
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES COMPANY

**PDX-R-0467/15 (Termination
Of [REDACTED])**

and

TWU LOCAL 555

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Company: Cynthia S. Fox, Senior Attorney –
Southwest Airlines

On Behalf of the Union: Brian Smith, Grievance Specialist –
TWU Local 555

I. ISSUE

The issue presented by the grievance before the Arbitrator can be framed as follows:

“Did the Company have just cause to terminate the Grievant’s employment for the reasons set forth in its February 23, 2015 letter and, if not, what shall the remedy be?”

II. BACKGROUND AND FACTS

The Union protests the Company’s termination of [REDACTED] (Grievant) from his position as a Ramp Agent. The reasons for the discharge were set forth in

the following letter:

A Fact-Finding was held on February 21, 2015 to discuss your whereabouts during your work shifts for several occasions since Jan. 13, 2015. Present at this meeting were you, TWU Representatives [REDACTED] and [REDACTED] Ramp Supervisor Travis Krason and myself.

After a thorough and complete investigation into this matter, and after considering the evidence and testimony presented at the Fact-Finding, we have determined that you left work on many occasions while on the clock and without getting permission from your Supervisor. These actions are in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to the following:

4. Complete coordination with Co-workers and Supervisors is required in order to provide harmonious working conditions.
7. Dependability and punctually(sic) are necessary. You are expected to be in, or at your position and ready to work when you are scheduled.
14. Performing your job in a careless, negligent, or unsatisfactory manner.
40. Time theft will result in termination.

Based on the above and because of your actions, your employment with Southwest Airlines is terminated effective immediately.

Subsequently, the grievance was filed. When it couldn't be resolved it was appealed to the System Board. A hearing was held on May 28, 2015. Following receipt of a transcript of the proceedings, post-hearing briefs were received and exchanged July 12, 2015.

III. OPINION AND DISCUSSION

On February 17, 2015, ramp supervision in Portland (PDX) tried to locate Grievant during his shift on the ramp and could not. He typically worked 5:00

a.m. to 1:30 p.m. This led to an investigation that included a check of his clock-in-times and times that he swiped in and out of the employee parking lot.

It was discovered that on sixteen different dates between January 13 and February 17 that he had clocked in appropriately before his shift and clocked out appropriately at the end of his shift (either at the regular time or a few minutes early with permission) *but* the parking lot swipes indicated he left the airport and returned during his shifts for extended periods of time.

The records indicated he was off premises on these 16 dates (11 of which he was assigned as a 'lead') between 1 hour and 1 minute and as many as 2 hours and 30 minutes. The total amount of time was 30 hours and 40 minutes. The parking lot swipes indicating his departure from the airport generally speaking occurred between 7:30 a.m. and 8:00 a.m.

At the fact-finding meeting held by the Company the Grievant explained some of the time away from the airport was due to having breakfast with his wife, going to take some forgotten medication or other errands. He acknowledged too that he did not have permission from anyone to leave the premises on these dates.

At the arbitration hearing he explained he left the airport during times when there were no planes to work. For example, he said during these lulls other employees would hang out in the break room or wander around the airport. He had "personal issues" he felt could be taken care of on the 16 dates. He claims to have

taken a radio with him and as a result he felt he was being responsible and productive. He also said some of the occasions involved getting his car home so his wife could use it. He didn't believe he ever missed a flight.

It is the opinion of the Board that the Company upheld its burden to show just cause for termination. Even when his 30 minute lunch period and two 15 minute breaks are accounted for (assuming it was permitted to combine them) Grievant still absented himself from the workplace for over fourteen hours over sixteen days. That is nearly two full workdays that he performed no duties and was practically speaking unavailable to the Company. It was nearly one hour or 12.5% of every shift. It is of little meaningful consequence that he had a radio with him that is to be used for worksite communication and is not a substitute for simply asking or informing his supervisor when he had to leave. Clearly, Grievant knew he had to have permission to leave and clearly he knew how as demonstrated that he had asked on several occasions to leave work without pay (LWOP).

While it cannot be said categorically that what Grievant did is classic time theft, it is nonetheless fundamentally serious misconduct. Theft of time typically involves time card fraud where records are altered or falsified in some way to deliberately claim time not worked. For example, secretly stowing one's self away in the workplace for the purposes of sleeping involves a deprivation of effort and/or availability to the Employer while 'on the clock' but it isn't strictly 'theft'.

The present circumstances, nonetheless, involved a particularly aggravated form of deprivation of effort and availability. Indeed, the reality is there are periods of inactivity in ramp operations. However, this is not “free time” for an employee to remove himself from the worksite for personal errands as if it was his time and not the Employer’s. Grievant lived almost 7 miles from the airport. He had to board a shuttle bus to get to and from the terminal and the parking lot. That took time and when this amount of time is considered, his time away from his responsibilities actually exceeded substantially the time reflected by the parking lot swipes. He simply was, on a regular basis, not in a position to realistically be relied on to address the needs of the Employer as articulated by supervision. This is what he gets paid for. His behavior went far beyond an isolated trip in the terminal to the bank or to get something to eat.

The Grievant’s behavior if validated would turn the employment relationship upside down. His conduct, if not theft of time, was deprivation of availability to such a degree that it easily tipped the scale from misdemeanor loafing to a felony. He exhibited a callous and cavalier disregard for the general nub of an employment relationship. The Employer was not unreasonable in concluding it could not fundamentally trust Grievant as an employee.

AWARD

The grievance is denied.

(Signature on Original)

Gil Vernon
Arbitrator

Dated this 30th day of July, 2015.