
IN THE MATTER OF ARBITRATION

OPINION AND AWARD

between

SOUTHWEST AIRLINES

**Grievance of [REDACTED]
(SFO-R-0229/14)**

and

TWU LOCAL 555

Gil Vernon, Arbitrator

APPEARANCES:

On Behalf of the Company: Kevin T. Minchey, Attorney - SWA

On Behalf of the Union: Jerry McCrummen, Vice President –
Local 555

I. ISSUE

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

“Did the Company violate the labor agreement when it did not allow Grievant to retract a call-off for “Kin Care” and thus did not allow her to work after her position had already been assigned to another employee on overtime, and if so, what is the remedy?”

II. BACKGROUND AND FACTS

The Grievant, [REDACTED] is a ramp agent in San Francisco. She was scheduled to work in the afternoon on January 14, 2014. That morning she called

the station and left a message at 11:18 a.m. that she would be absent because she needed to care for her mother as she was unable to find an alternative caretaker. In these particular circumstances, her loss in earnings would be (assuming a sufficient balance) covered by her sick leave bank. Southwest employees in California are permitted under state law to use half of their annual, accrued sick leave (normally six days per year) to care for a family member. The leave is commonly referred to as “Kin Care”. Among other things, the law also provides that Southwest may place the same restrictions and conditions on the usage of Kin Care as it would on the usage of regular sick leave.

The record indicates that the local supervisor received Grievant’s message and the Company claims it moved quickly to assign an employee to fill in for Grievant on her shift (set to begin at 1:45 p.m.). The employee the Company found was [REDACTED] (who also happens to be the SFO Station Representative) and he was assigned to the vacancy on an overtime basis.

The Grievant called back in at 11:40 a.m. leaving a recorded message that indicated she had ultimately found another family member to care for her mother and that she would be able to work. Not hearing anything from the Company she came to the station in time and prepared to work her shift. However, because the position was filled on an overtime basis with another employee, she was not allowed to work.

Subsequently, a grievance was filed protesting the Company's failure to allow her to work as a violation of the collective bargaining agreement. As a remedy, the grievance asked, in effect, for her sick bank to be restored by 8 hours and that her Kin Care privilege be similarly restored.

III. OPINION AND DISCUSSION

One thing seems to be agreed upon in this case. The instances of employees calling the Company back and reporting themselves available after previously reporting in as unavailable for the whole shift are rare. Indeed, the exact circumstances presented here are novel and a matter of first impression.

It can also be said that the collective bargaining agreement does not expressly or indirectly address the issue. In short, there is no contract provision that requires the Company to respect an employee's rescission of a report-off (such as a Kin Care day). Whether there is such a provision is the critical question. The question is not whether the contract prohibits the employee from reversing field.

Even though Management's discretion to accept or not, a reversal of a call-in/report-off is not restricted by the labor agreement, it is an equally true contract interpretation principle that such discretion cannot be exercised in an arbitrary or capricious manner and/or without reason.

In this respect, there is an agreed upon practice which, while not directly applicable, has some relevance. There is a practice (accepted as binding at least insofar as this record shows) that holds that once an overtime assignment is made to an employee it cannot be retracted by the Company.

This is relevant because if an employee's reported absence had been filled by assigning it to another employee on overtime by the time a report-off is reversed, there is a potential cost, prejudice and detriment to the Company if it allows that employee to rescind his or her call-off. In short, if the Company were required to accept a call-out reversal and since it is prevented from reversing an overtime assignment it could mean they would be paying two people when only one was needed. If it were true that Grievant's vacancy had been filled when she reversed her call-out, this would clearly be a rational and reasonably acceptable reason to have denied Grievant's request.

On the other hand, if the employee's absence had not been filled at the time the Company received the request to rescind the report-off it would seem arbitrary not to allow the employee to work his or her schedule.

In this regard, the Union questions the credibility of the Company's documentation as to when the vacancy was filled. However, the evidence is inconclusive that the overtime assignment had not been made by the time the Grievant's desire to rescind her report-off became manifest. The time of the

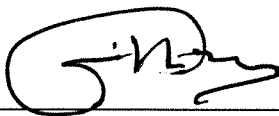
overtime assignment could have been readily established with direct and reliable evidence from the station representative who undisputedly received and worked the overtime.

Another aspect of the grievance must be addressed. The fact that California law allows sick leave to be used as a lost-wage substitute for an absence due to a family care circumstance would not have put Grievant at any disciplinary risk. Cases involving discipline for the use of sick leave for an absence due to a purported personal inability to work when it is proven the employee was not sick simply are not comparable to Grievant's case.

In summary, there was no violation of the contract in the manner in which the Company reacted to Grievant's report she could not work and her later advice she could work and/or her reporting for duty.

AWARD

The grievance is denied.



Gil Vernon
Arbitrator

Dated this 20th day of August, 2014.