


BEFORE  
WILLIAM H. LEMONS  
IMPARTIAL ARBITRATOR

In the Matter of Arbitration between	)	Case No. SFO-R-1916/13
	)	
Southwest Airlines Company	)	
Dallas, Texas	)	
	)	
And	)	
	)	
Transport Workers Union of America,	)	
AFL – CIO Local 555,	)	
Representing Ramp, Operations,	)	
Provisioning and Freight Agent Employees	)	Overtime Bypass Grievance

OPINION AND AWARD OF THE ARBITRATOR

March 15, 2014

## ARBITRATION AWARD

By the terms of the Collective Bargaining Agreement (“CBA”)(Jt. Ex. 1) between Southwest Airlines, Co. (hereinafter referred to as the “Company”) and the Transport Workers Union of America, AFL-CIO Local 555 (hereinafter referred to as the “Union”), William H. Lemons of San Antonio, Texas was selected by the parties to serve as Impartial Arbitrator, as per the parties’ December 9, 2013 letter to him. A hearing was held in the Board Room at the Wyndham Dallas Love Field on January 23, 2014. The parties were afforded full opportunity for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. The Union tendered four exhibits into evidence. The Company introduced seven exhibits into evidence. Additionally, the parties introduced three joint exhibits, including the CBA, the grievance package (Jt. Ex. 2), and later by stipulation, the Work Rules Interpretations (“WRI” – Jt. Ex. 3). The exhibits were received into evidence without the need for formal authentication or foundation, unless a particular document was the subject of a specific objection. There were none. The evidentiary portion of this matter was declared closed as of January 23, 2014. Post-hearing briefs were submitted in a timely manner and received on March 14, 2014.

### APPEARANCES:

FOR THE COMPANY:

Dan Kusek  
Sr. Manager – Employee Resources  
Ground Operations

FOR THE UNION:

Mike Roach, District 7  
Representative, TWU Local 555

IMPARTIAL ARBITRATOR:

William H. Lemons

**ISSUE:** Did the Company violate the CBA by not assigning the Grievant voluntary overtime on September 9, 2013? If so, what is the appropriate remedy?

**TIME FRAME ISSUES:** There were no timeliness/time frame issues, so reference is made to the grievance package (Jt. Ex. 2) for applicable dates, the same being incorporated herein by reference as though fully set forth *verbatim*. The parties stipulated that this grievance was properly before me for final and binding decision.

**PROVISIONS OF THE LABOR AGREEMENT:** (Jt. Ex. 1)

**Article 2 – Scope of Agreement**

- D. **Management Rights.** The right to manage and direct the work force, subject to the provisions of this Agreement, is vested in and retained by the Company.

**Article 7 – Overtime**

- D. **Notification.** Whenever possible, Employees in a shift shall be given a minimum of two (2) hours notice of overtime. . . .
- G. **Continuous With Overtime.** If a known overtime assignment of less than four (4) hours is available, it shall be filled by continuous with overtime (shift extension) as follows:
1. **Posting.** A column in the call book (Appendix A) shall be available for an Employee to indicate that he is volunteering to work continuous with overtime.
  2. **Agreement.** When an Employee signs this sheet, it constitutes his agreement to work the overtime.
  3. **Seniority.** Assignments shall be made to the most senior qualified Employee(s) on the sign-up sheet.
  4. **Reverse Order.** If no one signed up for overtime continuous with the beginning or ending of his shift, assignments shall be made in reverse order of seniority. . . .

5. **Rest Period.** For continuous service after regular working hours, Employees shall not be required to work more than two (2) hours without being allowed a fifteen (15) minute rest period, or be required to work more than four (4) hours without a paid thirty (30) minute meal period.
- H. **Splitting Assignments.** The Company may cover less than a full shift of available overtime, but if a block of four (4) or more consecutive hours is to be covered, the block shall not be split for assignments unless no one is eligible and available in the call book.
- I. **Overtime Call Book.** If a known overtime assignment of four (4) hours or more is available, the overtime call book for each bid location shall be utilized. . . . .
  4. **Closing/Notification.** The overtime call book for the following day shall be closed at 1200 hours of the preceding day or sooner when the station or office closes prior to 1200 hours. The Company shall attempt to assign known overtime assignments within two (2) hours after the overtime call book is closed.
  6. **Mandatory Assignments.** The Company and the Union agree that mandatory overtime assignments are not in the best interests of either party. To maximize voluntary overtime utilization, the Company must make overtime known to the Employees, and Employees must utilize the overtime call book to the fullest. If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company shall require Employees to work the overtime. It shall only be assigned as outlined in Article 7.I.2 a., b., and c. in reverse order of seniority.

**Article 20 – Grievance / System Board / Arbitration**

**Section One – Procedures**

- C. **Cost of Arbitration.** It is understood and agreed that the cost of arbitration shall be borne by the losing party.
- L. **Interpretation/Application of Agreement.** In the event of a grievance arising over the interpretation of, or application of, this Agreement, or in the event of disciplinary action other than discharge, the following steps shall apply. However, if the action involves discharge or a Union grievance concerning a change in Work Rules, it shall proceed to sub-paragraph 3, below. Decisions made pursuant to Steps 1 through 3, below, shall not constitute precedent of any kind unless agreed to, in writing, by the Union and the Company.
  1. **Step 1/Department/Assistant Manager ("Manager").** If an Employee is unable to resolve his grievance through his supervisor, within ten (10)

calendar days of the occurrence of the circumstances in question, the grievance shall be summarized in writing and presented to the manager or his designee. At any meeting to discuss same, the Employee may be accompanied by his local representative. The manager or his designee shall issue a written decision upholding or denying the grievance within five (5) working days.

2. **Step 2/Station/Provisioning Manager ("Manager")**. If the decision of the Department/Assistant Manager is unsatisfactory, the Employee or his representative may appeal the grievance to the Manager, or in the event of his absence his designee, within five (5) working days. The appeal of the grievance shall be signed by the Employee and his elected representative and presented to the Manager. The Manager shall issue a written decision upholding or denying the grievance within five (5) working days. Copies of the Manager's decision shall be forwarded to the Employee and the Union Office.
3. **Step 3/ Employee Resources or designee**. If the decision of the Station/Provisioning Manager is unsatisfactory, the District Representative/designee of the Union may appeal the grievance to Employee Resources or designee, provided that such appeal is presented, in writing, within ten (10) working days after receipt of the Station Manager's decision. The grievance shall be answered, in writing, to the District Representative/designee of the Union by Employee Resources or designee within ten (10) working days of receipt of the grievance.
4. **System Board of Adjustment**. If the decision of Employee Resources or his designee is not acceptable to the District Representative/designee of the Union, the Union shall notify the Company, within ten (10) working days of receipt of Employee Resource's or his designee's decision, of its intent to have the grievance reviewed by the System Board of Adjustment. It is understood and agreed that the decision of the System Board of Adjustment shall be final and binding on both the Company and the Union.
14. **Arbitration/Function and Jurisdiction**. The functions and jurisdiction of the Arbitrator shall be as fixed and limited by this Agreement. He shall have no power to change, add to, or delete its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement, and any matter coming before the Arbitrator which is not within his jurisdiction shall be returned to the

parties without decision or recommendation. In the event any disciplinary action taken by the Company is made the subject of proceedings, the Arbitrator's authority shall, in addition to the limitations set forth herein, be limited to the determination of the question of whether the Employee(s) involved were disciplined for just cause. If the Arbitrator finds that the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

### **OTHER PERTINENT INFORMATION**

#### **TWU Work Rules Interpretations** (Jt. Ex. 3)

- 3. How is a shift extension differentiated from a Callout? Is it 3 hours & 59 minutes or an even 4 hours? (Paras. G, H and I)**

Use the Callbook for four hours unless it is highly probable that the overtime can be released prior to four hours. A suggestion may be to extend only up to 3 hours and 45 minutes, thus not playing the minute game and putting you in a situation where the extension goes beyond the four-hour limit. This will eliminate grievances concerning Agent bypass. We must attempt to meet operational needs first, but keep in mind how this will affect the Employees.

- 6. What is the proper procedure for mandatory shift extensions? When should we stair step the assignment? (Par. G4)**

Mandatory shift extensions are determined by the time overtime is needed, and the most junior Employee is extended based on his shift ending time. When the extension is for a period of two hours or more, and a less senior Employee is available following the extension, the first Employee will be released, and the more junior Employee will be required to complete the overtime requirement. The total amount of overtime by this type of coverage shall not exceed 3 hours and 59 minutes, even if the shift was "stair stepped."

- 8. If no one is eligible and available in the overtime call book, can a shift be split by assigning mandatory overtime to two employees to each work a portion of an assignment on their scheduled day off:**

No. A mandatory assignment should be assigned in reverse order of seniority in the order as outlined in Article 7, paragraph I, sub-paragraph 6.

- 9. If there is no one eligible and available in the overtime call book, and no one is available on first-day off status for a mandatory assignment of four hours**

**or more, may a mandatory assignment be split among Employees on working status.**

Yes. If it is necessary to mandatory Employees who are at work on their regular work day, the overtime assignment of four hours or more may be split. The more senior Employee will have the choice of being released when a more junior Employee becomes available. The Supervisor will discuss the option with the Employee at the time the assignment is made. The Employee must make their decision at the time of the assignment whether to be released or not. The split assignment should not involve more than two Employees.

**10. How is the Overtime Callbook properly closed out? (Par. I)**

At 12:00 noon, a red line should be drawn diagonally from just below the last name to the bottom right hand corner of the page. Closing Supervisor writes in initials, time, and date. A witness initials the top of the page and the bottom "closed" line. "Closed" means no Employee can add his name to the Callbook, unless he signs below the line. Overtime assignments do not have to be made at 12:00 noon, however; the Company will make every attempt to assign known overtime for the following day within the designated two hour time period following the closing of the Overtime Callbook.

Mandatory assignments can be made any time after the callbook has been utilized, but it is not a requirement to make mandatory assignments within the two-hour time period. In a mandatory assignment situation the Company will attempt to notify the Employee of their assignment. If unable to reach the agent(s) next in line to be mandatoried and they are scheduled to work before the mandatory assignment begins, he/she will be notified of their assignment as soon as possible after they arrive at work. This could be later that same day or the following day depending on when they are scheduled. If they are not scheduled to work before the mandatory assignment then the Company will UTR and proceed to the next Agent in line to be mandatoried.

Employees can be assigned unknown overtime (as needs arise) anytime after the close out and throughout the following day. An Employee may be allowed to remove his name from the overtime book after all known overtime has been assigned, prior to receiving an assignment, by drawing a line through his name and having it initialed by a Supervisor.

**11. What is the major change with this contract in how the overtime Callbook (Appendix A) works? Must all information in the overtime call book be correct?**

There is a change to continuous-with overtime. The Employee may indicate either "B", "A", or "X". It is the continued goal of the Company and the Union to make sure that the Employee who was eligible and who wanted to work overtime was

the Employee who got the overtime assignment. We therefore, agreed that each Employee must be responsible for providing complete and correct information in order to be eligible for overtime. If information is incorrect or incomplete, Employee may be offered voluntary overtime as a last resort before mandatory.

**18. When an Employee indicates more than one preference for overtime, is he required to work more than one of his overtime preferences? (Par. I, 3)**

No. An Employee who indicates more than one preference in the call book and has worked one assignment can (but won't be required to) work a second assignment that day after the call book has been completely utilized (all Employees signed above the close out line). (The only exception is a continuous with assignment.)

**24. When there is no one in the Overtime Callbook, or when the Overtime Callbook has been used to its fullest, can a Supervisor work the OT? (Par. I, 2)**

Mandatory assignments must be made to Agents first as outlined in Article Seven, paragraph I, 6. Once the Agent is mandatoried it is acceptable for the Agent to give away their assignment to a Supervisor. In the event an Agent gives their mandatory assignment to a Supervisor, it must be documented on a shift trade form.

**36. If two Employees are in the Overtime Callback [sic], should adjustments on overtime be made to accommodate the most senior Employee even if overlap occurs? (Par. I)**

No. The overtime assignment needed should be determined prior to looking at what individuals are available. The very least amount of overtime possible should be arranged.

**DISCUSSION OF THE EVIDENCE**

The Grievant [REDACTED] is a 14 year Ramp Agent currently in San Francisco. He has been a Ramp Agent all his tenure, having been in Oakland and Sacramento previous to this assignment. On September 9, 2013, he was working an A.M. shift, his regular hours being from 5:30 a.m. to 2:00 p.m. He was in the overtime call book for a P.M. shift. Specifically, he had properly volunteered for callout overtime of four hours or more. It is the Union's contention that



the Company mandated eight different employees that were not signed up in the overtime call book that day, but did not issue any overtime to the Grievant, voluntary or otherwise.

The Union points out that under Article 7, Paragraph I, number 6 of the CBA, the parties have agreed that mandatory overtime assignments are not in their best interests, and accordingly the Company must make overtime known to the employees, and they must utilize the overtime call book to the fullest. The section concludes: *If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company shall require Employees to work the overtime.* (Jt. Ex. 1, page 18)

It is obvious that the Union reads this to mean that if there is any possible way to use voluntary overtime, use it, and don't be calling our people who are on their days off. The Union contends that its reading of the CBA is reinforced by the Work Rule Interpretations, where they state in Article 7, page 16, number 11: *It is the continued goal of the Company and the Union to make sure that the Employee who was eligible and who wanted to work overtime was the Employee who got the overtime assignment.*

In summary, this may have been an unusual situation, inasmuch as the person who assigned this overtime is not the regular administrative supervisor who normally did that.<sup>1</sup> The Union contends that this supervisor did not utilize the overtime call book to its fullest, and did not document when he made his mandatory assignments. Thus, in effect, the *last resort* assignments were not necessary because the Grievant was signed up correctly and completely. Thus, the Grievant should receive four (4) hours of overtime pay at time and a half, and three (3) hours of overtime pay at double time.

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<sup>1</sup> Although not important to my analysis, I do not find that the fact that overtime was assigned by Nathan Austin, rather than the regular administrative supervisor, made any difference in that I find later that the assignment did not violate the CBA.

Not so, says the Company. The known need for overtime was an eight-hour block. On September 8, 2013, management closed the overtime call book at noon, and began assigning overtime for the next day. Management followed its established policy and practice: exhausting the overtime call book – as to voluntary overtime – of all those who fit the need. This means they had to be eligible and available. Once that was done, management assigned the eight-hour block of overtime to [REDACTED]. The Company maintains that the hours mandatorily assigned to [REDACTED] were hours that the Grievant could not fulfill.

The evidence is that, according to the explanation of Company Witness Mandy Vitela, in similar instances where overtime cannot be fulfilled – the entire assignment cannot be fulfilled to its fullest – by a volunteer, the Company can and has in the past mandatorily assigned a full shift of overtime notwithstanding the overtime call book was not (theoretically) exhausted. In the Providence cases, [REDACTED] was properly and correctly in the overtime call book, yet the eight-hour overtime shift was mandatorily assigned to [REDACTED]. They both filed grievances, alleging that the overtime call book had not been used to its fullest. [REDACTED] was mad that he did not get the overtime, and [REDACTED] mad because she did. It was established that in fact, because there was a substantial overlap (1:45 to 4:00) for which [REDACTED] was not available, mandatory overtime was properly assigned. Both Grievances were withdrawn on December 19, 2012 (Co. Ex. Nos. 1-4). Mr. Roach had no cross of this witness.

Robert (“Wolfie”) Bettinger was asked, after he read into the record Article 7 paragraph 6, what does that provision mean to you?<sup>2</sup> He later opined that had the Company really wanted to utilize the least overtime, it might have mandated an extension to fill 12:30 to 2:00, and

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<sup>2</sup> While I respect Wolfie’s opinion, in arbitration, unless the Arbitrator finds the provision to be *ambiguous*, testimony about what it might mean (in lawyer terms “parol evidence”), or testimony about past practice, is not relevant and in fact, not admissible. For unambiguous terms, I am the sheriff of what the language *says*.

then given Grievant the overtime needed. I think in essence what the instant grievance may actually be about is not so much what happened to the Grievant, but more over concern that the Union has that people should not be mandatorily assigned small (one hour or one and a quarter hour) increments resulting in the disruption and interruption of their off-duty daily lives. Says Wolfie, we ought to be mandatorily assigning extensions (continuous with) rather than mandatorily assigning [small increments of] overtime to someone on their day off. But this is not what is before me. That is not what [REDACTED] is alleging. Similarly, I find that the situation involving [REDACTED] (Union Ex. 3) does not establish a violation of the realization of the *aspirational goal* that mandatory overtime is not in anyone's best interests, and that the overtime call book should be utilized to the fullest.

I find very persuasive the situation between [REDACTED] and [REDACTED] as occurred on August 31, 2012. [REDACTED] was regularly scheduled from 12:00 to 8:30, and was properly in the overtime call book above the line. [REDACTED] was in the call book as well, but was *invalid* – his entry had a mistake, which was not initialed by the Employee and the Supervisor. The voluntary assignment of overtime from 5:00 to 1:30 still went to [REDACTED] because the Company could offer it to him as a last resort before mandatorily assigning it. Mark Waters realized the assignment was not improper when he withdrew the grievance on October 22, 2012, stating [REDACTED] *could not work the OT shift because of the 1.5 hour overlap in the shifts* (Co. Ex. 6).

### **OPINION OF THE ARBITRATOR**

Both parties were well represented in this dispute and presented sound arguments. I appreciate their efforts. Based upon all the facts and evidence before me, and after my review of the applicable provisions of the CBA and WRI, it is my conclusion that the Company properly assigned [REDACTED] rather than the Grievant, the overtime in question, and in so doing did

not violate the CBA or the WRI, and did not violate the spirit or intent of the aspirational goal jointly made about minimizing mandatory overtime. In support of this conclusion, I make the following specific findings:

a) According to the Grievant's own testimony, SFO is known for the extreme number of irregular operations, and it seems about one-half of the flights historically are delayed. He testified that between 12:30 and 2:00 (even assuming he was through training at 12:30) there were 7-8 arrivals. On cross examination, the Grievant admitted that it would not have been possible for him to work overtime at 12:30 (Transcript p. 54, l. 8 to p. 55, l. 11). I am also not going to assume that the Grievant did nothing from 12:30 to 2:00. That isn't how it happens in real life. Much like the situation with [REDACTED] there was a 1.5 hour overlap that he could not cover, and thus he was not available.

b) I tend to believe that the aspirational goals of minimizing mandatory overtime assignments and maximizing the use of voluntary overtime are just that: they provide the underlying principle that then leads to formulation of the specific work rules in both the CBA and WRI. So I just don't know, as a matter of arbitration law, exactly how enforceable Article 7, Paragraph I, number 6 of the CBA actually is.<sup>3</sup> And so I tend to agree with Arbitrator Hill, "[c]ompletely silent in [REDACTED] grievance and the Union's Brief is what specific provision the Company violated when it mandated [REDACTED] on the 9<sup>th</sup>. To this end, the Company makes the better argument regarding the absence of language precluding the making of mandatory assignments. The parties' collective bargaining agreement includes specific requirements on how mandatory overtime is to be assigned . . . and the rate at which it is to be paid (double time)." Arbitration SWA/TWU 555 – Arbitrator Marvin Hill (PHX-R-1462/13 [REDACTED])

c) I also tend to agree with Arbitrator Jennings, and share some of his frustration, that "a ruling that supports an automatic overtime trigger in the event of any good faith mandatory overtime mistake made merely unduly punishes the Company for minor and harmless administrative errors." Arbitration SWA/TWU 555 – Arbitrator Daniel Jennings (PDX-R-0489/10 [REDACTED]) Perhaps the Union wants to have its cake and eat it too. Here, I find it

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<sup>3</sup> It is apparent to this Arbitrator that overtime is a very important topic both to the Union and the Company. Much of the CBA is dedicated to that, and about 25% of the WRI (10 pages of 39) talk about overtime. My broad dicta, not related to the specific facts and circumstances of this case, is just that. I am not going to inadvertently, or because I become result-oriented, risk dabbling in something that the parties are more capable of adjusting by grievances and negotiations. This Award, however, is fully binding and precedential as applied to the manner and means to which overtime was assigned in this case.

<sup>4</sup> I also appreciate being referred to Arbitration SWA/TWU 555 Arbitrator William Lemons (BDL-O-1699/08 [REDACTED]). It was brilliant. I do read my earlier Awards on the subject on the plane going to the hearing, in order to be familiar with the topic and to be consistent.

telling, though not conclusive, that [REDACTED] did not grieve her mandatory overtime assignment. Double time is nice. I always enjoyed it.

d) Let's be careful what we ask for. It would not be proper, after closing the overtime call book, to juggle known overtime needs to fit what individual(s) might be available (Work Rules Interp., Art. 7, 36.). It would not be proper for the Company to then split a "greater than" four-hour overtime assignment to fit the Grievant's needs/availability. It cannot assign mandatory overtime by splitting that shift if no one is eligible and available in the overtime call book (Work Rules Interp., Art. 7, 8.). For me to somehow torture this into a situation where Mr. Roach gets a win and the Grievant gets some overtime would most likely cause more harm than good.<sup>5</sup> And thus I am not even remotely tempted to do that.

### AWARD

After careful consideration of all the oral and written arguments and evidence, and for the preceding reasons, the Arbitrator finds that the Company did not violate the CBA by not assigning the Grievant voluntary overtime on September 9, 2013, and thus the grievance should be and is denied. Any unresolved differences regarding interpretation or application of this Award will be settled by the undersigned upon written request of the parties. The cost of the arbitration shall be borne by the Union.

Signed this 15th day of March, 2014, at San Antonio, Texas.

  
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WILLIAM H. LEMONS, Arbitrator

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<sup>5</sup> The Union makes much of the fact that indications are that perhaps Supervisor Lowry would have found a way to get the Grievant this overtime. First, I find this testimony to be *unreliable* hearsay, and have not given it much weight. Second, had that happened and this overtime assignment gone the other way, it is not unlikely that [REDACTED] would have grieved losing the overtime that [REDACTED] got. She could have become the [REDACTED] And I most likely would have sustained her grievance. You cannot have it both ways.