IN THE MATTER OF AN ARBITRATION
BETWEEN

TRANSPORT WORKERS UNION	§
LOCAL 555	§
and	**Termination of [redacted]**
	Case No. BNA-R-1280/9
SOUTHWEST AIRLINES COMPANY	§
DALLAS, TEXAS	§

William L. McKee, Ph.D.
Arbitrator

An arbitration hearing in this matter took place in Dallas, Texas, on October 16, 2009. On receipt of written briefs, the hearing closed.

REPRESENTATIVES

FOR THE UNION:
Mr. Mark Waters
TWU District III Representative

FOR THE COMPANY:
Mr. Juan Suarez
Associate Labor Counsel
Labor & Employee Relations

I. STIPULATIONS

The parties agree that the issue to be decided at arbitration is as follows:

> Did the Company have just cause to terminate the Grievant, [redacted] and, if not, what is the appropriate remedy?

They also agree that Company has the burden of proof to show that termination was warranted.

II. BACKGROUND AND AUTHORITIES

As of the time of his termination in July 2009, Grievant [redacted] had worked as a Ramp Agent for the Company at its Nashville Station for over eight years and was considered to be a hard worker. The Company discharged [redacted] after its investigation into an incident that occurred on July 19, 2009. On that date, the Grievant was assigned to load and unload baggage with another Ramp Agent [redacted] and [redacted] apparently had been involved in a heated argument the last time they worked together in January 2009. Late in the morning of July 19, 2009, [redacted] and [redacted] had another altercation, one that escalated to the use of physical force.

The parties disagree about how and why [redacted] used force against [redacted] argues that, in a continuation of their earlier verbal dispute, [redacted] leaned into him, blocking his exit from the rear aircraft bin where they were working, and that [redacted] shoved [redacted] out of the way in order to climb out of the bin. [redacted] claims that the Grievant pushed him to the floor, pinned him down with his knee, and put his hands on [redacted] neck. At least some portions of the incident were witnessed by another ramp employee [redacted] who testified that he stuck his head into the bin and saw [redacted] pushing [redacted] down with his hands.

Immediately after the July 19 incident the Company suspended the Grievant with pay and issued him notice of a fact-finding meeting the next day. [redacted] attended that meeting, along with his Union representative, to give his version of the events. In the fact-finding meeting, the Company considered the Grievant's statements, the oral statement of [redacted] and the written Irregularity Reports of [redacted] and [redacted]

The Company decided to terminate [redacted] immediately following the fact finding meeting and issued a termination letter. In the termination letter, supervisors specified that the Grievant was

discharged because he "struck another co-worker in a display of anger," in violation of at least six provisions of the Southwest Airlines Ground Operations Basic Principles of Conduct.

Apart from disputing the factual basis on which [redacted] termination was predicated (that he struck [redacted] in a display of anger) and arguing that the Company did not have "just cause" to terminate the Grievant, the Union challenges the termination on other grounds: (a) that the Company did not discipline [redacted] for his participation in the July 19, 2009, incident or in the earlier incident between [redacted] and the Grievant; (b) that the Company's investigation into the July 19, 2009, incident was flawed and incomplete because the Grievant was not asked to submit a written Report of Irregularity before the fact finding meeting; (c) that, in presenting its case, the Company relied on materials that should have been removed from the Grievant's personnel file prior to the hearing; (d) that the Company relied upon hearsay evidence both in deciding to terminate [redacted] and to impeach his testimony at the hearing; and (e) that the Company failed to engage progressive discipline after the July 19, 2009 incident.

Authorities

Each ground operations employee of the Company is provided and must acknowledge receipt of understanding of the Southwest Airlines Ground Operations Employee Policies Packet (the "Policies"). In 2008, the Grievant signed and acknowledged receipt and understanding of the 2008 version of the Policies. The Policies set forth basic principles of ground operations and of employee conduct and specify that the discipline for a violation of the Policies "may range from a reprimand to discharge, depending on the particular violation and the circumstances." Section 01.040.20 of the Policies, titled *Basic Principles of Conduct*, specifically warns against what the Company considers to be particularly serious violations and provides that "Striking another Employee in a display of

anger shall warrant termination." (Such a consideration, whether written or unwritten, is commonly recognized in arbitration.)

Article Twenty of the Collective Bargaining Agreement ("CBA") between the Company and the Union sets forth the procedures for disciplining an employee. Of note in this case are Article Twenty, Section G, which specifies the requirement that the Company conduct a fact-finding procedure prior to imposing discipline involving loss of pay; and Section I, which provides that letters of reprimand or warning issued as discipline against an employee in lieu of suspension or termination must be removed from the employee's personnel file after twelve months. Other provision of Article Twenty establish the grievance procedures followed in this matter.

III. FINDINGS RELATED TO THE JUST CAUSE STANDARD

Arbitrators in labor-management disputes typically consider several factors in making determinations under the just cause standard. Among them are adequate notice of the employer's standards, reliable evidence that the employee committed the violation(s), and the appropriateness of the disciplinary response.

Here, the evidence establishes tha[redacted]used physical force against[redacted]on July 19, 2009. This was established through the testimony of not only[redacted]but also through that of[redacted]who saw the Grievant holding Hall down with his hands. Whether described as a "shove" or a "push," the Grievant's use of force against[redacted]fits the definition of "striking another Employee in anger," as contemplated by Section 01.040.20 of the Policies. There is no question that the Grievant was familiar with the Policies and that he understood not only how he was expected to conduct himself in relation to other Company employees while on the job but also the potential consequences of violating the Policies.

Procedurally, the Company complied with Article 20 of the CBA in disciplining [redacted] was originally suspended with pay, and the Company held a fact-finding meeting the day following the incident. Along with his Union representative, the Grievant was allowed to attend and participate in the fact-finding meeting. The Company issued its Results of Fact-Finding three days after the fact-finding meeting. Although the Grievant complains that the Company did not ask him to submit a written Irregularity Report prior to the fact-finding meeting, as it accepted from [redacted] and [redacted] nothing in the CBA requires the Company to request an Irregularity Report from the suspected employee. It was sufficient that the Grievant was permitted to give his version of the events at the fact-finding meeting itself. Indeed, many employees might find it beneficial to have an opportunity to reflect on a situation and consult with representation prior to committing to a defense.

With reference to the evidence complained of by the Union, specifically (1) hearsay evidence regarding an earlier altercation with another employee and (2) written documentation of a reprimand or warning more than one year prior to the incident in question, I find that Company Exhibit 6 cannot be relied upon as evidence of [redacted] guilt in the instant matter.

As a threshold matter involving an act of violence committed on-duty and on the employer's premises, the Company is not required to establish that the Grievant had a history or pattern of similar violations of the Policies. A single instance of "striking another Employee in anger" is sufficient basis for termination. Thus, as Arbitrator I would have arrived at the same conclusion in this case whether or not evidence of earlier violations had been presented. The Company did not need to establish that the Grievant had a history or pattern of aggressive behavior in deciding to terminate him.

The provision in Article Twenty, Section I, *Retention*, specifically requires the Company to "remove from an Employee's file ... all letters of warning or reprimand after twelve (12) months." Although Company Exhibit 6 is entitled *Verbal Counseling Log* and, unlike warning and reprimands, documented counseling is not discipline under the Agreement, counseling logs reasonably should be considered to fall under the restriction imposed by Section I. The language of Sections J and I of the Agreement contemplates that only records of the most serious disciplinary actions will be maintained in employee files after passage of 12 months, and it would be inconsistent to allow logs of counseling to remain in employee files along with suspension and termination letters.

However, the requirement to remove warning letters and reprimands from employee files after 12 months operates only to prevent the Company from predicating discipline on past reprimands or warnings, but it does not preclude the introduction, through testimony, of prior misconduct in order to impeach an employee who claims to have a "clean record" when grieving a disciplinary action. In this case, the Grievant introduced evidence (i.e., the testimony of fellow employees) to show that he got along well with his fellow employees. The Company's introduction of testimony about incidents more than one year prior to July 19, 2009, but not the documents that should have been removed from [redacted] personnel file, was appropriate to dispute the Grievant's proposition that he had a history of getting along with his fellow employees. Further, testimony in reference to the older incidents also can properly be considered to rebut [redacted] claim that the Company should have pursued discipline against other employees for non-violent behavior technically in violation of the Policies. One of the prior incidents involving the Grievant did not amount to physical violence, and the Company responded in a manner similar in nature to its decision to forego disciplining [redacted] for his conduct in the January 2009 altercation wit[redacted]

IV. CONCLUSIONS

For the reasons stated above, the Company's decision to terminat[redacted]atisfied the standards for just cause. The Company's disciplinary response was not arbitrary or unreasonable, and, pursuant to Article Twenty of the Collective Bargaining Agreement, I am without jurisdiction to modify or remove the penalty imposed.

V. AWARD

Having found that there was just cause for Grievan[redacted]ermination, the grievance is denied.

William L. McKee, Ph.D.
Arbitrator

December 22, 2009