IN THE MATTER OF AN ARBITRATION
BETWEEN

TRANSPORT WORKERS UNION	§	
LOCAL 555	§	
and		[redacted] **Grievant**
		DEN-R-0433/09
SOUTHWEST AIRLINES COMPANY	§	
DALLAS, TEXAS	§	

William L. McKee, Ph.D.
Arbitrator

An arbitration hearing on this matter took place in Dallas, Texas, on August 7, 2009. The parties agreed to limit the hearing to the issue of arbitrability. On receipt of written briefs, the hearing closed.

REPRESENTATIVES

FOR THE UNION:
Kevin Carney and Mark Waters
District V Representatives
TWU Local 555

FOR THE COMPANY:
Eric Carr
Chief Counsel, Labor & Employee Relations

I. STIPULATIONS

The parties stipulated the issue to be decided at this stage of arbitration, as follows:

> Did the Company violate the time frame provisions of Article Twenty of the Collective Bargaining Agreement? If so, what is the appropriate remedy?

II. AUTHORITIES AND CONTENTIONS

A. Authorities

Section One of Article Twenty of the Collective Bargaining Agreement ("CBA") between Southwest Airlines Co. (the "Company") and Transport Workers Union Local 555 (the "Union") sets forth the procedures that must be followed when an employee is to be disciplined, to the extent of losing pay, or discharged. Relevant paragraphs of Article Twenty, Section One, are as follows:

> E. Time Frames. For the purpose of this Article, a working day shall be defined as Monday through Friday, excluding all Company recognized holidays. It is expressly understood and agreed that, if any of the time frames set forth in this Article are violated by the Company, the Employee shall be awarded the desired settlement without precedent. Furthermore, if the time frames set forth are violated by the Union the grievance shall be considered withdrawn. Determination of time frame violation issues shall take precedence over consideration of any other issue, and, if upheld, no further determination shall be appropriate.
>
> G. Fact-Finding Procedures. No covered Employee shall be subject to discipline involving loss of pay or discharge without first having the benefit of a factfinding, with the right to have a Union representative present, in accordance with the following procedures:
>
> 1. No Suspension. In circumstances where no suspension is imposed:
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> a. The Employee shall be advised, in writing, with a copy to the local representative of the Union, of the nature of the factfinding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the factfinding shall be convened.
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> b. The factfinding shall be held within five (5) calendar days from the date such notice is given to the Employee and the local representative of the Union; and
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> c. The Company shall render its decision (inclusive of any discipline), in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

2. Suspension. Notwithstanding the foregoing, the Company may suspend a covered Employee pending a factfinding and/or until such time as the decision of the Company resulting from the factfinding is rendered, subject to the following conditions:

a. The suspension shall be a paid suspension;

b. The basis for the suspension shall be reduced to writing and presented to the Employee and the local representative of the Union within two (2) working days of the suspension;

c. The factfinding shall be held within three (3) working days of the presentation of the written notice of the basis for suspension; and

d. The Company shall render its decision (inclusive of any discipline), in writing to the Employee, within five (5) working days after completion of the factfinding, and a copy of the decision shall be delivered to the local representative of the Union.

B. Factual Contentions

On March 30, 2009, the Company alleged that Grievant [redacted] ("Grievant" or [redacted]) engaged in misconduct while on duty that day. The Company decided to conduct a factfinding meeting in order to investigate and determine appropriate disciplinary action, but did not suspend [redacted] at the time. As the parties agreed, on March 30 the Company provided [redacted] a Memorandum notifying her that a factfinding meeting would be held on Monday, April 2, and directing her to attend. That Memorandum expressly advised the Grievant that the factfinding meeting would be held "to discuss your attitude and disrespectful behavior (shoving) towards a SWA Ramp Supervisor." [redacted] signed the Acknowledgment of Receipt line on the March 30 Memorandum.

However, the Union claims that the Company failed to provide a copy of that Memorandum to a Union representative as required by Paragraph G.1.a. The Company did not offer testimony or

documentary evidence to show that it provided the Union a copy of the March 30 Memorandum given to Grievant regarding the factfinding meeting, but argues that the Union had notice of the meeting, as evidenced by the Union representatives' presence and participation at the scheduled factfinding meeting on April 2, as well as by statements made by Union representatives to Company management prior to the meeting.

On April 1, Southwest Concourse Manager Helen Hancock issued Grievant a Memorandum titled *Suspension and Notice of Meeting for Fact Finding*, which advised that [redacted] was suspended, with pay, pending the factfinding meeting the next day. The Company may have copied the Union on the April 1 Memorandum, but the parties agree that this Memorandum was never provided to the Grievant. Instead, the Company contends that Grievant was not suspended as of April 1, so the April 1 Memorandum had no effect, regardless of who received a copy of it.

On April 2, the Grievant attended the factfinding meeting, along with Union representatives [redacted] and [redacted] The Company asserts that neither the Grievant nor the Union raised any issues regarding the Company's compliance with Article Twenty, Section One, at that meeting. At the conclusion of the April 2 meeting, the Company decided to suspend [redacted] with pay while it continued its consideration of her alleged misconduct. After the April 2 meeting, Southwest Assistant Station Leader Rob Vogt issued Grievant a Memorandum titled *Suspension – With Pay Pending Fact Finding Results*. The body of the April 2 Memorandum is as follows:

> [redacted] this letter will serve as your notice of suspension with pay pending Fact Finding results from April 2, 2009. The results meeting is scheduled for April 5, 2009 at 1230 ASM – Rob's office.
>
> You may have your Union Representative Present.

Both the Grievant and Union Representative [redacted] signed the Memorandum in acknowledgment of the April 2 Memorandum.

On April 5 or 8, 2009, the Company held its results meeting and issued the Grievant a Memorandum titled *Results of Fact Finding – Final Letter of Warning* (dated April 8). In addition to the final warning, the Memorandum assigned to Grievant five (5) unpaid disciplinary days. The Union grieved the Memorandum, arguing that the Company violated Article Twenty, Section One, of the CBA because it (a) failed to give the Union proper written notice of the April 2 factfinding meeting and (b) failed to identify a basis for suspension in the April 2 Memorandum that suspended Grievant with pay pending the factfinding results.

The parties conducted a Systems Board hearing on this matter on June 30, 2009, but the Board deadlocked, resulting in the instant arbitration.

III. FINDINGS AND CONCLUSIONS

At the outset, I find that the Grievant, and the Union, had actual notice of all aspects and proceedings related to the Company's allegations of misconduct against Grievant arising out of the alleged March 30, 2009 incident. I further find that the Grievant, and the Union, had notice of the basis of the disciplinary proceedings at issue here, and that Union representatives were given ample time to prepare their representation. There is no issue of the Grievant or the Union being blindsided by any aspects of those proceedings.

That being said, the CBA sets forth specific, mandatory notice requirements within designated time frames that the parties must satisfy with regard to disciplinary procedures and appeals therefrom. Certain procedural requirements were not followed by the Company in this case.

With reference to the March 30 Factfinding Notice, I find that the Company did not provide a copy of the notice to the Union, as required by Article Twenty, Section One, Paragraph G.1.a., within the designated time frame. While it is clear to me that Union officials were aware of the factfinding, the CBA requires that the Union be given a copy of the *same* notice of a factfinding meeting as the Company provides to the employee. Absent any proof that the Company provided a copy of the March 30 Memorandum to a Union representative, the Company did not comply with that technical requirement. The Union may not have complained about this lack of proper notice at the April 2 factfinding meeting, but I see nothing in the CBA that bars the Union from raising such an objection for the first time at a later proceeding.

The April 2 Memorandum notifying [redacted] of her suspension pending factfinding results was copied to the Union, but was deficient because it failed to specify the grounds for her suspension. While [redacted] clearly had notice of the grounds for the disciplinary proceedings resulting in the April 2 suspension (because those grounds *were* specified in the March 30 Memorandum), the CBA requires the grounds to be stated in the correspondence notifying an employee of his or her suspension. Pursuant to CBA Article Twenty, Section One, Paragraph L.14, the Arbitrator has no power to "change, add to or delete [the] terms" of the CBA. Thus, while it might seem reasonable to import the notice given the Grievant on March 30 into the April 2 Memorandum, I am not at liberty to do so. The Company failed to comply with CBA Article Twenty, Section One, Paragraph G.2.b.

The Collective Bargaining Agreement sets forth stringent technical requirements to which both parties must adhere in employee disciplinary procedures. Those technical requirements are, I am sure, carefully negotiated between sophisticated parties and their representatives. As the Arbitrator, I

am bound to strictly enforce the provisions of the CBA, specifically Article Twenty, Section One, Paragraph E, which states that *"Determination of time frame violation issues shall take precedence over consideration of any other issue."* Accordingly, I find that, because the Company failed to comply with the CBA in this case, and pursuant to CBA Article Twenty, Section One, Paragraph E, the Grievant is entitled to be awarded her desired settlement, without precedent.

IV. AWARD

Having found that the Company violated the time frame requirements of Article Twenty, Section One of the CBA, I award Grievant her desired settlement – specifically:

- Removal of the Disciplinary Letter ("Final Letter of Warning") issued to [redacted] on April 8, 2009; and
- Compensation, at [redacted] regular rate of pay, for the five disciplinary days assessed to her pursuant to the factfinding results.

William McKee

October 7, 2009

William L. McKee, Ph.D.
Arbitrator