

In the Matter of Arbitration

between

Southwest Airlines Company  
PHX

and

Transport Workers Union of America  
Air Transport, Local 555

PHX-P-0910/09



The Question of Time Limits

before

John B. Barnard  
Arbitrator

For the Company

Ms. Christina Bennett, Esq.  
Company Counsel

For the Union

Mr. Kevin Carney  
District V Representative

9:00 a.m. Monday August 31, 2009  
Wyndham Hotel/Love Field  
Dallas, Texas

## The Issue

The Company proposes,

Did the Company violate the provisions of Article 20, Section G of the collective bargaining agreement? If so, what is the appropriate remedy?

The Union offers,

Did Southwest Airlines violate the time frames set forth in Article Twenty of the collective bargaining agreement? If so, what is the appropriate remedy?

## Authority

### Collective Bargaining Agreement

#### Article 20 Grievance/System Board/ Arbitration Discharge and Discipline

##### E. Time Frames

...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 Furthermore, if the time frames set forth are violated by the Union, the grievance shall be considered withdrawn.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.

##### F. Extension of Time Frames

It is understood and agreed that, at any step of the fact-finding or grievance procedure, the time limits set forth may be extended by mutual agreement between the Company and the Union, in writing.

##### 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 fact-finding, 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,
  - a. The Employee shall be advised in writing, with a copy to the local representative of the Union, of the nature of the fact-finding not later than ten (10) calendar days from the time the Company becomes aware of the incident concerning which the fact-finding shall be convened.
  - b. The fact-finding 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,
  - 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 fact-finding, 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 fact-finding and/or until such time as the decision of the Company resulting from the fact-finding 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 (2) working days of the suspension.
  - c. The fact-finding 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 fact-finding, and a copy of the decision shall be delivered to the local representative of the Union.

### Background

According to the Company, and as a background only, the grievant, on May 16, 2009, entered the work facility (a secure zone) during his non working hours in an effort to evade the police, who followed him into the workplace and promptly arrested him. In this regard, the Company determined that it needed to investigate the incident to determine, what if any, discipline was appropriate and in light of the circumstances, it chose to suspend him pending a fact-finding meeting.

The grievant was scheduled off work from May 17<sup>th</sup> through May 31<sup>st</sup>, and was released to return to work on June 1<sup>st</sup>, per his doctor's note. Instead, he came to work unannounced on May 31<sup>st</sup>, and around 5:00 a.m.

The supervisor on duty, Clarence Willis, was not expecting him on that date, and the Company had not given Willis a copy of the suspension notice. As a result, Willis told the grievant he was suspended, and to leave. Apparently then Willis told the grievant that his Manager, Steve Land, would be following up with him later that morning. In fact, the grievant did speak to Land that morning, May 31<sup>st</sup>. According to the Company, the grievant agreed to meet Land the following morning to receive his suspension notice. They were to speak that morning to

arrange for the place and time of that meeting.

With that, Land attempted to reach the grievant on the morning of June 1<sup>st</sup>, but the grievant did not answer his phone. According to the grievant's testimony, he was in Sedona on June 1<sup>st</sup>, and had decided to go there on May 31<sup>st</sup>. The grievant also testified that Land had called him twice on June 1<sup>st</sup>, but he never returned Land's call. Of note is that the grievant testified that he didn't tell Land on that phone call that he'd meet with Land the next day, June 1<sup>st</sup>.

Land finally decided that the grievant wasn't going to meet with him on June 1<sup>st</sup>, and made arrangements for the suspension letter be delivered by FEDEX to the grievant's home on June 2<sup>nd</sup>.

According to the grievant, the package was left on his front porch, and he was not aware of it, as he hadn't looked on the porch. Although the package was delivered timely, the grievant never opened it.

Following that, the grievant came to the fact-finding meeting scheduled for June 4, 2009, along with his two Union representatives, [REDACTED] With that, however, the grievant refused to participate in that meeting. Land's notes of that reflect,

Q. [REDACTED] do you wish to participate in this Fact Finding meeting?

A. I've been advised by my Union that in my best interests I should not.

Q. Are you saying that you're electing NOT to participate, or give us your story version?

A. Yes, I do not wish to have this meeting.

Q. Then I (Land) must make you aware that the Company will proceed forward with reviewing this matter and addressing the concerns that we have based on the information and facts that we have.

At that point (per Land) it was clear that [REDACTED] was not willing to participate in the meeting and the gathering was adjourned. [REDACTED] was reissued his Company badge, and was instructed to resume his work duties at his next scheduled work shift until further notice.

The grievant was issued the results of the fact-finding meeting of June 4, 2009 with a letter to him dated June 10, 2009. Such letter outlines the information available to the Company along with the listing of the rules violations attributed to the grievant. Steve Land then states in conclusion,

.. [REDACTED] based upon the above mentioned violations, sick leave and sick pay abuse, and FMLA abuse, your employment is terminated effective immediately.

Company counsel, in post hearing brief, mentions,

...The parties agreed to argue the contract violation issues before the Arbitrator first, and to present the merits at a later date, if applicable...

The contractual violations are now at issue.

Union Position

As reviewed

Company Position

As referenced

Discussion and Conclusions

This case certainly cannot be described as one of first impression.

If one were to initially review this case, the evidence reflects that the grievant appeared at work on May 31<sup>st</sup>, even though the release to return was June 1<sup>st</sup>. As such, his appearance was unexpected, and the notice of suspension had not as yet been available. He was sent home, and Willis told him that Manager Steve Land would be contacting him.

Land then spoke with the grievant the morning of May 31<sup>st</sup>, and told him they needed to meet so that he could receive the suspension notice. According to Land, the agreement was that he would call the grievant the next morning to set up a meeting so that the suspension notice could be given to the grievant. Land said that he'd meet anywhere with him. The call lasted 12 minutes.

On June 1<sup>st</sup> then, as supposedly agreed, Land tried to call the grievant to set up the meeting, but the phone went to his voicemail. Land left a message. Land tried

later to call, but was also unsuccessful. With that, Land Fed Ex'd the notice to the grievant. Such package was not opened by the grievant.

On June 4<sup>th</sup>, the grievant arrived at the fact-finding with proper Union representation, but he then refused to participate in the meeting. The investigation then proceeded without his participation, and the decision was made to terminate the grievant, and he was timely notified of his termination on June 10, 2009.

According to the grievant, [REDACTED] he was unaware of his suspension, yet he testified he was in shock on May 31<sup>st</sup>. He then went to Sedona on June 1<sup>st</sup>, where his cell phone was inoperative, thus he was unable to speak with Land. He returned home later that evening, and there was no testimony given that he was not at home starting the evening of June 1<sup>st</sup>. [REDACTED] testified that when he returned the evening of June 1<sup>st</sup>, he received Land's messages, but never returned his call. Further, he testified that he never told Land that he'd meet him.

Article 20, Grievance, etc outlines a number of procedures, including the method of suspension, including time frames,

#### E. Time Frames

...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...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



## 2. 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.

As mentioned previously, the first impression of this issue would have been to determine that the Company was in violation of Article 20 E and G 2 b.

That said, the referred language was negotiated in good faith by both parties, and has been the standard to insure that a suspension was administered fairly and timely. Both parties will acknowledge that such contractual requirements are workable, and that any deviations to the timeframes typically are due to human error, thus there's a penalty attached for missing the timeframes as spelled out in Article 20, E.

This specific case puts a new twist on the timeframes in G2 however, and such twist I'm sure was not contemplated by the parties when the language was put in place.

The Company argues that the grievant comes with unclean hands, and mentions his actions surrounding the events here. I cannot disagree.

Once beyond first impression, that is, that there was a violation regarding presenting the basis for the suspension within two days of the suspension, another side of this issue emerges.

What is quite evident here, upon review of the testimony and evidence as

presented, is a series of events that must lead to the conclusion that the grievant, by his actions, made it difficult or virtually impossible for the Company to comply with Article 20, G 2 b.

First, the grievant arrived at work a day earlier than his release, so obviously the suspension notice was not yet ready. Knowing that such was forthcoming, he went to Sedona which is out of phone range, thus avoiding Land's calls to set up a time for the suspension notice to be presented. Land's calls were never returned. He later elected not to open the Fed Ex notice, nor did he ever call Land back. Finally, upon advice, he refuses to participate in the fact-finding meeting, which ultimately resulted in his termination. The one point here is that the Company certainly had the right to order him to participate, but for whatever reason, such was not forthcoming.

The contractual language was not put into place by the parties to cover an event such as this one. The grievant's actions were certainly contrary to the spirit and intent of G 2 b. Such cannot be rewarded by awarding the desired settlement. Simply put, what would prevent any grievant in the future from pursuing evasive tactics aimed at avoiding the required notice on a timely basis. If that would occur, such article and section would be rendered inoperative.

That said, the Union makes the strong and salient point that such timeframes as described in Article 20 were hard fought for, and are necessary. I must agree. This

case must be considered as nothing more than an isolated incident that occurred, and such incident was not in keeping with what the parties in good faith intended to happen.

In sum, I am certainly aware of the sufficient time frames in Article 20, and that if such are not adhered to by the Company, the Union's desired settlement shall be awarded without precedent. In all good conscience however, I must find that the spirit and intent of that language was overturned by the grievant's actions to prevent the time frames from being adhered to.

With that, the next step that should take place is to schedule a date for arbitration to hear the merits of the termination in light of the just cause standard. As I retain jurisdiction, such will be addressed in the decision.

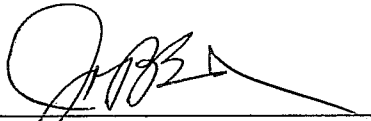
### Decision

As discussed, the testimony and evidence as presented must lead to the conclusion that the spirit and intent of Article 20 was violated, thus making it impossible for the Company to adhere to the time limits as set forth. Such decision is to be considered non precedent setting. Thus, there is no violation by the Company in regard to Article 20, G.

The next logical step then in this process is for the parties to agree upon a date for a hearing on the merits of this termination itself.

Upon contact by the parties, I will furnish dates for such hearing. As this is a termination case, I would urge the parties to expedite such request for dates so that a hearing can be held as quickly as possible.

November 28, 2009  
Dallas, Texas



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John B. Barnard, Arbitrator