

<b>IN THE MATTER OF ARBITRATION</b>		
<b>BETWEEN</b>		)
		)
<b>TRANSPORT WORKERS UNION</b>		)
<b>LOCAL 555, AFL-CIO</b>		)
<b>(Union)</b>		)
<b>-and-</b>		)
		)
<b>SOUTHWEST AIRLINES COMPANY</b>		)
<b>(Company)</b>		)

Grievant: [REDACTED]

Discipline (Termination)

Arbitrator: Diane Dunham Massey, selected from the Parties' Permanent Panel of Arbitrators.

**HEARING**

Hearings were held in the above matter on June 22, 2010, at the Wyndham Dallas Love Field Hotel in Dallas, Texas. The witnesses were sworn and excluded from the Hearing. Post-hearing briefs were received by the Arbitrator by July 26, 2010. The record was closed on July 26, 2010. The Parties were given full opportunity to present testimony and evidence at the Hearing.

**APPEARANCES**

**For the Company**

Kerrie V. Forbes  
 Tricia Houser  
 Shelly Ball  
 Mike Lovett  
 Eppy Epenesa

[REDACTED]

Attorney for the Company  
 Paralegal  
 Director, Employee Resources  
 STL Manager, Ramps & Ops, witness  
 STL Ramp Supervisor, witness

[REDACTED]

**For the Union**

Mark Waters  
 Curtis Clevenger

[REDACTED]  
 Patti Adams  
 Brian Smith

Advocate for the Union  
 Grievance Specialist

[REDACTED]  
 Scribe  
 Alternate District Rep., witness

## ISSUE

At the beginning of the Arbitration Hearing, the Parties agreed to the following statement of the issue:

Was the Grievant, [REDACTED], terminated effective March 29, 2010, for just cause? If not, what is the appropriate remedy?

## BACKGROUND

The Grievant, a Ramp Agent stationed in St. Louis, Missouri ("STL"), received a termination notice dated March 29, 2010, which stated, in pertinent part, as follows:

On 3/26/10, a FACT-FINDING meeting was held to discuss the alleged damage to Customers' bags caused by you on March 16, 2010 and March 19, 2010. Present at this meeting were you, TWU Representative [REDACTED], TWU Representative [REDACTED], TWU Representative [REDACTED], Ramp Supervisor Evan Jones, and (Mike Lovett).

During this meeting we discussed two witnesses [REDACTED] and [REDACTED] who separately observed you purposely damaging our Customers' bags, one of which you admitted to Ramp Supervisor Eppy Epenesa. After completing the investigation into this matter, and after review of the testimony and documents provided at the FACT-FINDING, we have concluded that you purposely caused damage to our Customers' bags. This behavior is unacceptable and is in violation of the Southwest Airlines Ground Operations Basic Principles of Conduct, including, but not limited to, the following:

2. An Employee on duty and in uniform reflects the SWA attitude to our Customers on a personal basis. It is imperative that you remember that your appearance, attitude, and conduct, whether on or off duty, may be a reflection on SWA, and that you act accordingly.
14. Performing your job in a careless, negligent, or unsatisfactory manner.
25. Southwest does not want to interfere in the personal affairs of Employees, however, Conduct, on or off the job which is detrimental to the Company's interest including unacceptable or immoral behavior on Company property or any adverse conduct that reflects on the Company, whether on or off duty, may be a cause for immediate dismissal.

Based on the above, and as a result of your actions, your employment with Southwest Airlines is terminated effective immediately. \* \* \*

The Union grieved alleging that the Grievant's termination lacked just cause.

The grievance was appropriately processed and remains unresolved. The Parties stipulate that the matter is properly before this Arbitrator for Opinion and Award. The Parties also stipulate that the Arbitrator may retain jurisdiction in the event a remedy is ordered for the purposes of implementing such remedy.

## **RELEVANT PROVISIONS OF THE AGREEMENT**

### **ARTICLE TWO 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 FIVE CLASSIFICATIONS**

#### **SECTION ONE RAMP AGENT/PROVISIONING AGENT**

The work of Ramp, and Provisioning Agents includes the functions which have been historically performed by such agents at Southwest Airlines stations and includes, but is not limited to, any or all of the following work covered under this specific labor contract. Agents required to perform such duties must be current and qualified within that classification.

\* \* \*

- E. Safeguards Customers' baggage, air cargo, air mail, and comat from weather, loss theft, damage, and/or destruction.

\* \* \*

- T. Provides friendly service to all co-workers and Customers.

## **POSITION OF THE COMPANY**

The Company makes the following arguments and contentions in support of its position:

The Company had just cause for the Grievant's termination. As a Ramp Agent, one of the Grievant's primary duties was to safely load and unload Customers' baggage. However, he was observed multiple times intentionally damaging Customers' baggage. The Grievant had been counseled numerous times about handling Customers' baggage more carefully and less aggressively, including a 2008 Discussion Log entry for kicking a

Customer's bag, and in his February 2009 evaluation which noted he had been observed slamming bags onto the belt.

In response to the economy's effect on airline travel, the Company recently began its "Every Customer Matters" and "Bags Fly Free" campaigns. To keep existing Customers and attract new ones – and, thus, avoid layoffs – employees were urged to give every Customer an excellent experience. For Ramp Agents, this means providing outstanding baggage handling. However, in March of 2010, the STL Ramp Agent Supervisor received two (2) separate reports that coworkers had observed the Grievant intentionally damaging or destroying pull handles on Customers' bags. Ramp Agent [REDACTED] had seen the Grievant intentionally damaging Customer bags on several other occasions and had previously spoken to the Grievant about how he was handling baggage, but to no avail. On March 16, 2010, Ramp Agent [REDACTED] saw the Grievant bending the pull handle on a bag which he then reported to Ramp Supervisor Epenesa and Ramp Manager Lovett. On March 19, 2010, Ramp Agent [REDACTED] observed the Grievant intentionally breaking the pull handle/rail off a Customer's bag by pushing down on it with his body weight. This was the second time Ramp Agent [REDACTED] had witnessed the Grievant damaging baggage, which he reported to Ramp Supervisor Epenesa.

A Fact-Finding was held on March 26, 2010. After considering the information gathered during the Company's investigation of the matter, Ramp Manager Lovett determined that the Grievant should be terminated for intentionally damaging/destroying baggage that belonged to the Company's Customers. Since the Grievant's termination, the number of broken roller bag handle complaints received by Customer Service has dropped dramatically. Indeed, Customer Service Agent ("CSA") [REDACTED] testified that she has not received any such complaints since the Grievant's termination, although she had regularly received them while the Grievant was still employed.

The evidence overwhelmingly showed that the Grievant had been intentionally damaging Customer bags. Although it is rare for Ramp Agents to come forward against a co-worker, a number of the Grievant's coworkers were even willing to testify in support of the Company's termination decision because they wanted to prevent other Customers from having their baggage damaged by the Grievant. The Grievant had been counseled previously about his aggressive handling of baggage, and had been given chances to improve. He failed to do so and his behavior became so obvious that even his co-workers felt obligated to report him.

Discharge for willful destruction of property is appropriate, and is consistently upheld by arbitrators. Not only did the Grievant damage Customer property, his conduct also could cause the loss of Customers, loss of revenue to the Company and, potentially, loss of employment for Employees. The Grievant's conduct was particularly egregious in light of the current economic situation and the Company's advertising campaigns assuring Customer satisfaction. The Grievant's behavior is intolerable, and there are no mitigating factors supporting a lesser discipline. In fact, the testimony of the Grievant's former co-workers [REDACTED]) indicates that STL Ramp Agents are happy that the Grievant is no longer working with them.

The Company had just cause to terminate the Grievant. The grievance should be denied.

### **POSITION OF THE UNION**

The Union makes the following arguments and contentions in support of its position:

The Company failed to meet its burden of proving just cause for the Grievant's termination. The only reason for the Grievant's termination was "purposely damaging" Customer baggage. The Termination Letter states that the Grievant admitted doing so when speaking with Supervisor Epenesa, but the latter's testimony during the Hearing was that the Grievant did not make such an admission. The March 19, 2010, conversation between the Grievant and Supervisor Epenesa was confusing, and at no time did he ask the Grievant if he had intentionally broken the handle off the bag. The handle broke off the bag in question while the Grievant was attempting to put it down, because the bag could not be sent on the bag belt with the handle stuck out as that could cause a jam or break the handle. Stuck handles are a common occurrence, and it is possible that the bag in question already was damaged. There is no indication that the other bag, involved in the March 16, 2010, incident had even been damaged. The Company introduced no documentation or testimony that the Grievant actually damaged this bag, nor did the Company show that the Grievant actually was a "Bag Runner" on that date or that his assignment would have put him in the area where he allegedly was observed. Ramp Agent [REDACTED] testimony should be disregarded, as his hatred of the Grievant is clear. Thus, if the Grievant's conduct was as bad as he claims, one might question why Ramp Agent [REDACTED] never took his concerns to a Supervisor.

Obviously the Grievant was not liked by the junior agents, three (3) of whom testified against him. Manager Lovett's decision to terminate the Grievant was based only on unproven inferences, allegations and assumptions. Management alleges that 44 bags in the Grievant's zone were damaged but did not provide a single report substantiating that claim even though all "Damaged Bag Reports" & "Courtesy Reports" are entered into the "Brutus" database. Additionally, the Company provided no documentation about any Customers who allegedly were injured by their damaged luggage. Manager Lovett tried to bolster his decision, and prejudice the Arbitrator, with "Performance Appraisals" and an out of date "Discussion Log". One of the former simply has a comment about the Grievant being "rough with the bags" but his rating had improved by the next Performance Appraisal.

Management has failed to prove that the Grievant acted intentionally. In fact, when Union witness Brian Smith, Alternate District IV Representative was presenting the Union's case to the System Board of Adjustments, he attempted to demonstrate during his closing argument what had occurred and how the Grievant was trying to straighten the rails on the roller bag. Using a Company provided damaged bag with rails that wouldn't slide in, Mr. Smith bowed the rails for demonstration purposes. They snapped and the handle broke off, yet Mr. Smith was not intending to break the handle. Rather, he was merely demonstrating what had occurred as the Grievant tried to get the handle to slide down.

The Company produced no documents proving or corroborating that the Grievant intentionally damaged Customers' baggage. The Termination Letter misrepresents the facts of this matter. The Grievant's termination lacks just cause and violates the CBA. For all of the foregoing reasons, the Union respectfully requests that this grievance be sustained and that the Grievant be reinstated to his former position and made whole, with no loss of pay, no loss of seniority, and no loss of benefits.

## **OPINION**

### **THE FACTS**

The weight of the evidence indicates as follows:

The Company is a domestic airline, with headquarters in Dallas, Texas. The Grievant was a Ramp Agent stationed in St. Louis, Missouri ("STL"), who had worked for the Company for approximately fourteen (14) years when he was terminated effective March 29, 2010.

On March 16, 2010, Ramp Agent [REDACTED] reported to Ramp Supervisor Eppy Epenesa and Ramps & Operations Manager Mike Lovett that he had witnessed the

Grievant, whom he described as “agitated”, bending the pull handle on a Customer’s bag while cursing (“motherf\*\*ker”) at the bag. According to Ramp Agent [REDACTED], the Grievant then threw the bag “hard” on the bag belt. In a written memorandum prepared March 22, 2010, which was prepared at Management’s request, Ramp Agent [REDACTED] stated as follows:

On Tuesday, March 16, 2010, I was walking into work from the security door by T-Point I noticed (the Grievant) dropping off his STL Bags on belt #1. He seemed agitated and he was bending the pull handle on the bag. He then threw the bag on the bag belt hard and he was cursing mf to the bag. This is the 3<sup>rd</sup> time I have seen (the Grievant) doing this sort of damage to the Customer bags. I have also witnessed (the Grievant) breaking wheels off bags and bending handles. I have enough of this and can’t stand watching another bag be(ing) damaged by (the Grievant) so I reported to Mike Lovett and Eppy.

Ramp Agent [REDACTED] testified that he had never before reported a Ramp Agent’s behavior to Management.

On March 19, 2010, three (3) days later, Ramp Agent [REDACTED] reported to Ramp Supervisor Epenesa that he had witnessed the Grievant breaking the rails – which are used when someone wants to pull, rather than carry, a bag -- off a bag, for the second time. In a written memorandum prepared March 22, 2010, which was prepared at Management’s request, Ramp Agent [REDACTED] stated:

I witnessed (the Grievant) pushing down on the bag with his body weight, holding it over the edge of a cart and pushing down which caused the handle rail to completely break off. I wanted to report this to someone before (the Grievant) damages another bag and possibly loses another Customer.

Supervisor Epenesa testified that on March 19, 2010, he had all Ramp Agents, including the Grievant, remain on mandatory overtime to unload three (3) aircraft that were arriving in St. Louis after midnight. According to Supervisor Epenesa, the Grievant was “p\*\*sed off” about having to stay and was cursing. After the last flight was worked, Ramp Agent [REDACTED] contacted Supervisor Epenesa and told him that he had witnessed the Grievant purposely break a handle off a Customer’s bag and that something needed to be done because it was not the first time the Grievant had done something like that. Supervisor Epenesa called the Grievant into his office and asked the Grievant about what Ramp Agent [REDACTED] had said. The Grievant initially said he did not know what Supervisor Epenesa was talking about. Supervisor Epenesa then asked what the Grievant would say if he knew that a witness had seen the Grievant doing it; the Grievant then stated that he did not know

why he did it<sup>1</sup> and that he should have treated the bag better than he did. Supervisor Epenesa also testified that he asked the Grievant how he would feel if it had been his bag that was damaged, and that the Grievant responded he would be upset. According to Supervisor Epenesa, he then told the Grievant he did not understand why the Grievant did what he did.

A Fact-Finding meeting was held on March 26th, 2010 to discuss the allegations that the Grievant had damaged Customers' bags on March 16th, 2010 and March 19th, 2010. Manager Lovett testified that during the Fact-Finding, the Grievant offered no explanation for his conduct. During the Arbitration Hearing, the Grievant denied that he had intentionally damaged Customer baggage, and testified that he told Supervisor Epenesa that the bag's handle was broken and that he was trying to bend it back. Following the Fact-Finding, Manager Lovett determined that the Grievant had intentionally damaged Customer baggage and that termination was warranted. The Grievant was terminated on March 29, 2010.

Several of the Grievant's past Performance Appraisals (2001, 2002, 2004, 2008 and 2009) noted that the Grievant needed to exercise more care with Customer baggage and cargo, that he should be less aggressive with Customer property, and that his attitude needed improvement because he became angry and frustrated with inclement weather and irregular operations. At the time underlying the baggage damage incidents, the Company had recently initiated two (2) campaigns: "Bags Fly Free" and "Every Customer Matters." Both of these campaigns focused on providing excellent Customer Service to retain existing Customers and gain new ones, in hopes that business would increase and no employee lay offs would become necessary. During the period of February 1 to March 19, 2010, approximately 50 handles on Customers' roller bags were reported as damaged, and 44 of these incidents occurred in areas where the Grievant was working. Customer Service Agent ("CSA") ██████████ testified that, between November 2009 and March 2010, four (4) to six (6) reports were being made each day relating to damaged baggage handles and that, since the Grievant was terminated, this type of complaint has decreased significantly. According to CSA ██████████, there have been no complaints of damage to baggage pull handles since the Grievant was terminated.

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<sup>1</sup> The Grievant contends that he did not admit to intentionally damaging Customer baggage.

## THE ARGUMENTS

### The Alleged Misconduct

The Company has accused the Grievant of purposely causing damage to Customer baggage. Thus, the Grievant is accused of an intentional act rather than an act of negligence. Normally, if no showing of intentional action is established, progressive discipline would be appropriate. However, intentional destruction of Customers' property is egregious behavior and, if proven, discharge is the appropriate penalty. A critical inquiry in resolving this matter is whether the evidence establishes an intentional activity by the Grievant. Thus, the evidence must be evaluated to determine the alleged intentional nature of the Grievant's actions.

### The Evidence of the Cited Incidents

The sole basis for the Grievant's discharge is that he intentionally damaged Customer's bags but the Grievant denies that he intentionally damaged Customer baggage. There is considerable evidence contradicting the Grievant's position.

Supervisor Epenesa testified that he confronted the Grievant on March 19, 2010, about Ramp Agent ██████ report that he had witnessed the Grievant intentionally damaging a bag. According to Supervisor Epenesa's March 19, 2010, write-up about the discussion, he told the Grievant what Ramp Agent ██████ had said, and the Grievant initially said he did not know what Supervisor Epenesa was talking about<sup>2</sup>. Supervisor Epenesa states that he then told the Grievant that someone had witnessed his actions and that, after a pause, the Grievant allegedly responded that he did not know why he did it. Supervisor Epenesa's write-up states that he asked the Grievant why did he "do such a terrible thing to our Customers' bags?" and that the Grievant again responded that he did not know and that "he should treat the bag better than he did."

The Company argues that the Grievant's responses to Supervisor Epenesa amount to an admission that he did, in fact, intentionally damage Customer baggage. The Union, however, counters that the Grievant was not specifically asked if he had intentionally damaged any baggage. In this Arbitrator's opinion, the Grievant's comments may not amount to a clear admission of wrongdoing. Supervisor Epenesa's account of the March 19, 2010, conversation may be interpreted as the Grievant saying he did not know why he

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<sup>2</sup> The Grievant's initial response, claiming not to understand, when questioned by Supervisor Epenesa implies that he probably knew he had been observed engaging in inappropriate conduct, although maybe not intentional destruction of property.

had become angry or handled the baggage roughly. Nevertheless, the Grievant's possible failure to admit misconduct does not determine the issue. Rather, it must be weighed against the testimony of others who observed specific incidents during which Customer bags were damaged while being handled by the Grievant.

Ramp Agent [REDACTED] reported that he had seen the Grievant damage a Customer bag on March 16, 2010. The statement he signed alleges, in part, that the Grievant "seemed agitated", that he was bending the pull handle on the bag and cursing at it, and that he then threw the bag forcefully on the bag belt. According to Ramp Agent [REDACTED] statement and testimony, the incident on March 16, 2010, was the third time he had seen the Grievant damaging a Customer's bag as he previously had observed the Grievant breaking wheels off roller bags and bending their handles.

On March 19, 2010, Ramp Agent [REDACTED] observed the Grievant damaging Customer baggage. He witnessed the Grievant completely breaking off the handle rail from a Customer's bag by pushing the bag down with his body weight while holding it over the edge of a cart. According to Ramp Agent [REDACTED], the Grievant appeared "like it was no big deal." Ramp Agent [REDACTED] stated that this was the second time he had seen the Grievant breaking the handle rail off a Customer's bag, and that he was very upset by the Grievant's conduct -- which he described as "morally wrong." Ramp Agent [REDACTED] told another Ramp Agent what had occurred, and then went to Supervisor Epenesa because:

I wanted to report this to someone before (the Grievant) damages another bag and possibly loses another Customer.

The testimony of Ramp Agents [REDACTED] and [REDACTED] was supported by Ramp Agent [REDACTED] whom the Company called as a rebuttal witness. Ramp Agent [REDACTED] testified that not only had he observed the Grievant maliciously damaging Customers' bags many times, but that other Ramp Agents also had seen it over the years. Ramp Agent [REDACTED] stated that he had personally spoken to the Grievant several times trying to convince him to stop doing so. On one occasion, Ramp Agent [REDACTED] stated that he asked the Grievant how he would feel if it was his baggage that was being damaged, and the Grievant conceded that he would not like it. However, according to Ramp Agent [REDACTED] his attempt to change the Grievant's behavior through peer pressure was not successful. When asked if he agreed with the Company's decision to terminate the Grievant, he responded, "Very much so."

Manager Lovett testified that there were fifty (50) damaged handles on Customer bags between February 1 and March 19, 2010. Of this number, forty-four (44) occurred on gates being worked by the Grievant; only six (6) incidents occurred on days when the

Grievant was not working. Customer Service Agent (“CSA”) [REDACTED] testified as to her experience working with damaged and lost luggage claims in the Baggage Service Office. CSA Grieshaber stated that, between November 2009 and March 2010, when the Grievant was terminated, the Baggage Service Office was receiving from four (4) to six (6) reports of damaged baggage handles per day. According to CSA [REDACTED], when she noticed a trend of two (2) to three (3) bags from the same flight being damaged, she began putting data into the Brutus tracking system<sup>3</sup> and suggesting that Customers contact the Corporate office in Dallas to request compensation, despite the fact that the Company normally is not liable for damaged handles. However, since the Grievant’s termination, reports of damaged handles have significantly decreased. Indeed, CSA [REDACTED] testified that there had been zero complaints about similar damage after the Grievant was discharged.

The testimony of the Company’s witnesses that the Grievant’s actions were intentional is compelling and, standing alone, would probably suffice in supporting the conclusion that the Grievant acted purposely. Nevertheless, there are other considerations which tend to buttress that conclusion.

#### The Grievant’s Observed State of Mind

The record indicates that the Grievant appeared to be angry on both of the dates – March 16 and 19, 2010 – on which he is alleged to have intentionally damaged Customers’ bags. Ramp Agent [REDACTED] described the Grievant as being “agitated” on March 16<sup>th</sup>, and reported that the Grievant forcefully threw the bag on the belt and cursed at it, saying “mother f\*\*ker” at the bag. Supervisor Epenesa testified that, on March 19<sup>th</sup>, the Grievant was “p\*\*sed off” and cursing about being required to work late. Moreover, several of the Grievant’s Annual Performance Appraisals refer to his negative attitude and tend to bolster the observations of Ramp Agent [REDACTED] and Supervisor Epenesa. The Annual Performance Appraisal signed by the Grievant on February 10, 2009, includes the following observations:

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<sup>3</sup> As the Union notes, the Company presented no Damaged Bag reports or Courtesy Reports, or any other documentary evidence concerning the alleged number of Customer complaints about damaged handles. While the absence of such documentation does lessen the weight allocated to the Company’s evidence, it does not conclusively establish that the numbers cited by the Company are wrong. Moreover, the evidence indicated that Baggage Service personnel do not encourage Customers to make complaints because they tell them the Company is not liable for handle damage. Thus, there may have been even more instances of damaged and broken baggage handles than those referred to during the Arbitration Hearing.

(The Grievant) tends to get angry and frustrated during inclement weather, making things more difficult during irregular operations. He has also been seen in the baggage claim area slamming bags onto the belt.

The Annual Performance Appraisal signed by the Grievant on January 8, 2010 – just two (2) months prior to the incidents on which his discharge is based – notes that his attitude toward “Care – Customers” needs improvement and also states:

(The Grievant’s) attitude at work needs to improve. He becomes upset during irregular operations and his work ethic goes way down.

Such evidence establishes that the Grievant had been observed to be angry while handling Customers’ baggage. In other words, it was not unusual for the Grievant to demonstrate an attitude consistent with purposely damaging Customer baggage. The evidence indicates that the situations cited were the kind of situations that tended to anger the Grievant. Further, it follows that, if the Grievant was angry, he may very likely have been acting in a way that could damage Customer baggage.

#### The Evidence

The Arbitrator concludes that the evidence that the Grievant acted intentionally is substantial. It is significant that the Grievant’s misconduct was reported by bargaining unit/non-Management employees as Union members are generally loathe to report one another. In this situation, there were four non-Management employees who testified credibly and forcefully against the Grievant. This unusual circumstance indicates, in this Arbitrator’s opinion, that their testimony is credible. The evidence failed to indicate any motivation<sup>4</sup> for the bargaining unit members to report the Grievant other than their strong disagreement with the Grievant’s actions and, perhaps, their realization of the financial impact that a loss of Customers would have.

In addition, the witnesses’ testimony was consistent with prior observations of the Grievant’s behavior. In other words, it had been noted in the past that the Grievant would get angry in instances of forced overtime/irregular operations and that he would handle baggage in a rough and angry manner.

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<sup>4</sup> The Union’s suggestion that the Ramp Agents were motivated by seniority concerns was not supported by the evidence. Certainly everyone welcomes greater seniority, but it is almost inconceivable that three (3) employees would conspire to get a fellow employee fired in order to advance in seniority.

Finally, the evidence concerning the number of damaged bags reports – particularly contrasting the high daily number of reports from November until the Grievant’s termination, when such reports dropped significantly – is compelling.

The Arbitrator concludes that the Grievant was observed purposely damaging Customer’s bags.

#### Intentional Conduct

Proving intentional misconduct is a high threshold. It could be argued that the Grievant may have been angry and perhaps was behaving aggressively, but that he never intended to damage Customers’ bags. However, the weight of the evidence persuades this Arbitrator that the Grievant, in fact, acted with malicious intent and disregard. The eyewitness testimony of Ramp Agents [REDACTED] and [REDACTED] by itself indicates that the Grievant intentionally damaged Customer baggage. That conclusion is strengthened by the evidence indicating that the Grievant had been observed to be angry on the dates in question when it had been noted that the Grievant was mistreating Customer baggage.

Perhaps one could argue that one cannot get into the Grievant’s mind to determine whether he was acting to purposely damage bags and that he was simply angry. Yet, in this instance, the Grievant should have reasonably anticipated that he would damage bags by handling them in the manner in which he handled the bags in question. At a minimum, the Grievant’s intended angry behavior would foreseeably result in damaged bags and he should have realized that fact. As such, the Arbitrator really needs to go no further in the analysis of requisite intent. In this case, however, based on the evidence, the Arbitrator is persuaded that the Grievant fully intended to damage Customer bags during his fits of anger. Discharge is the only appropriate response under such conditions.

#### The Company’s Advertising Promotions

The Company suggests that the Grievant’s misconduct is even more egregious in light of the Company’s two (2) recent promotions, entitled “Every Customer Counts” and “Bags Fly Free.” According to the Company, these promotions were instituted to retain existing Customers and to attract new ones by offering excellent Customer service and, unlike many other carriers, not charging Customers to check baggage. The Company hoped that these promotions would increase its revenues and, thereby, prevent employee layoffs. Certainly, the Grievant’s misconduct comes at a particularly critical time for the

Company. However, intentionally damaging Customers' baggage is absolutely prohibited at any time regardless of any such promotions.

### **CONCLUSION**

The Union, as always, did an admirable job of representing the Grievant. However, the weight of the evidence persuades this Arbitrator that the Grievant purposely caused damage to Customers' bags as observed by witnesses. Intentional damage to Customer baggage is egregious misconduct and discharge is the only appropriate response under such conditions. Accordingly, this Arbitrator concludes that the Company had just cause to discharge the Grievant and this grievance must be denied.

For the reasons hereinabove setforth:

### **AWARD**

The grievance is denied. The Grievant, [REDACTED], was terminated effective March 29, 2010, for just cause.

Signed this 31st day  
of August, 2010 in  
Houston, Texas

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Diane Dunham Massey