WILLIAM H. LEMONS

MEDIATOR • ARBITRATOR

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October 12, 2009

Ms. Kerrie V. Forbes
Senior Attorney
Labor & Employee Relations Dept.
SOUTHWEST AIRLINES CO.
2702 Love Field Drive, HDQ-4LR
Dallas, Texas 75235-1611

Mr. Jerry McCrummen
Vice President
TWU LOCAL 555
2608 Inwood Road, Suite 150
Dallas, Texas 75235-7449

VIA LONE STAR OVERNIGHT

Re: **BDL-O-1699/08**
OT bypass – Agent X
TWU Local 555/Southwest Airlines

Dear Ms. Forbes and Mr. McCrummen:

I enclose for each of you duplicate originals of my Opinion and Award in the referenced matter. I also submit my Bill.

It was my pleasure to serve as Arbitrator in this matter.

Very truly yours,

Bill Lemons

William H. Lemons

Enclosures

BEFORE

WILLIAM H. LEMONS

IMPARTIAL ARBITRATOR

In the Matter of Arbitration between	)	Case No. BDL-O-1699/08
	)	
Southwest Airlines Company	)	
Dallas, Texas	)	
	)	
And	)	[redacted]
	)	
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

October 12, 2009

ARBITRATION AWARD

By the terms of the Collective Bargaining Agreement ("CBA") 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' June 15, 2009 letter to him. A hearing was held in a mutually-acceptable conference room at the Wyndham Dallas Love Field on August 12, 2009. The parties were afforded full opportunity for the introduction of evidence, examination and cross-examination of witnesses, and oral arguments. The Union tendered some thirteen exhibits into evidence. The Company introduced four exhibits. Additionally, the parties introduced four joint exhibits, including the grievance package (Jt. Ex. 4). The evidentiary portion of this matter was declared closed as of August 12, 2009. Post-hearing briefs were submitted in a timely manner and received on September 11, 2009.

APPEARANCES:

FOR THE COMPANY:	Kerrie V. Forbes Senior Attorney
FOR THE UNION:	Jerry McCrummen Vice President, TWU Local 555
IMPARTIAL ARBITRATOR:	William H. Lemons 4040 Broadway, Suite 616 San Antonio, Texas 78209

ISSUE: Did the Company violate the CBA on [redacted] when it awarded *continuous with* overtime to the Employee on duty rather than awarding *callout* overtime to the Grievant?

TIME FRAME ISSUES: There were no timeliness/time frame issues, so reference is made to the grievance package (Jt. Ex. 4) 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. The parties also stipulated that the Company's documentation could be received into evidence without the need for formal authentication or foundation, unless a particular document was specifically objected to.

PROVISIONS OF THE LABOR AGREEMENT:

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**. In 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.

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 . . .

3. **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.

OTHER PERTINENT INFORMATION

TWU Work Rules Interpretations (Jt. Ex. 3, Union Ex. 1)

Article Seven (Overtime)

4. **How is a shift extension differentiated from a Callout? Is it 3 hours & 59 minutes or an even 4 hours? (Pars. 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.

STATEMENT OF FACTS

The day before Thanksgiving is affectionately known as "Black Wednesday." In this instance, it was November 26, [redacted] and history has shown that day to be a very heavy travel day. The Grievant, an Operations Agent for the Company in BDL, worked his scheduled shift from 5:15 a.m. to 1:45 p.m., apparently without incident. Agent X had also volunteered to work *callout* overtime of four hours or more, if there was a need (Union Ex. 4). It is undisputed that the last flight of the day into BDL, Flight [redacted] was scheduled to arrive at [redacted] a.m.

Also on Wednesday, [redacted] an Operations Agent at BDL, worked his scheduled shift from 1:30 p.m. until 10:00 p.m. [redacted] had volunteered to work *continuous with* overtime following (as an extension of) his shift, if there was a need (Union Ex. 4). As it turned out, [redacted] the only Agent scheduled to work after Agent [redacted] that day, was on a vacation (VAT) day. Because the last flight of the day (Flight [redacted]) was to (should) arrive at [redacted], Agent [redacted] was scheduled to work the closing shift ending at [redacted] a.m. to cover operational needs after Flight [redacted] had arrived. Because of Agent [redacted] absence, management determined that it needed to cover from 10:00 p.m. until 12:30 a.m. – long enough for Flight [redacted] to arrive and be worked. Management thus perceived a need for two and one-half hours of overtime, and Operations Supervisor Nicola Flowers awarded Agent [redacted] a *continuous with* overtime shift extension of two and one-half hours.

Because of a combination of holiday travel and an equipment change, as luck would have it, Flight 1234 began running behind schedule. This began to happen several hours after Agent [redacted] was notified of his shift extension. Although it made up some time, as often coast to coast flights are able to do, Flight [redacted] arrived into BDL at [redacted] a.m. Agent [redacted] diligently worked the flight, completed his duties and clocked out at precisely [redacted] a.m. His shift extension totaled exactly four (4.00) hours of overtime. This Arbitrator is under the impression that both parties concede that had a) Flight [redacted] arrived a moment earlier, or b) Agent [redacted] needed only twelve (12) minutes to close out the flight, this grievance would not have happened.

POSITION OF THE UNION

The Union recognizes that it has the burden of proof to show this Arbitrator that the CBA was violated in the manner alleged. The Union's position on this grievance may be summarized as follows:

a. The CBA is clear and unambiguous, and the Company misinterpreted it and applied Article 7, Paragraph G incorrectly. The Company took a chance that Agent [redacted] could complete his duties within a "3 hour and 59 minute window;"

b. In fact, in hindsight, the actual overtime in question was four (4.00) hours or more, so it was assigned erroneously. Because it was four hours, it should have been *callout* overtime, and there is no "OOPs" provision in the CBA;

c. At least two settlements of grievances in the past (Union Exhibits 6 and 7) establish that station management (indeed, even the Manager of Employee Resources) have recognized that overtime of four hours or more is *callout* overtime, and have thus awarded time off with pay and additional pay where violations have occurred;

d. Local management *knew* that there was a need for *some* overtime, and anytime that it turns out that the actual overtime is four (4.00) hours or more, *continuous with* assignment is erroneous;

e. If one looks at the data surrounding Flight [redacted] historically, management should have known – it is highly probable – that the flight would be late.

POSITION OF THE COMPANY:

The Company's position in this matter may be summarized as follows:

a. Whether overtime is *continuous with* or *callout* cannot be based upon hindsight because of the nature of the industry. It must be based upon what in management's eyes is "highly probable" and is based upon the length of a "known overtime assignment."

b. "Known overtime" is the key to both Paragraphs G and I of Article 7, and that clear and unambiguous language may not be changed by settlements of grievances at the station level. As a general rule, "known" is based upon scheduled arrival and departure times;

c. Everybody knows, and the CBA language specifically states, that there will be instances where *continuous with* overtime assignments will be four (4.00) hours or greater. Indeed, the Union tried to negotiate that language out of the CBA during negotiations held in 1994-1995, and the last sentence of Article 7, Paragraph (G)(5) remained and remains the same.

d. While Union Exhibits 10 and 11 try to show that Flight [redacted] was late "quite often," it was late only once in a manner that would have pushed the overtime assignment to four (4.00) hours or beyond.

OPINION OF THE ARBITRATOR

Both parties were well represented in this dispute and presented persuasive arguments. Their excellent briefs were most helpful to my making a decision in this instant case. It is a pleasure to hear a case where capable representatives present a good case using credible witnesses – witnesses who tell the truth. It says a lot about the culture of the Company and the Employees, and speaks highly of the professional relationship between the Company and TWU Local 555.

Mr. Charles Cerf testified first and Mr. Cerf very ably set forth and supported the Union's position in this matter. He espoused the view that *continuous with* overtime is to be connected with a shift and should be less than four (4.00) hours. To the contrary, *callout* overtime is four (4.00) hours or grater, but less than eight and one-half, and is normally not connected to a shift (but could be). He summarized the previous settlements at the station level and said that the Company, when it recognizes that it messed up in assigning overtime, generally paid overtime to the person who should have gotten it and gave time off with pay to the person who got it and should not have. His direct testimony is to the effect that "four hours or more of overtime is considered to be *callout* overtime.

On cross examination, Mr. Cerf was again very credible. He admitted that *if it is highly probable the overtime will be less than four (4.00) hours,* then it should be covered by a shift extension (*continuous with* assignment). If the *continuous with* assignment is correct, there is no need to even look in the overtime book for *callout* preference, and seniority makes no difference. He conceded that here, Agent [redacted] was the only one who indicated *continuous with* preference, and because Agent [redacted] worked the earlier shift ([redacted] a.m. to [redacted] p.m.), he couldn't have worked the *continuous with* overtime for the hours in question. Mr. Cerf acknowledged that Agent [redacted] has not grieved asking for additional pay or pay and/or overtime free of the Company.

Finally, Mr. Cerf admitted that at the time the overtime in question was actually assigned, there was no proof that Flight [redacted] was running late.

Grievant [redacted] was also candid and truthful. He testified about his background, the day in question and that Flight [redacted] had a reputation of being late. Yet I glean from his testimony, and from Union Ex. 12, that the flight log actually demonstrates if anything the uncertainty – the ***unknown*** nature – of scheduling in general and of Flight [redacted] in particular. It is clear from the Grievant's own testimony and from the exhibits that at the time of the overtime assignment, it was ***not known*** that the overtime in question would ***probably*** be four (4.00) hours or longer in duration.

Mr. [redacted] further testified that even OTIS gives the *estimated* time of arrival, and as of 5:32 p.m. ET that afternoon (when in a perfect world delay of Flight [redacted] might have been detectable), the overtime had long been assigned. Thus, in BDL station management's mind, when the *continuous with* overtime was awarded to Agent [redacted], there was no indication at that time that Flight [redacted] would be late – much less that it would be 102 minutes late. There are a lot of variables and "the nature of the business is unpredictability." The Operations Agents generally do not call downline to advise of delays even when known.

Agent [redacted] discussed the situation that day, and the overtime that he actually worked. He was UTR (unable to reach) so was told at [redacted] when he started his shift that he would be working from [redacted] p.m. to [redacted] a.m. He had volunteered for two and one-half hours overtime, not for four, and ended up losing an hour of sleep that morning. [redacted] stated that even in his opinion, he thought it probable that he would be out by [redacted] a.m.

In summary, the testimony of both Agent [redacted] and Agent [redacted] completely corroborates and supports that of [redacted] to the effect that there was no indication (much less proof) that Flight [redacted] would be late when the *continuous with* overtime assignment of less

than four (4.00) hours was made. Based upon the known facts, [redacted] only needed two and one-half hours of overtime to cover the situation as she understood it at the time the assignment was actually made.

AWARD

I find that the language of Article Seven, and particular that of sub-paragraphs G and I, authorizes the assignment of overtime in one of two ways based upon the *known* need for overtime – is the *known overtime assignment* less than four (4) hours or is it four (4) hours or more? Here, the *known* (even if it turns out to be wrong) *overtime assignment* was two and one-half hours. That is what Ms. Flowers had determined in good faith to be sufficient to meet operational needs. In accordance with the literal language of Article 7, Paragraph G, she correctly assigned the overtime to Agent Y, the only person eligible to work *continuous with* overtime. The Company did not violate the Collective Bargaining Agreement on [redacted] when it awarded *continuous with* overtime to the Employee on duty rather than awarding *callout* overtime to the Grievant.

There was no indication in this case that the decision was not made in good faith or that the Company was playing the minute game, gambled and lost. This Arbitrator is quite certain that in the event Flight [redacted] becomes routinely, predictably and severely late, the parties can fashion a local agreement to address the situation. The Company should not penalized for granting the grievances ([redacted] – SDF and [redacted] – BNA) in similar (but not identical) situations because I surmise that in doing so the Company was acknowledging that when it meets operational needs first, such has an effect on Employees. I certainly do not want to discourage that.

After careful consideration of all the oral and written arguments and evidence, and for the preceding reasons, the Arbitrator finds that 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 12th day of October, 2009, at San Antonio, Texas.

William H. Lemons

WILLIAM H. LEMONS, Arbitrator