ARBITRATOR'S OPINION AND AWARD

In the Matter of Arbitration Between:

June 12, 2015

SOUTHWEST AIRLINES COMPANY

and

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO
Local 555

Grievance: LAS-P-2125/14 [redacted]

Before

Elizabeth Neumeier, Arbitrator

Representing:

The Company: Suzanne Lehman Johnson, Esq., Muskat, Martinez & Mahony, LLP

The Union: Jerry McCrummen, Vice President, TWU Local 555

Statement of the Award: The grievance is denied.

BACKGROUND

Southwest Airlines Company (Company or Southwest) and the Transport Workers Union Local 555 (Union) are parties to a collective bargaining agreement (CBA) effective July 1, 2008 through June 30, 2011, and continuing. In this case the Union protests the Company's failure to compensate the Grievant at the Article Seven mandatory overtime rates for two days of training that occurred on her scheduled days off.

The grievance was denied by the Company in the grievance procedure. After the System Board deadlocked on January 22, 2015, the Union appealed to arbitration. The parties stipulated that the case is properly before the undersigned arbitrator for final and binding decision.

The Grievant was hired by Southwest in 2000 as a Ramp Agent in Portland, transferred to Denver in 2006 and, after three years, transferred to Provisioning. Four years later she transferred to San Diego and worked as a Ramp Agent for 18 months. Then, on August 1, 2014, she exercised her seniority to transfer, laterally, to Provisioning in Las Vegas. The Grievant bid a base shift with Tuesday and Wednesday off, as a Relief Agent. Relief Agents receive premium pay because their shifts do not have clearly defined work weeks and, pursuant to Article Six, Section Two, Relief Agents may be assigned to cover any absence.

As a newly-transferred employee the Grievant received required training for 9 or 10 days at the Las Vegas base, including following a senior agent. Until she completed training, she was not eligible to trade shifts but she did work overtime. On September 8, 2014, the Grievant traveled to Dallas for further Company-required training on Tuesday, September 9, and Wednesday, September 10, 2014. September 9 and 10 were her regularly-scheduled days off.

Pursuant to Article Seven, Paragraph I, the Las Vegas station has a "Ramp, Operations, Air Freight and Provisioning Standard Overtime Call Book" for employees to sign up for voluntary overtime. When an employee signs the Overtime Call Book and receives an overtime assignment the employee is paid for those hours at the time and one-half or double-time rates provided for in Article Seven, Paragraphs B and C. Employees do not sign the Overtime Call Book for training, although it may be utilized to provide coverage, if necessary. The Grievant did not sign the Las Vegas Overtime Call Book for September 9 and 10, 2014. Her timecard shows that she was paid time and one half for Tuesday, and double time for Wednesday. She was also paid for all travel time, including delays.

Under the prior CBA the Company had been able to require, in reverse order of seniority, employees to work overtime. Such mandatory overtime is recorded in the Company's "exception log" for pay tracking purposes. Training was not and is not assigned by seniority. In the current CBA Article Seven now provides additional compensation when an employee is required to work on scheduled days off. The "Work Rules Interpretations" dated April 12, 2010, pertaining to Article Seven do not mention training. ("2010 Interps.") However, they include the following with respect to Article Nine, Training:

1. How is an Employee paid when attending training in Dallas due to a transfer from one classification to another (i.e., Provisioning to Ramp or Ramp/Provisioning to Operations) or as a New Hire after working more than 30 days of their probation?

* * *

Example Three Day Off: Training Class 0730-1600
Employee's base is off
The Employee will be paid at the applicable overtime rate of pay for 0730-1600
[JX 3, pg. 24.]

"Applicable overtime rate of pay" is not defined in the CBA or the 2010 Interps.

Following the Southwest-AirTran merger the AirTran employees became Southwest employees, but were not treated as new hires or placed on "probation" under the CBA. They received extensive training from Southwest, in bases, and at the Dallas training facility.

At the arbitration hearing the Union offered testimony from Curtis Clevenger, Grievance Specialist, and Grievant [redacted]. The Company offered testimony from Mandy Vitela, Labor Relations Manager, and Michelle Jordan, Director of Labor Relations for Technical Operations.

Grievance Specialist Clevenger explained the Union's position in this case, i.e., that "applicable overtime rate" for Company-required training is the rate for mandatory overtime if the training is on the employee's scheduled days off. He testified that he had received numerous phone calls from members, including former AirTran employees, about not being properly paid for training that occurred on their days off. He said "we've been able to make phone calls and get it cleared up." Prior to this case, he was not aware of any situations similar to this that required a grievance to be filed, although there are a couple of active grievances now. He said that he spoke to approximately 100 former AirTran agents who were attending training classes in Atlanta. After initially being paid incorrectly, ultimately, they were paid at the mandatoried overtime rate, if they were trained on their days off. He emphasized that it is the Company's decision when and where to train, and whether to require an employee to be at training outside of that employee's scheduled work hours.

Labor Relations Manager Vitela testified that in the stations there are trainers and facilities to provide consistent training to new hires and transfers. Timely training is important because the reason the position was filled in the first place is that there was a shortage in that station. Therefore, the Company needs that person actively working. There is also a benefit to the employees who can only shift trade after they have signed off on all their training. The timing of training at the headquarters is based upon their training schedule because many different types of training take place, and on the operational needs of the station.

Labor Relations Manager Vitela explained the Company's position in this case, i.e., that mandatory overtime occurs when the Company requires the employee to work based upon operational needs, late flights, irregular operations, etc., and the employee has not signed the Overtime Call Book. The Grievant was paid the voluntary overtime rate because she was not required to become a Las Vegas Provisioning Agent and she initiated the process that led to this training. Referring to employee time cards, Vitela testified that employees who voluntarily transferred and required training on their days off were paid "training overtime" (TRO) at the time and one-half rate for the first day and training double time (TRD) for the second day. (CX 1, pgs. 1-3.) On cross examination, she acknowledged that, unless a grievance was filed, the Union would have no knowledge of how employees were paid and that employees have varying levels of knowledge of the CBA. Vitela also testified that the AirTran employees were required, as a result of the merger, to attend training and therefore were paid at the mandatory overtime rate if they were trained on their days off. That was similar to the case of Los Angeles Freight Agent [redacted], who was paid at the mandatory overtime rate because he had not initiated any transfer or bid to a new position, but he was required by the Company to take additional training in his existing position. (CX 1, pg. 4.)

Director of Labor Relations for Technical Operations Jordan, who participated in negotiations for the current CBA, testified that the purpose for negotiating the new mandatory assignment provision was to cover operations such as call-outs for sick leave, short staffing for a particular day, weather delays, etc. She recalled lengthy discussions on short staffing and headcount issues in certain locations, specifically within Ground Operations, and quality-of-life issues so that employees could plan ahead. She did not recall having discussions about "mandatory for training." Jordan also participated in drafting the 2010 Interps and is familiar with the interpretation of Article Nine, Training. At no time was it discussed with the Union that overtime for training would be treated as mandatory for the circumstances described on page 24. She said that the way the Grievant was paid in this case is consistent with Article Nine and the 2010 Interps.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE SIX
SECTION ONE
HOURS OF SERVICE

* * *

D. **Work Schedule Bids/Requirements.** Work schedules shall be bid as often as required but shall be bid at least six (6) times per year. Each bid shall be for a minimum period of twenty eight (28) days and shall, where possible, become effective at 0000:01 Sunday morning. Each bid shall indicate the starting and tentative ending dates of the work schedule. Once an Employee's shift is established, it shall not be changed except in accordance with this provision or Article

Seven (Overtime). The ending date of the work schedule may be changed due to an unexpected change in flight activity or because of Employee(s) returning from approved leave(s) of absence. There shall be no re-bid on less than seventy-two (72) hours notice. Employees shall have seven (7) days to bid on either a shift bid or rebid. Nothing in this Agreement shall prevent the Company from assigning shifts and days off to new hire probationary Employees. Probationary Employees shall be considered in training, and shall be assigned shifts and days off, but not used as Relief Agents, during the first thirty (30) days worked of their probation. Thereafter, probationary Employees shall bid shifts and days off according to their seniority on the next scheduled bid.….

SECTION TWO
Relief Agents

A. **Coverage.** Where established by the Company, Employees may be assigned to relief duties for the purpose of covering any absence. These shifts shall not have clearly defined work weeks since their work shall vary dependent upon the work week of the Employee whom they are relieving. In order to provide such allowance for days off to such belief personnel, the Relief Agent shall be entitled to a minimum of four (4) days off for each two (2) week period in the specified bid period. Where there is an odd number of weeks in the bid. The Relief Agent shall be entitled to two (2) days off for the odd week and that specified bid period.

B. **Base Shift.** On days on which the Relief Agent cannot be scheduled to a relief assignment, he shall have hours of service and days of rest as established by the Company. Base shift shall not include Saturdays or Sundays as scheduled days off. Base shifts will be established as A.M. or P.M. shifts and will not be used to cover an absence outside of that designation.

C. **Notifications/Changes.** Relief Agents may have their base hours temporarily changed with at least twelve (12) hours notice prior to the start of the new shift assignment. However a Relief Agent will not be required to report to a shift without at least a ten (10) hour rest period.

D. **Bidding.** Relief shift shall be bid as prescribed in Section One, Paragraph D, of this Article and shall be identified appropriately.

E. **Relief Shifts.** Relief shift shall be bid separately in 1) Ramp; 2) Provisioning; 3) Operations; and 4) Air Freight. Relief Agents bids shall be designated as A.M. or P.M. shifts. A.M. Relief Agents will be used only to cover A.M. shifts. P.M. Relief Agents will be used only to cover P.M. shifts.

F. **Premium.** Relief agents shall receive a premium of one hundred seventy five dollars ($175) per month, in addition to inconvenience shift premium, which shall be added to their base pay during each month they work.

G. **Day Off Status.** Relief Agents shall be covered under Article Seven for overtime

purposes. For purpose of applying the overtime provisions of Article Seven, Relief Agents shall be considered on first day off status on their first scheduled day of rest and second day off status on all subsequent days of rest (when more than two (2) continuous days off are scheduled).

H. **Allowable Amounts.** The number of Relief Agents per station shall be determined by the Company; however, the maximum number allowed shall be calculated separately based on the number of Employees on the current shift bid in each location for 1) Ramp; 2) Provisioning; 3) Operations and 4) Air freight, as follows:…

ARTICLE SEVEN
OVERTIME

A. **Computation.** ...

B. **Time and One-half.** Employees shall be paid an hourly rate of time and one-half for:

1. **First 4 Hours.** The first four (4) hours worked either prior to or after an Employee's regular shift.

2. **First 8 Hours.** The first eight (8) hours worked on one of the two regularly scheduled days off.

C. **Double-time.** Employees shall be paid an hourly rate of double time for:

1. **Excess of 8 Hours Overtime.** All hours in excess of the first eight (8) hours worked on one of the two regularly scheduled days off each work week.

2. **Second Scheduled Day Off.** For all time worked on the second regularly scheduled day off in a work week, if a minimum of four (4) hours overtime on the first day off was also worked.

3. **Excess of 12 Hours.** For all time worked in excess of twelve (12) hours in any work day.

4. For all time worked due to mandatory overtime assignments.

D. **Notification.** …

E. **Authorization.**…

F. [intentionally left blank.]

G. **Continuous With Overtime.**…

H. Splitting Assignments.…

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. In accordance with Appendix A, to be eligible for this overtime, an Employee must complete and sign the overtime call book in ink and must initial, in ink, any subsequent deletion or changes. All such changes must be witnessed and initialed by a supervisor. A standard overtime call book shall be used at all stations and offices. Overtime call books shall be posted for a minimum of fourteen (14) days in advance. When an Employee signs the overtime call book, it shall constitute his agreement to work on the day for which he signed, and normal attendance rules shall apply.

* * *

6. **Mandatory Assignments.** The Company and the Union agreed that mandatory overtime assignments are not in the best interests of either party. To maximize voluntary overtime utilization, the Company must make overtime known to the Employees, and Employees must utilize the overtime call book to the fullest. If a sufficient amount of overtime is not voluntarily obtained or if no one signed the overtime call book, the Company shall require Employees to work the overtime. It shall only be assigned as outlined in Article 7.I.2. a., b., and c. in reverse order of seniority.

   a. However, when an Employee trades or gives away his/her entire shift or any portion of his/her shift, and

      - then cancels or trades back to his/her original shift after initial callout assignments have been made, and
      - the original trade or giveaway made that Employee ineligible for a mandatory callout assignment that he/she would have received, then
      - that Employee will continue to be eligible for assignment as outlined in Article 7.I.2. a, b, and c, in reverse order of seniority, and will be eligible to be given one mandatory assignment when on "d" status during the next seven (7) calendar days.

   b. Employees will only be required to work on one (1) of their regularly scheduled days off. However, in the event of an emergency situation and the Employee is mandatoried to work both scheduled days off, the Employee will be paid for the second scheduled day off at the applicable overtime rate plus an additional one half (½) time at his regular rate for all hours worked during the overtime assignment.

* * *

K. **Overtime Sheets/Unsigned.** Any Employee who has not signed the overtime call book shall have no rights under the grievance procedure (Article Twenty) in case of a dispute as to voluntary overtime.

ARTICLE EIGHT
SENIORITY

* * *

B. **Classification Seniority.** For any other purposes, classification seniority shall govern and shall be defined as the length of service for which an Employee receives credit in any of the classifications listed below, accruing from the date of entering such classification. The classifications to be recognized for seniority purposes are:

1. Ramp/Provisioning Agents; and
2. Operations/Freight Agents.

Each classification shall be divided into two (2) job titles. The Ramp/Provisioning Agent Classification shall contain the following job titles:

1. Ramp Agent; and
2. Provisioning Agent.

The Operations/Freight Agent Classification shall contain the following job titles:

1. Operations Agent; and
2. Freight Agent.

Furthermore, effective June 14, 2001, Employees under the scope of this Agreement will begin to accrue seniority within both classifications ("R/O Seniority").

Classification seniority shall determine:

1. Choice of vacation (within a job title);
2. Shift assignments including days off (within a job title);
3. Reduction in force; and
4. Filling vacancies within a classification.

ARTICLE NINE
TRAINING

A. **Rate of Pay.** The Company shall make every reasonable effort to schedule Employees to attend training classes during their regular shift; however, any time spent in working, training, badging, or traveling, over and above the regular shift, shall be considered overtime and shall be

paid at the applicable overtime rate.

B. **Day off Status.** An Employee required by the Company to attend classes on the Employee's day or days off shall be paid for the day or days at the applicable overtime rate.

C. **Expenses.** When an Employee is away from his base station on Company business the Company shall defray the Employee's reasonable and actual expenses covering meals (not to exceed 35.00 per day), lodging, tips, laundry and transportation. Expenses must be properly substantiated by receipts.

D. **New Equipment**.…

ARTICLE ELEVEN
FILLING VACANCIES

A. **Permanent Bid File.** Vacancies in all Ramp, Provisioning, Operations and Operations (Air Freight) positions shall be filled from the permanent bid file in the office of the appropriate department head. When a vacancy occurs, the senior Employee in that classification who has a bid on file shall be offered the opportunity to transfer. All permanent bids shall be in writing. An employee who accepts a unilateral transfer as the result of his bid or who, more than 24 hours after being notified of an award, refuses to accept a transfer for which he bid, shall not be eligible for a vacancy, other than a new station vacancy, for a period of six (6) months from the time of his assignment or refusal and shall have all other bids on file at the time for it. If any Employee elects to have their bid removed they must submit their request.

* * *

F. **Lateral Transfers.** Vacancies within a classification shall be filled by the senior bidder, according to classification seniority.

ARTICLE TWENTY
GRIEVANCE/SYSTEM BOARD/ARBITRATION
DISCHARGE and DISCIPLINE

SECTION ONE
PROCEDURES

* * *

L. **Interpretation/Application of Agreement.**…

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14. <u>Arbitration/Function and Jurisdiction.</u> The functions and jurisdiction of the Arbitrator shall be as fixed and limited by this Agreement. He shall have no power to change, add to, or delete its terms. He shall have jurisdiction only to determine issues involving the interpretation or application of this Agreement, and any matter coming before the Arbitrator which is not within his jurisdiction shall be returned to the parties without decision or recommendation. In the event any disciplinary action taken by the Company is made the subject of proceedings, the Arbitrator's authority shall, in addition to the limitations set forth herein, be limited to the determination of the question of whether the Employee(s) involved were disciplined for just cause. If the Arbitrator finds that the penalty assessed by the Company was arbitrary or unreasonable, he may modify or remove that penalty.

CONTENTIONS OF THE PARTIES

<u>The Union's Contentions</u>

The Union contends that the Company violated the clear and unambiguous language in Article Seven when they paid the Grievant the voluntary overtime rate for both days she worked on her scheduled days off. The Company is arbitrarily trying to enact their own definition of what "applicable" means. The Company's position, i.e., that in order to transfer to LAS provisioning she was required to "volunteer" to work both days off for training, is indefensible because no language places that restriction or requirement on her. The negotiated language should be strictly adhered to and the Company should not be able to creatively circumvent the double time and double time and one half provisions when making mandatory assignments for training.

The Union notes that the Grievant did not sign the Overtime Call Book seeking voluntary overtime. The applicable overtime rate therefore includes the additional one half time her regular rate. The CBA puts no restrictions on her exercising her seniority rights to use a lateral bid form to transfer to Provisioning. Nothing requires her to waive her right to proper pay rates.

Further, the Union contends that the Company is solely in control of when they schedule agents to attend training. The Grievant had bid and was awarded a relief shift at the time and management could have adjusted her shifts and assigned her Thursday/Friday off for that week to minimize exposure for overtime. The Company is now asking the arbitrator to "bail them out." In this case the Company made no effort, much less a reasonable one, to train the Grievant within her regularly scheduled hours. The Company did not support its allegation that hundreds of transfers take place under these circumstances and proper payment would be costly.

For the above reasons, the Union requests that the grievance be sustained, that the Grievant be paid at the double time and double time and a half for the time she worked on her days off, i.e., an additional 10.55 hours at her regular rate, and that the Company bear the costs of this arbitration. The Union further requests that the arbitrator retain jurisdiction for a reasonable time in case there is a need for clarification during the implementation of the decision.

The Company's Contentions

The Company contends that the Grievant voluntarily transferred knowing that she would be required to attend training both in her base and in Dallas. Under that circumstance, which differs from mandatory, short notice operational overtime, she received two weeks notice of the Dallas training and was properly paid the regular overtime rate rather than the mandatory overtime rate for the training she received on her days off. Holding that training as part of a regularly-scheduled class was reasonable given the logistics of grouping training classes system-wide, the efficient use of facilities, and the benefits of consistent training to corporate standards.

The Company contends that the Grievant has the burden of showing that the Company breached the CBA and they have failed to do so. The provision containing the mandatory overtime rate is found in Article 7, Section I dealing with the Overtime Call Book. That provision is specifically worded to apply in the context of operational overtime imposed on an employee in seniority order, on short notice. The Union attempts here to impose a penalty that was not negotiated through an interpretation that equates required training after a voluntary bid to an employee being mandatoried to work after the volunteers in the Overtime Call Book have been exhausted. Section I says nothing about training overtime.

The Company contends that the Union's argument also conflicts with the jointly negotiated, drafted and distributed 2010 Interps that provide an explanatory question and answer to clarify how an employee who laterally transferred is to be paid for training in Dallas. The answer is that the employee "will be paid at the applicable overtime rate of pay." The Interp does not refer to overtime incurred in the Grievant's situation as mandatory overtime, although that term is used elsewhere. Similarly, Article 9 of the CBA uses the term "applicable overtime rate" with no mention of mandatory overtime.

The Company notes that the only witness who participated in the negotiations for the new provision of the CBA and the 2010 Interps, Michelle Jordan, was clear that a "penalty" was never negotiated or agreed to with training in mind. Rather it was very specific regarding operational overtime situations and use of the Overtime Call Book in advance of assigning mandatory operational overtime. There is no process for using the Overtime Call Book to sign up for training. As a matter of policy, imposing a penalty overtime rate on training should be avoided, as doing so would create a disincentive to engage in training.

The Company contends that past practice supports its interpretation in that the mandatory overtime rate was only paid when training was imposed by the Company without any prompt or request by the employee. This occurred in the aberrational situation due to the AirTran merger, that did not involve voluntary lateral transfers initiated by current Southwest employees.

For the above reasons, the Company requests that the grievance be denied, and that the Arbitrator find it did not violate the CBA by paying the Grievant at the regular overtime rate, rather than the mandatory overtime rate, for training on her scheduled days off, where she

voluntarily elected to bid for a lateral transfer, knowing she would need to attend two days of training in Dallas.

ISSUE

Whether the Company violated the terms of the CBA, and, if so, what is the remedy?

FINDINGS

In this case the parties disagree as to the proper interpretation of the phrase "applicable overtime rate" as it is used in Article 9, Training, Paragraph A, Rate of Pay, of the CBA. "Applicable overtime rate" is not defined in the CBA or in the 2010 Interps, and the Union contends that it refers to the rate paid for mandatory overtime. To prevail in this case, therefore, the Union must show that the parties intended for the pay rate for mandatory overtime assignments to apply in these circumstances.

Article 7, Overtime, Section B requires that an employee be paid an hourly rate of time and one half for the first four (4) hours worked prior to or after the employee's regular shift and for the first eight (8) hours worked on one of the employee's two regularly scheduled days off.

Article 7, Overtime, Section C requires payment at double time if:

1. an employee works more than eight (8) hours on one of the employee's two regularly scheduled days off in the work week;
2. for all hours worked on the employee's second regularly scheduled day off in that work week if the employee worked a minimum of four (4) hours overtime on the employee's first regularly scheduled day off;
3. all time worked in excess of twelve (12) hours in any work day; and
4. all time worked due to mandatory overtime assignments.

The Grievant worked, by being at training in Dallas, on both of her scheduled days off the week of September 7, 2014. The Company, applying Section B, paid her at the hourly rate of time and one half for the first eight (8) hours worked on her first scheduled day off, and, applying Section C, at the double time rate for all time worked on her second regularly scheduled day off.

The Union seeks to have both days treated as "mandatory overtime assignments" because the Company required or "mandated" that she attend the training on her days off. Doing so would bring into play Article 7, Sections C.4 and I.6.b, with the result that she would be paid at double time for all time worked on her days off and, also, would be paid an additional one-half time for hours worked on her second day off.

Section I was added to the current Article 7 by the parties during the last round of negotiations. The testimony of Company witness Jordan was clear that Section I was negotiated to address the problems in some locations of short staffing and head count issues. Those problems lead to quality of life issues for employees who were required to work overtime on their days off on short notice. That testimony was not rebutted on this hearing record. In addition, Arbitrator Jenning's recitation of Local 555 President Charles Cerf's testimony about mandatory overtime supports Jordan's testimony as follows: "(talking about the Company) that 'when this language was being proposed and agreed upon that the Company could curtail the mandatory overtime because they would work harder at getting staffing correct in the stations.'" In re Southwest Airlines, Dallas, Texas and Transport Workers Union of America, Local 555, Grievance. No. PDX-R-0489/10, 128 LA 534, 539 (Arbitrator Jennings 2010). That testimony was given during an arbitration hearing over the proper remedy in a mandatory overtime assignment bypass case.

In its arguments before Arbitrator Jennings the Union referred to the ways overtime is assigned, all clearly in the context of operations at a base. For example, the Union states "If there are enough volunteers or if there is adequate staffing, there is no mandatory overtime." There is no way for employees to volunteer to take training in Dallas on their days off. Hence, the delineation between voluntary and mandatory overtime only makes sense in the context of operations at a base.

Article 7, Section I provides that the Overtime Call Book at each bid location is to be used "[i]f a known overtime assignment of four (4) hours or more is available." It plainly cannot be used for a training assignment, because an employee cannot sign up to volunteer to be trained on a seniority basis. Section I provides in great detail how assignments from the Overtime Call Book are made, including:

> Paragraph 1 - how employees who report ill are paid after being assigned voluntary overtime;
>
> Paragraph 2 - the assignment order for qualified employees;
>
> Paragraph 3 - utilizing all employees before an employee who has worked overtime is again eligible;
>
> Paragraph 4 - the time to make assignments;
>
> Paragraph 5 - A.M. and P.M. preferences;
>
> Paragraph 7 - a minimum of four (4) hours pay for employees recalled to work; and
>
> Paragraph 8 - the rate of pay for employees who volunteer to work while on vacation.

Notably, each of these provisions apply only in the context of operational needs at a base station. It makes no sense to try to apply the A.M./P.M. preference provision to Company-required training, for example. Nor would an employee on vacation status be volunteering to be trained on overtime.

The Union seeks to have Paragraph 6 of Section I apply on the basis that the Grievant did not sign the Overtime Call Book. This approach does not take into consideration that the overall purpose of Section I is to delineate how the Overtime Call Book is to be used by both employees and the Company. If the Overtime Call Book is not being used, none of the paragraphs delineating its use do not apply.

Despite the fact that the mandatory overtime language providing for additional pay for employees required to work on their off days has been in the current CBA for years, during which time many employees have voluntarily transferred – laterally – from one classification to another, necessitating training, the Union has not presented evidence sufficient to establish a past practice supporting its proposed application of Section I.6. The testimony regarding the Air Tran employees who became Southwest employees by virtue of the merger was successfully rebutted. That was a special case that cannot drive the general application of this provision of the CBA. The mere fact that the Company witness did not know whether the instances cited in CX 1 of employees who were paid the TRO and TRD rates had been grieved does not help the Union carry its burden of proving a contrary practice. Nor does the Union's general testimony to the contrary.

The Union also argues that the Company did not make "every reasonable effort to schedule" the Grievant's training during her regular shifts, as is required by Article 9, Section A - Rate of Pay. The Company's unrebutted testimony about the scheduling of training in Dallas, as required to accommodate system-wide needs for various types of training, was persuasive that individualized scheduling of training based upon an employee's days off is not practicable, nor reasonable within the meaning of Article Nine, Section A. As to the Company's ability to switch the Grievant's days off at her base because she had bid a base shift as a relief agent, there is no evidence in the record that she was not needed on the other days she was scheduled to work.

For the above reasons, the Union has not established that the Company violated the CBA and the grievance will be denied. In accordance with Article Twenty, Section One, Paragraph C, the costs of the arbitration shall be borne by the Union.

AWARD

The grievance is denied.

Elizabeth Neumeier, Arbitrator

June 12, 2015