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IN THE MATTER OF ARBITRATION **OPINION AND AWARD**

between

SOUTHWEST AIRLINES, INC. **Case No. SAN-O-0327/14 ([redacted]-Christmas Triple Time)**

and

TWU LOCAL 555 **Gil Vernon, Arbitrator**

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APPEARANCES:

On Behalf of the Company: Erick C. Burroughs, Attorney – SWA

On Behalf of the Union: Kevin Carney, District VI Representative – Two Local 555

I. BACKGROUND AND FACTS

The grievance before the Arbitrator seeks triple time (3X) for the hours worked by Grievant beyond eight hours on Christmas Day 2014.

To understand the dispute it is helpful to understand the manner in which scheduling is done for TWU Local 555 represented employees on Christmas and Thanksgiving. It is unique and distinguished from ordinary scheduling in many respects and the thrust of it can be traced to a 1991 arbitration Award by Arbitrator Barnett Goodstien as well as the subsequent Letter of Agreement implementing the Award.

The scheduling for Christmas and Thanksgiving starts with the premises that everyone is considered "off" and (at least it was true in 1991) that the Company operates a reduced schedule with reduced demand for employees on that day. Beyond this—in simple terms—it starts with the Company determining what its staffing needs are and posts those needs in advance extending to everyone the opportunity to volunteer rather than be mandatorialy assigned in reverse seniority. The first eight hours would be at time and one-half (1.5%). The posting operates in conjunction with the "call book". Employees desirous of work sign the call book indicating which shift or shifts they are willing to work.

If not enough employees sign up for the voluntary overtime (VOT), employees are scheduled on a mandatory overtime basis in reverse seniority for which (under 2009 amendments to the CBA contrary to earlier language) they will be paid double time. See Article Seven Section C.4.

An employee who is assigned mandatory overtime (MOT) on Thanksgiving or Christmas can avoid working if she or he finds someone to work for them. This process is purposely described here in generic terms, as there is significant semantic debate whether this is considered a "shift trade" or a "giveaway". This led to other debates if and how other processes, rules, agreements and understandings are implicated. Determinations in these respects aren't particularly necessary to address the very limited issue in this case. It merely requires that the

essential character of the transaction be recognized: The employee who has been mandated to work seeks a replacement that agrees with the employee to work for them instead. The Company is notified so it knows who to expect to work.

In this case, Grievant signed the Company's posting seeking volunteers for Christmas overtime. He signed up for only one shift (an "AM" shift). It is not insignificant that Grievant could have signed up for an "AM" and a "PM". In this regard, there is a grievance and unanimous System Board decision (without neutral participation) that the grievant in that case ([redacted]) had signed up for both AM and PM shifts and had been scheduled by the Company for both shifts from the "call book". He claimed all his hours beyond eight should have been at triple time. The System Board agreed. It resolved the grievance in the employee's favor which had been filed shortly after the 1991 Goodstien Award.

As noted, Grievant did not sign the call book for two shifts. He signed up for one and was assigned one (06:00-14:30). Having not received enough sign-ups in the call book for VOT the Company made mandatory assignments (MOT). One of the employees who received a MOT was Ops Agent [redacted] for a PM shift (14:15-22:45). She asked Grievant if he would work her shift. He agreed.

Grievant subsequently was paid double time for working [redacted] PM MOT shift that followed his AM VOT shift. He filed a grievance seeking triple time for all hours worked that Christmas Day in excess of eight. The grievance cited

Articles 2, 7, 22 and all others that might apply. The grievance could not be resolved and was ultimately appealed to arbitration. The matter was heard on March 19, 2015. Following receipt of the transcript, post-hearing briefs were filed May 4, 2015.

II. OPINION AND AWARD

Interestingly, triple time is not mentioned in Article Seven (Overtime). Section B and C of that Article which only addresses time and one-half and double time. It is subsection 4 of Section C that requires double time for a mandatory overtime assignment.

The only contract ("Red Book") provision that mentions triple time relevant to this dispute is Article Twenty-Two (Holidays/Free Days) Section C that reads:

ARTICLE TWENTY-TWO
HOLIDAYS/FREEDAYS

> **C. Holidays.** The following holidays shall be observed: Thanksgiving Day (November) and Christmas Day (December). These holidays shall be that day generally recognized as that holiday. All Employees shall receive a holiday bonus in an amount equal to their regular compensation rate, including premium and differentials, if applicable, for eight (98) hours. If the Company ***requires*** an Employee to work on a holiday, he shall be paid time and one-half according to his regular compensation rate for the first eight (8) hours, in addition to his regular holiday bonus rate, and triple time thereafter. An Employee scheduled to work on a holiday who does not report for work shall lose all pay for such holiday unless the absence is due to sickness or is excused. (Emphasis added)

Operatively, triple time is provided under two conditions: (1) if the Company requires the employee to work and (2) if the employee works more than eight hours.

It is the opinion of the Arbitrator that the critical question in this case—under these unique facts and circumstances namely that Grievant worked in excess of 8 hours on Christmas as the result of agreeing to cover [redacted] mandatory overtime—is whether the Company ***required*** [redacted] to work the PM shift.

The plain meaning of the word 'require' does not support the Union's case. Nor is there any practice or bargaining history cited by the Union that suggests the contract shouldn't be interpreted consistent with the common concept of what it means to 'require'.

Grievant had the choice to work for [redacted] The Company did not compel this choice and had no hand in him working her mandatory overtime. The only way the Company could have been the moving and initiating party to Grievant working more than 8 hours is if Grievant's name came up in the inverse application of seniority or if he had signed up and had been assigned to two shifts from the call book. That the Company may have had expectations of Grievant once he committed to [redacted] (such as attendance etc.) does not convert his voluntary agreement with Rivera or change its fundamental nature into an involuntary mandate by the Company.

The only hesitancy in applying the plain meaning of the words require, requires or required is the [redacted] System Board decision. It is argued that there is no difference between it and the instant cases in the sense that [redacted] also

volunteered for his second shift on Christmas Day just as Grievant did. The argument by extension states if [redacted] got triple time Grievant should get triple time. However, this argument is not persuasive under close scrutiny. There is a fine but significant distinction.

[redacted] worked two shifts (thus more than 8 hours) as a result of signing the call book for both the 'AM' and 'PM' shift. The Company gave him that option and in Article Seven, Section I.6. the overtime call book must be used to its "fullest" extent and the Company is to maximize voluntary overtime utilization as both Parties agree mandatory overtime is not in either of their interest. Only when a sufficient amount of voluntary overtime is not obtained is mandatory overtime used in reverse seniority. Moreover, Article Seven I.6. authorizes the Company to "require" employees to work overtime. The Company required only [redacted] to work mandatory overtime.

The difference between the nature of [redacted] second shift and [redacted] is deceptively significant. [redacted] work in excess of 8 hours was in lieu of a mandatory assignment. Thus, there was a direct nexus to mandatory overtime (which is required by the Company). This direct nexus does not exist in [redacted] case. If [redacted] had not signed the call book somebody would have been "mandatoried" or required by the Company to work. Volunteering in the call book thus avoiding a mandatory overtime assignment to someone is in some sense an

action voluntarily initiated by the employee yet it is essentially the same thing as a mandatory assignment. If someone hadn't signed the call book someone else would have been "mandatoried". If the first thing didn't happen, the second one would have. Signing the call book for Christmas and Thanksgiving and being mandated to work the holiday are the flipside of the same coin. The Company sets the schedule and requires it to be filled. A call book sign up is 'voluntary' in a sense but not in the final analysis. It merely avoids a mandate to someone. Both are in response to a Company requirement.

[redacted] volunteered to the Company to directly fulfill a Company requirement. [redacted] volunteered [redacted] to fulfill a requirement the Company placed on her. That [redacted] worked more than eight hours on Christmas was not the result of a Company requirement but it was the result of a transaction between [redacted] and [redacted] with no direct action by the Company.

In [redacted] case the Company had already required [redacted] to work. No further mandate was issued or acted upon by the Company. Its mandate and requirements had been fulfilled. Grievant's action was strictly voluntarily and fulfilled no mandate or requirement of the Company. Grievant's transaction with [redacted] was not required by the Company directly or indirectly. It was the result of the choice of two individuals. While the Company had to honor their agreement, mandating [redacted] satisfied its needs. Mr. [redacted] work in excess of 8 hours was

not related to any action of the Company's. Had the Company done nothing more than mandate [redacted] as it did its requirements would have been satisfied. Said another way, the buck stopped with [redacted] as far as the Company's requiring anything. The Company's obligation was met when, as it agreed, to pay Grievant double time just as it would have paid [redacted]. The Company ultimately acknowledged double time was the appropriate rate for both Grievant and [redacted] (had she worked) in spite of some intentional obscuration or unintentional confusion to the contrary.

In summary, there is no contractual provision that requires triple time in this circumstance. Grievant was not required by the Company to work [redacted] shift.

AWARD

The grievance is denied.

(Signature on Original)

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Gil Vernon
Arbitrator

Dated this 3rd day of June, 2015.