

**Denenberg #1**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

**ISSUE**

Was the discipline of the Employee just and proper? If not, what then shall be remedy?

**REMEDY SOUGHT**

Rescind the discipline and remove all references from the Employee's personnel file.

**BACKGROUND**

The dispute between the union and the employer was not resolved during the grievance procedure, and it ultimately came before this system board with the neutral chairman sitting alone. A hearing was held on February 3-4, during which the parties were afforded an opportunity to present evidence and argument. Witnesses were sworn. The parties filed post-hearing closing arguments.

The 1989-1994 Ramp and Stores Agreement provides:

**ARTICLE XVII: DISCIPLINARY ACTION**

B. No employee shall be discharged without a prompt, fair and impartial investigative hearing at which he may be represented and assisted by Union Representatives. An employee will also be entitled to an investigative review hearing if he so requests upon being advised of a disciplinary suspension. The hearing will be held before any suspension is served. Prior to the actual hearing the Union and employee will be given

copies of any previous disciplinary action letters which are to be considered and the Union will be advised in writing of the precise charges against the employee. The Union and employee will have at least forty-eight (48) hours advance notification of the hearing should they so desire. Nothing herein shall be construed as preventing the Employer from holding an employee out of service pending such investigation.

[Joint Exhibit 1]

This matter involves a Level 4, the equivalent of a twenty-day suspension, assessed on October 7, 1991, to the Employee, a day-shift Ramp Serviceman [Employer Exhibit 6].<sup>1</sup> This action represented an advance of one step in the non-punitive disciplinary scheme "based on a series of nine job performance failures" [Employer Opening Statement, p. 3]. The triggering incident, which occurred in City 1 on August 21, 1991, involved the mishandling of more than approximately 100 passenger bags. Destined for City 2, they were misrouted to City 3. For his part in the incident, as well as other instances cited, the Employee was deemed to be in violation of the following Employer rule of conduct:

38. Failure to do job assignment, careless workmanship, or unacceptable job performance. Level 1 to discharge.

[Employer Exhibit 1]

The Employer asserts that it patiently counseled and progressively warned [the Employee] regarding his job performance and dependability. After a series of repeated job performance failures which caused disservice to our customers, it became blatantly clear to management that the Employee had a serious performance problem which he refused to acknowledge, despite ongoing efforts to effect a change in behavior. While these performance problems were not new, since Employee had a history of such difficulties, the magnitude and frequency grew intolerable and, consequently, the Employer acted in an appropriate manner to deal with the problem [Employer Opening Statement, p. 2].

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<sup>1</sup> The Employee's Company and Classification seniority dates are April 29<sup>th</sup>, 1965 and July 30<sup>th</sup>, 1968 respectively.

The union disputes the factualness of the allegations, contending that the nine cited instances of poor performance were contrived by the Employer to justify moving him to a level that was only a step away from discharge. The union contends that the incidents cited were, by and large, everyday occurrences on the ramp that would not normally result in counseling or documentation. Whatever so-called "counseling" supervisors may have provided was so casual that the Employee often did not recall the session or the incident that led to it. The union maintains that the purported counseling was used by the Employer "as a weapon rather than to be constructive or beneficial" [Union Opening statement, p. 3]. That is, in the union's view, the Employer hoped the accumulation of counseling would lead to his discharge rather than prove to be corrective. The Employer also treated his part in the triggering incident—the baggage mishandling—more seriously than that of other employees involved, the union asserts. The union considers it is unfair to advance the Employee to a Level 4 based upon allegations (substandard job performance) unrelated to the conduct which had brought him to Level 3.<sup>2</sup>

The union believes that the Employee' dependability—the reason for previous discipline—had improved, causing the Employer to develop an alternative disciplinary trail, leading toward a Level 4 for substandard performance. The union notes that never before in his 27-year career with the Employer had the Employee been disciplined for that failing. Had the Employee not been given the Level 4, he would have completed in only a few more months the two-year, discipline-free period required to wipe the slate clean.

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<sup>2</sup> On February 6, 1990, the Employee was assessed a Level 4 [Employer Exhibit 3] for a violation of Rule 32 (dependability). The level was grieved and upheld in a Third Step Decision of May 24, 1990 [Employer Exhibit 4], which was not appealed to the system board. In February, 1991, after a year with no further discipline, he was rolled back to a Level 3, in accordance with Letter 87-2R of the agreement.

## **DISCUSSION**

A major mishandling of baggage unquestionably occurred on August 21, 1991, and the Employee played a significant part. It was he who made the critical mistake of physically transporting the City 2-bound bags to the City 3 flight—from whose incoming segment the bags had just been off-loaded. In seeking to avoid blame, the Employee points out that the bags had been left in the run-off area of the outbound bag room and that the identifying placard had not been changed since leaving City 4. It still bore the number of the inbound flight-193—which was also the number of the outbound flight to City 3 from City 1. According to his testimony, he reasoned: "I was working 193, and they were 193 bags."

Nevertheless, there was sufficient information on the placard to give one pause before concluding that the bags were destined for City 3. The complete message chalked on the placard, as recreated by Bag Room Supervisor Person 1 at the arbitration hearing, was "TB9 193/LAX 897/NRT" [Employer Exhibit 14]. Person 1 explained that this formula indicated bags traveling internationally through City 1 and entirely on the Employer. The international destination, City 2, was clearly marked by name and flight number. It is also undisputed that the doors on the baggage containers were open in the run-off area, and that visible inside was bags tagged for City 2. The City 3 destination code appeared nowhere on the tags or the placard.

In choosing to move the bags without a specific instruction from supervisors, the Employee implicitly accepted responsibility for handling them correctly. Yet he violated one of the basic maxims of baggage handling: he did not know with certainty what he was towing. At least, he took no steps to confirm that City 3 was the destination, despite clear warning signals: the contra-indications on the placard and the bags. Although the placard retained "193" from the inbound flight, the rest of the message was inconsistent with a connection in City 3.

Asked if a ramp serviceman could conclude that City 3 was a transfer point for the City 2 bags, Ramp Service Manager Person 2 indicated that it was possible but that "given the fact that we fly non-stop [from City 1] to City 2, I wouldn't say it's logical." Supervisor Person 1 commented that while the marking on the placard was "not as standard as we would like it, it's fairly common."<sup>3</sup> Thus, even though the placard was unchanged after Flight 193 arrived from City 4, a ramp serviceman could have been expected to realize that the transfer to City 2 was to be accomplished in City 1, not City 3.

Although the Employee said in his testimony that he "noticed they were City 2," he nevertheless decided to take the bags to the City 3-bound plane. The Employer could justifiably fault the Employee for that decision, especially since he acknowledged in his testimony that he was aware that "897/NRT" was, in fact, a flight departing from City 1.

Lead Ramp Serviceman Person 3, who was in charge of the crew for the flight to City 3, undoubtedly contributed to the misrouting by directing that the bags be loaded despite the City 2 markings. But the difference between his appreciation of the incident and the Employee's is telling. Person 3 acknowledged in his written report that he had been careless: "I should have been more aware of the situation" [Union Exhibit 1]. The Employee, in contrast, evidently considers it natural and inevitable that bags left in an outbound area and marked "193" would end up in City 3 regardless of what other information was on the placard or the bags.

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<sup>3</sup> Corrective action was subsequently taken to ensure that the kind of errors made on August 21 were less likely to occur. Person 1 issued a memo in October, 1991:

Effective immediately, any time we route a container or a cart of bags from the transfer area to the run-off or any other bag area, the placard must be re-marked, repeat, remarked to show the flight and destination out of the airport. Hopefully this will help us with the problems we have been experiencing at the runoff line with misrouted LD3 containers of bags. Please, no exceptions. Remark the placards. THX.

The union argues that the Employee should be absolved, because it is well established on the ramp that once someone accepts responsibility—in this instance, Person 3—others are held harmless. But Person 3 took responsibility on behalf of those following his lead in loading the bags that had been delivered to the plane. The Employee was following no lead but his own in undertaking to deliver the bags. He explained:

I felt as a backup driver that was part of my function . . . I'm part of the crew. If I see freight for 193 . . . I'll take it to the plane, and if it is not supposed to be put on I'll take it back...I don't feel I have to be told everything to do.

In other words, he transported the bags to the plane just in case they were to be loaded, while leaving that determination to someone else. He apparently felt no responsibility to try to confirm the destination himself—to really know what he was towing. The Employee reasoned that he was not responsible since

“someone didn't do their job . . . . [W]hen bags are brought down to that area you're supposed to change the placard. If this had been 897 they should have changed the placard . . . . I brought the bags out because I felt it was my job. Because of a breakdown in the system I brought out the wrong bags.”

Nonetheless, the Employee was part of the system that broke down. The handling error, which was far from unavoidable, was in substantial part attributable to his not doing his job carefully. The union reckons that approximately nine employees were involved in the mishandling and argues that all should have been disciplined—or none. The Employer, on the other hand, maintains that it was proper to discipline the Employee and two others—Supervisor Person 1 and Lead Ramp Serviceman Person 3—since they were the crucial links in the mishandling.<sup>4</sup> The

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<sup>4</sup> The incident started when a driver assigned to assist in key transfers of baggage noticed that a form reconciling international passengers and bags was missing. He radioed Supervisor Person 1 for instruction. Person 1 told him to drop the bags at the outbound run-off and he would take it from there. However, the supervisor failed to change the placard or to hand it off to another employee before rushing off to an emergency.

Employer's theory for blame apportionment is sound. There is nothing inherently unfair about allocating primary responsibility to the three employees most directly involved—the person who left the containers unattended, the driver who took them to the plane, and the person in charge at plane-side—even though others may have contributed in some indirect way. The employees disciplined were the key participants—those without whom the mishandling could not have occurred, despite mistakes made by others.

The Employee's role, as the connecting link between the other two, was particularly significant. No valid claim of disparate treatment can be lodged against the Employer, certainly none that would exonerate the Employee, merely because persons peripherally involved were not disciplined. The major blame was appropriately assigned to the central actors.

The union believes that the Employer disciplined Person 3 and Person 1, albeit reluctantly, solely to avoid the accusation of disparate treatment. However, even if the Employer were determined to maneuver the Employee toward a Level 4 by such an elaborate stratagem, there would seem to be no reason for the other two men to go along with the scheme; they had unblemished records prior to Flight 193, yet neither challenged the discipline. It is highly improbable that they would allow their records to be besmirched for no reason other than to provide "cover" for discipline of the Employee.

It is true that Person 3 did not receive formal written notice of the level until after the Employee IRH, at which the union insists it raised the issue of disparate treatment. But it is uncontroverted that Person 3 came forward, accompanied by a shop steward, shortly after the baggage mishandling was brought to light and took responsibility for his part in it. He was informed then by the Employer that he would be receiving a level, and he acquiesced. Grievance Committeeman Person 4 recalled speaking to Person 3 about five days prior to the Employee

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IRH: "He told me the Employer had advised him he would be getting a level." When issued, the level was dated around the time of the occurrence.<sup>5</sup>

The baggage mishandling episode fits within a pattern of poor performance by the Employee, as recorded since his previous level, assessed in February, 1990. There were four instances later in that year:

04/09/90 (Right 97). Bag left in manual pit for about 20 minutes. Supervisor Person 5 wrote that he "advised the Employee of what he failed to do and he had no reason for what he did" [Employer Exhibit 15]. The Employee testified that he does not recall the incident, although believes he would have remembered it had it happened.

04/09/90 (Flight 193). Locks incorrectly set before loading containers. Person 5 "advised Person 6 [the lead] that the Employee appeared to be having problems loading the forward system. Person 6 went into the pit and rearranged the locks correctly. I asked the Employee what the problem was and he said he was only human and made a mistake. That was his only excuse [Employer Exhibit 15]. The Employee testified that "anytime you're told a specific number of containers and it changes in any way the locks have to be changed and I started to change them." The union maintains that this was a simple conversation about a common occurrence that resulted in no flight delay or customer disservice.

09/02/90 (Flight 1046). Poor work performance (failure to appear for flight). Supervisor Person 7 noted: "I spoke with his crew and they informed me that his poor performance was consistent all day. I informed the Employee that I will document his poor performance on future [flights]. His attitude during our conversation was negative, He smiled and remarked that I should get pleasure following him around and that it has been tried before" [Employer Exhibit 17] The Employee acknowledged that "Person 7 and me had conversations. Supposedly he said I was late for a trip or I didn't show up or something. But I can't recall what it's about."

11/06/90 The Employee received traffic ticket for failure to stop at stop sign, delaying delivery of bags. Because the supervisor was unable to testify, the parties stipulated to the following (although the union disputes the substance of the stipulation): "If Supervisor Person 8 were to testify he would state he processed the ticket administratively, made a copy with his handwritten note confirming the conversation and put it in the Employee's file. The Employer is not disputing the Employee's testimony that the discussion happened in front of the white area." The supervisor's note was: "We almost did not make goal." The ticket indicates that three offenses in 12 months can lead to loss of driving

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<sup>5</sup> This would be to Person 3's advantage since his two year window for discipline would begin when he was initially told about- and accepted- the level.



privileges in the airport [Employer Exhibit 13]. The union argues that since the baggage delivery goals were in fact met, there was no customer disservice.

The union questions the significance of all four incidents. Each was trumped up, according to the union, merely to provide an excuse for an interaction with supervisors which could be turned into "written statements that went into a dark hole, known as the employee's working file, that all management employees have access to, yet the employee or the union does not" [Union Closing Statement, p. 1]. The Employee said that he either does not remember any such events or does not recall being counseled. The union theorizes that any supervisory interaction with the Employee was too casual to make an impression and thus could not be counted as full-dress counseling.

Nevertheless, at least one of the four instances cited by the Employer, the Employee's conversation with Person 7 in September, 1990, was plainly a substantial supervisory interaction. Promoted from the ramp, Person 7 had been on the Employee's shift a few years earlier and had considerable empathy for his former co-workers. The supervisor's account of the interaction has the ring of truth. He found the Employee in a ready room, reading a newspaper, when the Employee was supposed to be working Flight 1046. The supervisor recalled saying:

"You're assigned this flight ..." [The Employee] jumped up and said "OK" and proceeded to drive his tractor and work the flight . . . . After the flight departed I came across him in the run-off area in the bag room. He was driving his tractor. I stopped him and I told him "you know this has been going on for some time. Your fellow crew members are complaining to me about your dependability. You're not even showing for trips or lateness." He seemed to—he kind of smirked and said "Is that so?" and I told him I was going to document from then on . . . any such occurrences and he said, basically, "Do what you are going to do. You should get great pleasure in following me around." At that time I went in and wrote this statement and placed it in his file and at that time I saw he was already at a Level 4....Well, I went back in my area and on the next occasion when I saw him and said "I see you're already at a Level 4" and basically communicated he couldn't afford in my opinion to have such situations as the one I wrote the statement about. I was concerned for his job status . . . and tried to communicate to him. He didn't seem to take it too seriously.

This encounter alone should have put the Employee unmistakably on notice that continued poor performance could result in his termination. Not showing up for flights is a serious offense on the ramp, as the union acknowledged in its closing argument.<sup>6</sup> Supervisor Person 7, elevated from the ranks himself, was plainly reaching out to the Employee. He was trying to convey to the Employee the seriousness of being overly casual about fulfilling job requirements while at a Level 4. Yet his plea seemed to fall on deaf ears, leaving Person 7 frustrated.

All four recorded instances were again reviewed for the Employee at the end of 1990 in a formal setting when the new Operating Manager, Person 9, arrived. Responding to the Employee's request and "a number of complaints, comments from supervisors and a few leads, some of them well respected," the operating manager met with the Employee. Supervisor Person 10 was also present. Person 9 characterized the meeting as "coaching" and described it as the "full package," a complete review. The Employee had his concerns that he wanted my action on. But he also stated other employees and supervisors were judging him wrong and that he had a bad reputation.... I said I would take care of them ... and investigate the issues he asked about. But I also took the opportunity to reflect to him he had four counseling's on previous issues, and he was at a Level 4 on February 1, 1990, and that for it to be a new beginning he needed to meet Employer requirements and do his job.

Whether or not each of the four prior incidents was properly characterized as counseling, there can be no doubt that they were thoroughly reviewed for the Employee on that occasion and had not merely disappeared into "a dark hole." Given the scope of this meeting, the Employee had reason to understand the extent of supervisory dissatisfaction with his work and the likely

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<sup>6</sup> The remark was made in connection with two missed trips on April 19, 1991 [at p. 61. The comment is valid, however, for Flight 1046 as well. Employee would have, at a minimum, been late for the trip, as Supervisor's Person 7's credible testimony established. Had the supervisor not sought him out and directed him to the flight, he might well have missed the entire assignment.

consequences of his continuing along the same path, rather than attempting the new beginning that Person 9 offered him.

In April, 1991, according to Employer records, the Employee committed two further performance errors, which echoed the problem of the previous September: failure to show up for a flight assignment. Person 10 testified that Supervisor Person 7 and Lead Ramp Serviceman Person 11 reported the Employee's absence from two flights (Flight 1111/1114 and Flight 1401/1236). The Employee maintained that Person 11 had not instructed him to meet the two flights in question but rather to show up for Flight 495, several hours later. The Employee recalled,

I had been told by Person 11 I had 495. Well, I knew I was getting an exceptionally good lunch...When I heard Person 11 say come back for 495, I felt maybe he didn't mean what he said, but when I pulled up the trips 1111 for 1114 and 1401 for 1236 they were so light that I figured I heard Person 11 right, to come back for 495 . . . . I showed up for 495.

Person 10 precipitated two meetings with the Employee, on April 19 and 27. Each included union representation. Person 10 said he decided to involve Operating Manager Person 9, a usual step, because of the Employee and his unsatisfactory job performance. This is a very serious violation. We had an employee problem that was getting worse. That was something he [Person 9] needed to be aware of and brought into the circle.

Person 9 attended the second meeting, on April 27, which was a long counseling session, according to Person 10:

We went over the information. His first response was that he misunderstood the lead. After further questioning ... the Employee finally said I didn't think they needed me. This was amazing to us. I never heard anyone say this to us. He would look at the trips and he would decide on his own if he were going to come or not on the trips. I told him that was an unacceptable answer. That he's paid to work here eight hours and follow the direction of his lead. If everybody thought this way we would have nobody at the trip. I told him ... in ending he was expected to follow instructions and assignments given to him by his lead, and failure in the future to do it would result in termination.

Mr. Person 9 characterized Employee' response to counseling as follows:

The Employee didn't take it seriously. He didn't seem to respond to what the Employer was trying to change in his behavior. He specifically felt there were not many or any improvements for him to make.

The Employee acknowledged during that session that he missed flights, but his explanation did not sit well with Mr. Person 9:

I attempted and Supervisor Person 10 attempted to explain missing flights, being delayed to his assignment really negatively impacted on our customers and our goals. The Employee in fairness felt people were picking on him. We were making a bigger issue of things than we should be.... He acknowledged he missed flights... That's the thing that bewildered me and hit me the hardest. He stated he was an excellent ramp serviceman. The way he was trained and did a good job for the Employer. He did the extras and no one noticed. On those occasions and others he would check the inbound loads, the number of bags, and number of the volume the trip had. If it wasn't that heavy, he was allowed not to show up. He just took an extra break . . . . It's not allowed by his lead or supervisor, but in his mind it was OK. He stated in his judgment they didn't need me.

Although Person 9 maintained that unauthorized absence from the work area is a serious allegation, he elected to merely document the April 19<sup>th</sup> occurrences rather than initiate discipline immediately, because "I thought that the Employee would change. That's the most honest answer I can give you."

Summarizing the session, Supervisor Person 10 issued the following memo to the Employee on May 2, 1991:

On April 19, 1991 a discussion was held regarding your unauthorized absence for approximately 1 1/2 hours. In attendance was Shop Steward Person 12. A subsequent discussion was held on April 27, 1991 with Operating Manager Person 9 and Shop Steward Person 13.

On April 19, 1991, you were a member of the late day Ramp Service crew assigned Flights 1111/1114, 1401/1236, and 495. After receiving instructions from your Lead, you only showed up for Flight 495. Ron your explanation was you misunderstood and then said, "I didn't think they needed me."

You are expected to follow the instructions and assignments given to you by your Lead. Absence from your work area is a serious situation in which you place your employment in jeopardy. Unauthorized absence from your work area in the future will lead to termination from the Employer.

[Employer Exhibit 11]

On the day the Person 10 memo was issued, the Employee and a co-worker, Person 14, were involved in another incident, which also involved failing to follow the lead's directions.

According to Supervisor Person 15, the two were assigned by Person 11 to dump four containers from inbound Flight 816 and then wait to assist Ramp Serviceman Person 16 in dumping another five containers from the flight. After dealing with the first batch of containers, neither man waited to help Person 16 but went to lunch at their usual time. Person 15 testified:

At that time [Person 11] was pretty upset.... It caused a problem with his crew . . . . Person 16 had to stay longer than expected, causing his assigned lunch to be delayed. Consequently, that had an effect on the schedule for the rest of the flights for the rest of the day since now Person 11 had to fill in for Person 16, shift his lunch and take his lunch later . . . . The only issue then with me and the Employee and Person 14 was the fact they were not where they were supposed to be. Whether they heard the instructions or not was of no consequence because, according to the lead, he gave them instructions. Whether he [Employee] did hear or not I can't dispute. I'm not in the Employee's mind. My only concern was the expectation from the Employer's standpoint and from the lead's expectation.

At the hearing the Employee disclosed for the first time that he has impaired hearing in his left ear, due to an inner ear problem. The implication was that it could account for his not hearing the lead's instruction. But he said he had not mentioned it to management before, inasmuch as "nothing can be done" for the condition and

"it really never has been a problem. Matter of fact, because of it I never wore ear muffs and it never seemed to bother me. I've taken tests most years and really my hearing stays the same.

The Employee worked without apparent incident until April 21, 1991 when the baggage mishandling occurred triggering an investigation assessing the next level? The next day the Employee and two other ramp servicemen, Person 17 and Person 18 were working outbound Flight 1116. Supervisor Person 5 recalled:

The flight departed [the gate] on time. Ten minutes after, a zone controller who enters the final weight and balance into the computer said the load was not called in yet and departure loading record had not yet been completed. I said, "OK I'll get back to you" and started looking for the Employee and the other two who loaded the aircraft.

Twenty-four minutes after the aircraft departed the gate; he discovered the Employee and one other crew member only then calling in the load. As a result of the delay, noted a Letter of Concern issued on August 26, 1991, "The aircraft had to wait at the end of the runway and missed number one take-off position twice" [Employer Exhibit 16]. All three ramp servicemen were given similar letters, although those issued to Person 17 and Person 18 were withdrawn about a year later, since the supervisor felt they had served their purpose. Unlike the Employee, the two junior ramp servicemen did not give further cause for concern. In any event, the Employee had accepted responsibility as the self-styled lead: "He had 25 years; he said he should call in," according to Supervisor Person 5.

In his testimony the Employee minimized the significance of the omission: "The trip left on time and supposedly loads weren't called in, but there was no problem other than that the loads were not called in and we called them in." Under questioning, however, he conceded that there was a disservice to passengers:

Q. Do you consider it a problem if an airplane gets to the end of the runway and has to miss its takeoff slot because the pilot does not have the final weight and balance?

A. Yes.

Q. Was that what happened here?

A. So I'm told.

Q. So it created a problem for our customers?

A. So I'm told.

The union claimed that this incident was piled onto the indictment as an afterthought to ensure that Employee would receive a level. But occurring, as it did, the day after the baggage mishandling, while the investigation of that incident had just begun, it fairly reinforced the Employer's contention that the Employee often failed to do his job thoroughly.

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The union argued vehemently that the case against the Employee was somehow manufactured by supervisors once he had improved his dependability and that he can barely recall the incidents now held against him; given the detailed accounts of specific performance failures by a wide variety of supervisors, that contention not supportable. While some of the, earlier interactions may have been too informal to be termed counseling, as the deficiencies continued the interventions became more intense and should have been memorable. The Employee certainly had reason to be aware of his precarious status after hearing Person 7's heart-felt admonition in September, 1990, Person 9's "full-package" review of his record in December, 1990, and the formal counseling session of April, 1991. Although the Employee might plausibly lack recollection of some of his interactions with supervisors or the underlying events, it is implausible that he would only dimly remember a meeting of several hours length, during which he was represented by a shop steward and after which he received a strongly worded memorandum with a dismissal warning [Employer Exhibit 11].

During his meeting with the Employee in December, 1990, Person 9 offered him a new beginning: he promised to look into Employee' complaint that he was under-appreciated and had an undeserved poor reputation. At the same time, Person 9 reviewed the Employee's history with him and underscored Employer expectations. An employer bent on dismissing an employee would hardly have held such a session. Indeed, the meeting might have been a catalyst for a dramatic turnaround. Unfortunately, the supervisors' perception was that the Employee's job performance continued to deteriorate during 1991, culminating in two missed flights in April, the consequent counseling and the major baggage mishandling in August that finally triggered discipline.

The overall picture that emerges is distressing, given the Employee's length of service. While he prides himself on having been an excellent ramp serviceman, the record establishes that on a number of occasions during the period under review he was either unduly casual about his responsibilities or deliberately chose to work on his own terms, rather than follow instructions. At the same time, he spurned the exhortations of supervisors. Although the conduct for which discipline was imposed did not always result in missing passenger bag delivery goals, it undoubtedly impeded efforts to give the best service possible.

Judging by his testimony, the Employee pictures himself as an employee who asserts leadership on the ramp, who does helpful things that go unnoticed, and who guides junior employees. In return, he evidently considers himself entitled to exercise independent judgment about such matters as whether he is needed for an assigned flight. Rather than checking with his lead on April 19, for example, the Employee felt justified in deciding for himself that the loads were light enough for him to miss two trips; he casually assumed that he had been assigned an



unusually long lunch break. This concept of his role on the ramp clashes with the expectations of the employer.

In the Employee's view, he assists the Employer by showing initiative, but in the case of the August baggage mishandling, his initiative proved to be harmful. He opted to tow the bags but not to determine their destination with care. The Employee similarly believed that he was being helpful when, as senior man on a crew, he spontaneously acted as a quasi-lead. Yet the Employer has no wish for him to act as a lead ramp serviceman, a separate classification under the contract. Moreover, the Employee's assertion that his experienced leadership benefitted younger and newer co-workers is belied by the fact that a crew supposedly following his lead neglected to transmit load information promptly, causing a takeoff delay<sup>7</sup>.

In sum, the record supports a finding that the Employee's performance violated Rule 38 and warranted a level of discipline. While the discipline is relatively serious, the equivalent under the old system of a lengthy suspension, an employee who is already at Level 3 is clearly a candidate for Level 4 under the appropriate facts and circumstances. There is no evidence that assessing a Level 4 is irregular merely because the misconduct at issue is different from that which earned the Level 3.

It is always sad to see an employee, especially someone with the Employee's longevity, reach the brink of termination. But the Employer had just and proper cause to move him to the next higher level of discipline. In light of the credible evidence on the record, longevity alone is not a sufficient reason to mitigate the discipline.

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<sup>7</sup> During the hearing, the following colloquy took place:

Q. Are you the lead?

A. Unofficially. Well, I'm told not to lead . . . But I'm the senior man on the crew, so I am the lead. I don't say that I'm the lead, and I'm not the lead. But I am the lead.

## **CONCLUSION**

For the reasons discussed above, and after considering all arguments and the entire record, the neutral chairman rules as follows:

The discipline of Employee was just and proper. His grievance is denied.

## **DECISION**

The undersigned chairman of the System Board of Adjustment, having been designated in accordance with the collective bargaining agreement entered into by the above-named parties, and having duly heard the proofs and allegations of the parties, awards as follows:

The discipline of Employee was just and proper. His grievance is denied.