Gilson #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

This dispute was presented to the undersigned for a final and binding decision under the Clerical Employees Collective Bargaining Agreement (CBA) which the parties stipulated contained the identical relevant wording to the Mechanics and Related Employees CBA which ran from November 1, 1990 through October 31, 1993 and was in evidence as Joint Exhibit #1. The parties agreed that this dispute was arbitrable and was properly before the arbitrator, although the 3rd step of the grievance procedure was by-passed. The parties agreed to an informal proceeding without transcript or post-hearing briefs. A hearing was conducted at the Employer premises on January 19, 1994 and was completed with closing statements from each party on that day. The Employee was a Customer Service Agent before his discharge,

RELEVANT PROVISIONS OF THE CBA AND RULES OF CONDUCT

Article XV in CBA

F. No employee covered by this Agreement shall be discharged or suspended without pay from service without a prompt, fair and impartial hearing and shall be represented and assisted at such hearing by a Business Representative or his designee and members of the Local Committee. At least 48 hours prior to such hearing, the employee and members of the Local Committee and the Business Representative shall be advised in writing of the precise charges against the employee. Nothing herein shall be construed as preventing the Employer from holding an employee out of service without pay, pending such hearing.

Rules of Conduct- C. Causes for Discipline or Discharge

Category I: Violations will result in discharge

1. Unauthorized (actual or attempted) possession, removal, or purposeful misplacement of any Employer property including records, confidential information, or property of employees or customers.

2. Falsification of Employer records or reports, including, but not limited to, personal time cards or payroll records and punching another employee's time card or payroll records.

13. Defrauding or attempting to defraud the Employer.

BACKGROUND

The Employee had been employed by the Employer for three years in baggage handling. He testified that his only training was on the job for a day or more with a senior agent. He testified that after his employment interview, he completed the paper work for his I.D. His only knowledge of rules was that there was to be no fighting. He denied receiving a copy of the Rules of Conduct. He admitted receiving the Employee Handbook, but didn't know if it contains the Rules of Conduct, because he didn't read all of it, just looked at it. He stated that he had never been verbally disciplined or suspended, and the only complaint on his evaluation was that he should be more enthusiastic.

The testimony of Person 1 and Person 2 showed that on Tuesday, February 16, 1993 a shipment from Company 1 of 3 packages of flowers weighing 28 pounds was made from City 1 to Company 2 in City 2. However, the waybill showed only one package. In City 2, only two packages weighing 23 pounds were found by Customer Service Agent Person 3. He corrected the Waybill to show the two pieces and 23 pounds. The charge of $19.13 was paid by driver Person 4 and the consignee memo was closed in the computer.

On Friday, February 19, 1993, Person 4 picked up a shipment for Company 3 from the Employee. When the Employee retrieved the shipment for Company 3 from storage, he found the third box for Company 2 on the air waybill. The Employee testified that Person 4 asked for a

receipt. The Employee prepared a duplicate of the original waybill, and gave it to Person 4 along with the package of flowers in exchange for the payment of $19.13. The Company 3 waybill was completed at 7:10 p.m., although the Employee recalled it at "6:00 or 6:30."

Sometime before 9:00 p.m. that night Person 1 received a call from Person 4’s wife at Company 2, stating that her husband had picked up and paid for a flower shipment earlier that evening. It already had been paid for on Tuesday night, February 16, 1993. Therefore, she requested a refund. Person 1 questioned the Employee, and when she found that he had collected $19.13, she told him that he would have an overage, and he couldn't enter the transaction into the computerized air cargo system because Person 3 had previously collected the $19.13 on the same air waybill on February 16, 1993. Person 1 told the Employee to deposit the money, and report the overage and that she would issue a Cargo Discrepancy Advice to the Accounting Department. She originally had intended to offer to hold the money, but realized that she would be off for the next two days. Therefore as she and the Employee agreed, she did not make the offer.

On Monday, February 22, 1993, Person 1 sent the Cargo Discrepancy Notice to the Accounting Department. On Wednesday, February 24, Accounting Clerk Person 5 sent a note to Person 2 saying she couldn't understand the Discrepancy, because she didn't show any overage in City 2 or City 1. When this was bucked to Person 1, she responded that the overage was on the Employee's F233 Report dated February 19, 1993. Person 2 spoke to the Employee on March 2, 1993 to get clarification on the overage. The Employee told Person 2 that if there were any problems, he would pay the $19.13 and Person 2 could return the $19.13 when the overage was discovered. Person 2 told the Employee that he was only trying to find out if the refund to Company 2 was justified, because no overage was reported by the Employee and there were no

copies of any air waybills for Company 2 in the Employee's sales report. The Employee did not recall handling any shipments or cash payments for Company 2. There were two more discussions which included Person 2, the Employee and Person 6, a steward. In both discussions, the Employee recalled handling the Company 3 box and payment, but did not recall handling any shipments or payments for Company 2.

Because there was no record of the second payment of $19.13 from Company 2, Person 2 contacted Company 2 to see if they had any receipts or air waybill copies to confirm a double payment. Company 2 stated that they had consignee copies of both the original waybill of February 16 and the duplicate of February 19. On March 11, 1993 both copies were retrieved from Company 2. The Employee was again asked by Person 2 and Person 6 if he handled any shipments for Company 2 on February 19, 1993, at first he denied it. However, when shown the duplicate air waybill, he admitted that he had handwritten the duplicate, issued it and collected the $19.13. He stated that he had reported and deposited the overage with his February 16 sales report. The computer print out did not show any overage or any deposit of $19.13 by the Employee. He was held out of service on March 11, .1993. An investigative hearing was conducted on March 16, 1993 and the Employee was terminated on March 22, '1993,

EMPLOYER POSITION

The Employer argued that all copies of the duplicate air waybill were lost. In addition, the cash report did not show any overage. If another employee had taken the money, he or she would also have had to go through all of the waybills to take out the copies. Even then, no overage was shown. Person 1 testified that she told the Employee that he should report an overage. He did not. When Person 2 began to investigate, the Employee's offer to repay showed his guilt. Then he

tried to stonewall, because he didn't believe that the Employer could prove that he took the money. He was not cooperative or honest, because he denied handling the Company 2 package until confronted with the duplicate air waybill which he admitted he made out.

The Employer urged that employees are treated differently. Category 1 offenses which may result in terminations are investigated and the discipline depends on the circumstances. In the case of Cabato's $5.21 shortage, Person 2 and the union representative were satisfied that Cabato knew of the shortage, and that his failure to report it was not intentional. They agreed on a waiver of the investigative hearing with a two-day suspension. Other cases of fighting and drinking likewise were investigated and mitigating circumstances were considered. In the Employee's case there were no mitigating circumstances. The Employer argued that it was fortuitous that the discrepancy was found and that Company 2 had retained the duplicate copy. The Employer argued that the investigation had been fair and that the termination should stand.

UNION'S POSITION

The Employee claimed that he received a $20 bill from Person 4, and put it, and the copies of the duplicate waybill in the top drawer. He copied the duplicate from the sticker on the package because he couldn't find the original. He agreed that Person 1 told him to report the overage and include it in his deposit. He had no explanation for the fact that neither was done--either under remarks on his report or in his deposit of $57.85. He admitted that he knew how to close out.

The Union argued that there were several cases in which a Category 1 violation did not result in automatic termination. Both Person 7 and Person 8 (whose testimony the parties stipulated) testified that they had been involved in several such cases. For example, about 3 years ago, a Person 9 went off premises to drink. When she returned, she was confronted by a senior agent.

In two other cases, an employee and a supervisor and two employees got into fights. In the former, city police were called, none of the employees was terminated. In still another case; about 20 employees and at least one foreman were arriving late or leaving early to commute to outer islands and having someone else punch their time cards. Because the Employer couldn't fire all of those involved, only the one who had punched the time cards of several others was terminated, the others were given final warnings of termination and a general notice was posted repeating the warning. Because other Category I cases did not result in termination, the Union urged that consistency required that a lesser penalty should be imposed on Employee.

DISCUSSION

After careful review of the exhibits, the notes of the testimony and the parties arguments, I have reached the conclusions which follow. First, the Employee had no explanation for his failure to report the $19.13 as an overage or to include it in his deposit as Person 1 told him to do. Second, he also could not explain what happened to the copies of the duplicate air waybill. Third, he couldn't remember handling the Company 2 package on February 19, 1993 on at least three separate occasions. Only when shown the copy of the air waybill in his own handwriting did he remember that he handled it. On the basis of the testimony, there is no question in my mind that he took the money and discarded all copies of the duplicate except the one which, Person 4 took for Company 2. The investigation was fair and thorough. As for the consistency of discipline for Category I offenses, mitigating circumstances were involved each time. In particular, there was no evidence of attempted cover-up in either the drinking or the two cases involving fighting. In the case of Cabato/s shortage, Person 2 was satisfied that the failure to report was an oversight and there was no effort to hide it. To the falsification of time cards, only the fact that so many

were involved saved all but the one who punched others/ cards from termination. The Union pointed out that no Union representative was present, as required by the CHA, when the Employee was interviewed. The Employer's explanation was that initially the investigation only aimed to determine whether Company 2 had paid twice and was entitled to a refund. Only after the copy was retrieved from Company 2 was discipline considered and a steward was present at that interview. In summary, the violation by this Employee attempted to stonewall until the evidence from Company 2 was presented to him. The Union's only remaining argument was that several comparable Category I offenses had not resulted in terminations. However, it was shown that in each of these cases there were mitigating circumstances or doubts which applied. Therefore, I must conclude that the termination of Employee was for just cause.

AWARD

The grievance is denied.