

**Walsh #1**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

**OPINION**

The hearing in this arbitration was held on January 13, 1994. Prior to the hearing, all preliminary steps of the grievance procedure had either been completed or waived. At the hearing all witnesses were sworn, and were subject to direct and cross examination. After the conclusion of the testimony and the closing arguments of the advocates the case was submitted for final decision.

By memorandum (entitled "UNSATISFACTORY PERFORMANCE REPORT") of January 20, 1993, the Employee was issued a ten work day suspension, and his travel privileges were suspended for one year. It is to be noted that the Employee resides in City 1 and commutes by air to his work site in City 2. During the one year period the Employer did permit him to continue to use his travel privilege for the limited purpose of commuting to and from work.

The issue before the Board is whether the Employer had just cause for imposing discipline; and if not what is the appropriate remedy. The Union contends no just cause existed, and for a remedy it asks that I grant the Employee back pay for the relevant period, and make him whole for all benefits he has lost. The Employer contends it had just cause, and it asks that I deny the grievance.

The memorandum mentioned above states in part: "On January 16, 1993, while attempting to utilize your flight privileges in SFO, you exhibited behavior that was unacceptable towards several other employees that included making demands to be put on a flight and physically restraining a Customer Service Agent. You are charged with violations of the following GMM

Posted Rules of Conduct:

"Rule 21, Threatening, intimidating or otherwise interfering with other employees at any time is prohibited. This includes off-duty periods..."

"Rule #25 (reads in part)... violations of the Employer rules and regulations regarding free or reduced rate travel as outlined in Employee Travel Manual will not be tolerated."

There is a difference of opinion between the Employer and the Union as to what occurred on the evening of January 16, 1993. Based upon the credible evidence introduced by the Employer, I find the latter had just cause for imposing the discipline upon the Employee.

At approximately 6:38 p.m. one of the Employer's flight attendants, Person 1, was at the podium 10 at the Airport 1. She was not checking in passengers, but was using the telephone when two men and a woman approached her. She did not at that time know any of these individuals. One of the men, whom she later learned was the Employee, demanded that she put him and his wife on the 6:40 p.m. flight to City 1. Person 1 informed the Employee she was not an agent, and was not checking in passengers. She offered, however, to check the monitor and ascertain the status of that flight. She did so, and learned that Flight 2041, scheduled to depart at 6:25 p.m. had already left. She immediately told the Employee and his companions the status of that flight. During this period the Employee had been, in Person 1's words, "very aggressive, but was not yelling".

When she informed him the flight had left he continued to act aggressively, raised his voice, and persisted in demanding that he and his wife be put on that flight--a flight that had already departed. The Employee's male companion, Person 2 who had driven the Employee and the

latter's wife to the airport, also demanded that the two be placed on the flight. Person 1 then noticed a blue slip in the Employee's hand, and inquired if he was a non-revenue passenger, and an employee of Employer. He did not answer but continued to demand that he and his wife be placed on the flight. She ascertained he was an employee of the Employer, and stated he should not act in that manner. The Employee then acted in a very abusive manner towards Person 1. Concerned that the Employee might take a later flight that evening, and because his attitude and actions might continue, and pose a problem to the flight crew and passengers on the later flight, she decided to bring the matter to the attention of a supervisor. She telephoned the operations office, and requested that a supervisor report to Gate 10.

Passenger Service Supervisor Person 3 responded to this request, and started toward Gate 10. Before he reached the gate he encountered Person 1, and the latter told him what had occurred; and that in her opinion an employee traveling in a non-revenue status should certainly not conduct himself in such a manner. The two then approached the Employee, and Person 3 informed the latter of the complaint that had been made against him by the flight attendant. The Employee stated that it was his male friend, and not he who had acted in an aggressive manner. Person 3 then asked Person 1 to repeat her allegations in front of the Employee. She did so. This occurred while all concerned were walking toward Gate 2. At this point the Employee became very upset, and spoke out in a very loud voice. The Employee confronted Person 2 and demanded she give him her name. She refused.

Person 3 gave the Employee his name, and employee identification number, and suggested the Employee leave and report the matter to his own supervisor when he reported for work in City 2 on Monday. By this time, the group was gathered around a podium, and Person 3 thinking the matter had been concluded started to leave. The Employee grabbed Person 3's arm in a very tight

grip. The Employee placed his face about two inches from Person 3's face. Person 3 pulled away, and started to leave. The Employee again grabbed him, and Person 3 found himself "cornered between" the former and the latter's friend. Person 3 again pulled away from the grip, and told the Employee he was going to call the police. He did so, and Officer Person 4 responded. The Employee told Person 4 he had not touched Person 3. Person 3 pulled up his sleeve and showed the bruise that had been inflicted on him. The officer, upon observing the injury, advised Person 3 to take pictures of the arm, and asked Person 3 if he wished to press charges against the Employee. Person 3 declined to do so, having decided he would prefer that the matter be handled by the Employer. Person 1 testified she heard Person 3 exclaim to the Employee: "Don't touch me again". The shift manager at Airport 1, who investigated the incident, observed the severe bruise that had been sustained by Person 3.

Just prior to calling the police, Person 3 informed the Employee that he would be denied boarding on any Employer flights to City 1 that evening, but that his wife could depart that evening. The Employee and his wife both flew to City 1 the next morning on an Employer flight. Person 5, the Shift Manager of the Employer at Airport 1, spoke to both Person 3 and the Employee and sent a written report to the Employee's supervisor in City 2. Person 5 described in this report what he had learned after interviewing all concerned. The concluding paragraphs of this report are:

"I was asked to speak to the Employee on 1/17/93 just before he boarded the first flight to City 1. We had a discussion about the incident that occurred the previous evening. The Employee had a distorted view of the events as they happened and denied having grabbed Person 3 at all. I told the Employee that I did not feel he was telling the truth and that I had viewed the bruise on Person 3's arm. We ended our conversation by me telling him that physical abuse is not, and would not, be tolerated by the Employer in any fashion. I told the Employee that I would be in contact with his Manager on Monday evening. The Employee took my name for reference and was allowed to board the flight to City 1.

This incident is both regrettable and very disturbing. I am sure that Employee's behavior will be addressed accordingly. If I can be of further assistance in this matter please do not hesitate to call me."

The written report of Person 5 was directed to Person 6, the Base Manager of the Employer at the City 2 International Airport. A written report by Person 3 was also sent to Person 6. Person 6 forwarded these memoranda to Person 7, the Maintenance Foreman and the Employee's supervisor. Person 7 was directed to investigate, and decide what action, if any, should be taken against the Employee.

The Employee approached Person 7 on Monday, January 18, and told the latter he had had a problem in Airport 1 after his wife had been stopped at the security position. He asked Person 7 "what would happen to me". Person 7 directed the Employee to write out a statement as to what had occurred, and that he would then talk to the Employee again. After reviewing all the reports, questioning the Employee, and reading the latter's statement, Person 7 concluded the Employee had engaged in improper and abusive conduct toward both the flight attendant and Person 3. He also concluded that the Employee had touched Person 3 in a rude, angry, and threatening manner. Person 7 has been employed by the Employer for twenty-one years, and has been a supervisor in City 2 for eight years. Despite this long period of service he had never encountered a situation like this one, so he telephoned Person 8 who serves as the Employer's labor relations officer. The matter was discussed at some length by the two, and they both concluded the Employee should receive a ten work day suspension, and that he should lose his travel privileges for one year. They were also both believed that a termination might be warranted. Person 7 thereafter issued the "UNSATISFACTORY PERFORMANCE REPORT" described above. Person 7 testified at the hearing that the Employee had been a "fair" employee.

Testifying in his own behalf the Employee stated that: he, his friend Person 2, and his wife arrived at the security checkpoint, and he and his friend went through without incident. However, when his wife passed through she set off the alarm, apparently because of some metal object on her person; she had to go through again, and three to five individuals were ahead of her. He told his friend to go on ahead to the podium, because he thought the flight departed at 6:30 p.m. He waited for his wife to pass through security; Person 2 arrived first at the podium and inquired of a person he thought was an agent if the flight was on time; he overheard the person reply to Person 2: "I am not a ticket agent. Check with the ticket agent. It is not my business." The Employee never spoke to the other employee, whom he later learned was Flight Attendant Person 1. While all of them were gathered around the podium, he noticed on the monitor that there was an 8:30 p.m. departure for City 1, so he and his friends went to the ticket counter so that he could get boarding passes for this flight. While in that area, Person 3 appeared and told him that he and his wife were not flying that night. When he asked Person 3 the reason, the latter replied: "Because you asked a flight attendant about the flight. Why didn't you ask a ticket agent! It is not her business."

Both in his further testimony and in a written statement which the Employee dictated to a fellow employee the Employee denied he ever spoke harshly to Person 1. He denied he spoke in a threatening manner to Person 3. He also denied having touched Person 3 at any time. He claimed he explained to Person 3 and to another supervisor that he and his wife had to get home, because they had three young children who were alone. The supervisor relented and said his wife could fly that night. He explained this would be of no help because his wife could not get access to his car which was at the Employer's garage in City 1, nor could she obtain a ride to their home.

Person 3 refused to let him fly that evening. He and his wife were forced to stay over night, and this caused their children to be very upset.

The Union contends: there was no just cause for the action taken by the Employer; both Person 1 and Person 3 overreacted against a man who was merely trying to get home to his children, one of whom was ill. Person 3 is not credible--he claimed he was grabbed in an iron grip by the Employee, and that he sustained a large bruise; he also claimed that he took pictures of this bruise, but was unable to produce these pictures either at the arbitration hearing or at preliminary grievance sessions. The Employee is a slender man incapable of causing the severe bruise described by Person 3. Person 1 claims the Employee acted in a rude, aggressive manner; the Employee did not even speak to her at the time she claims. The Employee has been commuting for one and one-half years between City 1 and City 2 on the Employer's aircraft; he has never experienced any problems of the type claimed to have occurred by Person 1 and Person 3 on this occasion. He is a mild mannered man, and it would be completely out of character for him to act in the-way Person 3 and Person 1 claim.

The Union further argues that the Employee has been employed since November 14, 1987, and has been an excellent employee, and has never been disciplined.

My decision in this case obviously depends upon the credibility of the principal witnesses for both sides. I find the testimony of Flight Attendant Person 1 and that of Supervisor Person 3 both credible and consistent.

Person 1 tried to assist the Employee, even though this was not her responsibility. The Employee met her offer of assistance with hostility, and his behavior indicated to her that he might pose a threat to the safety of passengers and crew if he boarded a flight while in this aggressive mood. She is a veteran attendant, and has had ample experience in dealing with people. Her assessment

of the Employee proved to be accurate as is shown by his conduct toward Person 3. Person 3 also acted in a proper and professional manner, but the Employee continued to evidence hostility both in word and deed. He grabbed Person 3 twice, and inflicted a significant bruise which was observed not only by him but by the police office and by Person 1. Person 3 did indeed throw away the pictures after he thought there was no need to retain them since the Employee had been suspended. This action is of no significance.

The Employee's own testimony showed he was neither candid nor credible. At the hearing he claimed he did not know what time the flights left for City 1. Yet in his written statement he states: "...we were concerned about our flight and not being on time. (I thought it was going to leave at 6:40 p.m.)" It is very obvious what occurred--the Employee and his wife were trying to depart on the 6:25 p.m. flight to City 1. The Employee knew he was either just going to make it or just miss it. He lost his temper when Person 1 told him the flight had left, and he continued to remonstrate with her after the flight had left. He continued in this same mood when Person 3 tried to ascertain what had transpired. This culminated in his hollering at Person 3, and then grabbing the latter twice. This type of conduct obviously violated Rules 21 and 25. It may well be that the Employee was upset because he had just missed a flight, and he was concerned about his children. This does not however excuse his serious and flagrant misconduct.

## **AWARD**

1. I deny the grievance.
2. I hold the Employer had just cause for imposing the discipline.