

Gilson #2

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

This dispute was presented to the undersigned for a final and binding decision under the Collective Bargaining Agreement (CBA) which ran from November 1, 1990 through October 31, 1993. A hearing was conducted in a conference room in the Employer offices on January 17, 1994. The parties agreed that this dispute was arbitrable and properly before the arbitrator. They agreed to follow an informal procedure without a transcript or post-hearing briefs. The hearing was concluded with closing statements from each party before the start of a later grievance on January 19, 1994. The Employee had been a lead, ramp service, until his demotion which was one of the causes of this grievance.

BACKGROUND

The Employee was employed by the Employer on January 25, 1960 as a ramp service person. He had been employed previously in a utility capacity by Company 1 for 4 years when that Employer went bankrupt. In 1962, he was promoted to the new job of Lead, Ramp Service. He testified that he had 8 or 9 employees under him. His job, as described in the CBA, Article IV #G involves responsibility of directing and supervising the work of 3 to 12 Ramp Servicemen. The Lead performs the same work and receives a higher rate, because of his responsibilities. The Employee is assigned to the so-called "grave yard" shift. The hours are 9:00 p.m. to 5:30 a.m. with a half hour for lunch at 1:00 a.m. There are 4 cleaning crews working on this shift. The

particular crew of which the Employee serves as leader does general interior cleaning. The cleaning work has been broken down into 4 types for 15 years or so. Testimony of at least two Ramp Servicemen was that it takes about 1 hour 10-15 minutes for the full clean of a 737-400; 1 hour for a 737-300 and 45 minutes for a 737-200. The Employer has 2 of the 400's, 2 of the 300's and 7 of the 200's operating at any given time, a total of 11. In addition, there are 4 cargo planes and one plane undergoing overhaul--this making a total of 16 planes.

Testimony indicated that on March 9, the Employee and his crew were assigned to fully-clean 10 planes and-to spot-check one (because that plane had not flown that day). Actually the crew fully cleaned 9 planes. They left the one to be spot-checked and one scheduled for a full-cleaning to carry over when they left at 5:30 a.m. The Employee did not notify anyone that there would be a carryover until 5:00 or 5:05 a.m. when he saw Person 1, the mechanics' supervisor, and told him. Person 1 had a walkie-talkie with which he presumably notified the shift manager, Person 2. Person 3 testified that he was notified by Person 2 of the carryover. When the Employee arrived in the office, he was handed a memorandum stating that he was being held out of service pending an investigative hearing.

The hearing was conducted by Person 4 on March 23, 1993. The Employee was charged with violation of Items 3 and 13 of Category 2 offenses, Section 900:8 of the Corporate Policy Manual. These read: "restricting work output or encouraging others to do so" and "failure to do job assignment, careless workmanship or unacceptable job performance," respectively. Person 4 found that no evidence was presented to support the charge of violation of Item 3. However, he found that the crew of 7 which had been assigned to clean 10 aircraft plus one spot-check should have completed the assignment. He did not accept the excuse, because the Employee did not come into the Maintenance Control office until 5:05 a.m. with a cup of coffee in his hand to

inform the supervisor of the incomplete work. Therefore, Person 4 suspended the Employee from March 10, 1993 through March 22, 1993 and demoted him to ramp serviceman effective April 1, 1993.

On April 6, 1993, the Union made a request for a third step grievance hearing to Person 5. The latter noted that this was seven (7) days since the decision and therefore he questioned the timeliness of the request. However, he set the hearing for April 13, 1993. The Union asked that the demotion be rescinded; that the Employee be made whole for all losses; that the Letter of Reprimand and all related memos and attachments be removed from his file, and that the Employer pursue his allegation that Person 3 threatened him with physical violence. Person 5's decision concluded that the Employee had seven men including himself to clean 10 planes plus one spot-check. This represented 49 man-hours or 4 hours and fifty-four minutes per plane.

Person 5 stated that it is accepted practice that it takes from 4 to 4 1/2 hours to fully-clean a plane. He noted that the Employee cleaned 9 planes using the 49 hours available. The crew thus spent 5.26 Man hours on each plane. He furthermore stated that during the night the Employee did not approach Person 3 to tell him of problems which would cause one plane to be carried over for the Day Shift to clean. Based on the testimony, he upheld the suspension from March 10, 1993 through March 22, 1993 and the demotion effective April 1, 1993. He also noted that the hearing was terminated rather abruptly so there was no discussion of the Union's requests that the Employee be made whole for all losses, that all reports of the discipline be removed from his file and that the Employer pursue the alleged threat by Person 3. At the arbitration hearing the Union claimed that there were only 6 members of the crew (including the Employee) working on the night of March 9-10, 1993. In June, 1993, Person 4 modified the Employee' demotion to 4 years

which would take him to retirement with a review in 1995. If the Employee showed improvement by that date, he would be eligible to return to his job as leader.

RELEVANT PROVISIONS OF THE CBA AND RULES OF CONDUCT

Article IV Classification Work and Qualifications G. Lead Ramp Serviceman

A Lead Ramp Serviceman shall be directly responsible to the Foreman, Ramp Supervisor, Station Manager and/or his designee and will be charged with the responsibility of directing and supervising the work of Ramp Servicemen, and performing such work as may be required as a Ramp Serviceman. A Lead Ramp Serviceman will be required when three (3) or more Ramp Servicemen are on duty at the same time, and no Lead Ramp Serviceman will be required to lead and direct the work of a group totaling more than twelve (12) other employees.

Article XV Bargaining and Grievance Procedure

Step 3--If the Local Committee is dissatisfied with the decision of the Employer official in Step 2, the Union Business Representative or his designee may present the grievance to the chief operating officer within five (5) work days after receiving the decision in Step 2.

Step 4--If the Union Business Representative is not satisfied with the decision rendered in Step 3, the grievance may then be appealed to the System Board of Adjustment, in accordance with Article XVI of this Agreement. However by mutual agreement the parties may agree to waive such System Board of Adjustment and appeal directly to arbitration.

Article XVIII General and Miscellaneous

A. If there is any change during the life of this Agreement in the licenses that employees covered by this Agreement are required to have, all employees affected shall be given one (1) year from the date of such change to obtain such licenses, and there shall be no change in their status or pay during said one (1) year if they are able to perform the work called for in their classifications.

B. Service records shall be maintained for all employees by the Employer. When an employee covered by this Agreement leaves the Employer for any reason, he will upon request be furnished with a copy of his service record. In case of investigation or hearings involving an employee's past record, the employee shall be furnished a copy of his record prior to such investigations or hearings. The Employer will not use, during grievance hearings, reprimands more than one (1) year old if offenses of a similar nature have not

be committed in the interim. Any adverse letters will be considered invalid and removed from the employee's record after two (2) years.

Article I Purpose of Agreement

E. The right to hire, promote, discharge or discipline for cause in accordance with the terms of this Agreement and to maintain discipline or employees is the sole responsibility of the Employer except that employees will not be discriminated against because of Union membership or activities. It is understood and agreed that the routes to be flown; the equipment to be used; the location of plants, hangars, facilities, stations and offices; the scheduling-of airplanes; and all other matters of policy and management are the exclusive function and responsibility of the Employer, providing such matters are not in conflict with the terms of the Agreement.

Rules of Conduct

Category II: (Violations will result in disciplinary action, up to and including discharge..)

3. Restricting work output or encouraging others to do so.

13. Failure to do job assignment, careless workmanship, or unacceptable job performance.

THE ISSUES

Was the Employer's suspension and demotion of Employee a violation of the CBA? If not, what shall the remedy be? Employer Position

The Employer argued that a crew may not finish cleaning the planes assigned but if so, the supervisor must be notified, preferably by 11:30 p.m. or 12:00. Person 4 testified that he was aware of Employee' previous demotion for one month and a suspension of one month in November, 1991. These were not grieved. The Union noted that this offense by the Employee's group, including himself, was for being AWOL on a 2 1/2 hour lunch break. The Union argued that his current violation of Category II Item 13 was not similar to the 1991 violation and was more than one year old. Therefore, in accordance with Article XVIII B, such a reprimand cannot

be used in the grievance process. The Employer argued that the offense was similar: failure to show judgment and leadership. Person 4 also believed that the Employee was delinquent when Person 5 found that several members of the Employee's staff were involved in leaving early or arriving late to work, and had someone else falsely punch their time cards. This was described in an attachment to Person 4's memorandum of the Investigative Hearing, which he conducted on March 23, 1993. He testified that the suspension and demotion were necessary in order to prevent reoccurrence of further violations of Corporate Policy. He testified that he considered the Employee's long service and that the punishment was not severe.

Person 3 was Employee's immediate supervisor. He had worked for the Employer for 4 years. He explained the procedure for cleaning, and why it was important for him to know of delays during the shift so that he could arrange for additional help. Otherwise the flight crew might refuse to fly. He testified that he didn't learn of the delay until after 5:00 a.m. when the shift manager told him. He testified that on occasion a crew had worked to the last minute in order to complete an assignment. He testified that the Employee was wrong in not telling him of the delay or not pushing the crew to get the job done. He testified that he had been instructed to let the lead do his job and just make sure that they had equipment.

Person 3 was cross-examined about several aspects of his relations with Employee. He testified that the Employer had designed a detailed check-list in an attempt to improve accountability. However, the Employee refused to sign it because he said that it went too much in depth. Person 3 replied that he would take care of it. The list was dropped over a year ago and has not been used since. No one was disciplined. Person 3 testified that he had told the Employee and other leads to report to him any possible carryovers in time for him to arrange other coverage. He testified that the animosity with the Employee started shortly after Person 3 came because he's a

doer. He testified that he was directed to follow the crews and list discrepancies, but he tried to work things out orally. When asked about threatening the Employee, he admitted doing so. He apologized and offered to shake hands, but the Employee refused and turned away and said: "I don't want your apology. I don't respect you as a supervisor:" When asked about other threats, Person 3 replied that another lead took his loud voice as a threat. He did not recall saying that he had finally gotten the Employee. In answer to the question of whether on other occasions the Employee did not complete a job, he stated that he had complained about lack of equipment and personnel. Person 3 stated that he had recommended that the Employee be demoted for the November, 1991 incident. He didn't recall, but may have made a similar recommendation in March, 1993. He didn't recall whether all the planes left on time on March 10, 1993. He denied that the Union had ever claimed that only 6 were in the crew before this hearing. In fact, Person 6, the Local Committee representative who attended both the investigatory hearing and the third step grievance hearing, was asked whether the Union could have protested the fact that the minutes of both hearings stated that there were 7 members of the crew on March 9, 1993. Person 6 admitted that the Union could have and had no explanation of its failure to do so. Person 6 also claimed that the Employee did not have a coffee cup in his hand--again contrary to the statement in Person 4 minutes.

Person 4 testified that he alone had made the decision in Person 3's case. He testified that he considered two previous incidents involving the Employee's crew. Shortly before the March 10, 1993 incident about 20 employees, including several in Employee's crew, were found to have left early or arrived late in order to catch planes to neighbor islands. Because so many were involved the only termination was the person who punched the cards of 5 others. Person 5 posted a notice on March 1, 199 that any such violations in the future would result in immediate termination;

Person 4 believed that a leader should know where his crew members were. The November, 1991 case involved the Employee and several members of his crew taking a 2-21/2 hour lunch, some even going home. The Employee was demoted for one month and, along with the others, was suspended for one month. Only one was terminated because he was on a final warning because of 3 auto accidents. All could have been terminated because it was a Category I violation. Person 4 testified that Person 3 had mentioned his problems with the Employee. He had advised Person 3 to document the Employee for failings, but it was his prerogative to decide whether to take action. He testified that the lead receives more money, in part because of his leadership responsibility.

Person 5 testified that there was no dispute as to the number in the crew on March 9, 1993. It was 7. He also testified that he was aware of the November 1991 long lunch hours. He met with Person 3 and they searched the area. After 2 hours, the crew began to return. He stated that the lead should know where each man was. He was aware of the animosity which resulted in several verbal confrontations. However, both he and Person 4 did not believe that these influenced their decisions. In fact, both indicated that Employee's long service was considered. Person 5 admitted that on one occasion he complimented the Employee's crew but told them of two omissions. He testified about the check-list and stated that the failure to sign it was not regarded as insubordination.

The Employer summary reviewed the facts and stated that other crews were available if the supervisor knew of any problem in advance. It asserted that the crew knew by the lunch break that they were behind. It urged that a crew often functioned with less than 7. It stated that the November 18, 1991 discipline remained in the personnel file for 2 years. It served as an official warning of termination. It means that the employee must remain extra squeaky clean. The

Employer argued that the November 18, 1991 letter clearly can be referred to because it was negotiated. The offense in March, 1993 was similar but not identical. Both were performance related. It argued that there was just cause for discipline. The Employee was responsible for direction and supervision and exercising judgment. As Person 3 reported, he was told to let the Lead do his job. The Employee agreed that he should notify his supervisor early of a possible carryover. Person 4, who made the decision to discipline in both incidents, was afraid that the Employee, with whom he had worked for over 30 years, would lose his job. Person 3 was not liked, but was doing his job. The Employee admitted that he didn't look for Person 3 or anyone in management until about 5:00 a.m. It was lucky that the mechanic supervisor was in the area, otherwise Person 3 would not have learned of the situation until 5:15 or 5:20 a.m. The crew could have used short cuts; Person 3 had approved their use before. The check list had been dropped so it was no big issue. The discipline was for not notifying, not for the carryover. Although there was animosity between Person 3 and the Employee, Person 4 had none and wanted to save Employee's career. The Employer cited Article I E of the CBA covering management's rights. It urged that the Employee should reestablish confidence in him as a leader. The Employer wanted to rattle his cage. Finally, the November 18, 1991 letter was not a surprise; it was referred to on page 2 of Person 4's decision,

UNION POSITION

The Union urged that the Employee was a long-service employee who had seen growth. He was conscientious and had worked for many supervisors. The crew did its best on March 9, 1993 with only 6. The conflict with Person 3 led to the Employee's demotion. Even after the 1991 incident

there was no documentation or verbal warning. The March 1, 1993 memo warning of termination for future falsification of time cards did not involve the Employee's delinquency.

The Union presented a number of witnesses. Person 7 testified that he heard loud arguments. He testified that his one-week vacation started on March 8, 1993, but the schedule introduced by the Union showed him as working on March 9, 1993. He admitted that he was suspended once a year ago. He agreed that he had seen people brought in when the shift was short (of employees). Person 7 testified that a couple of weeks after March 10 he heard Person 3 say to a couple of other employees that he had finally gotten the Employee. He stated that he was standing about 5 feet away.

Person 8 testified that the crew always did 8 planes with 7 men. He stated that 6 were on that night. He testified that the men took a 10-minute break about 11 p.m., a 30-minute lunch at 1:00 and another 10-minute break at 3:00 a.m., and that Person 3 was aware of this. He said that he and the Employee got their pay checks about 5:20 a.m. on March 10. He claimed that there were usually 14 or 15 trash bags, but there were 20 that night. He stated that he saw the Employee talking to Person 1 about 5:00 a.m. He testified that the Lead is the liaison between the crew and the supervisors. He testified that the crew had cleaned 4 planes by lunch (1:00 a.m.). He stated that Person 1 was told of the carryover about 5:00 a.m. He stated most of the time they have done an average to poor cleaning jobs for the last 2 months. He stated that Person 3 would know this if spot checks were made.

Person 9 testified that he did not hear Person 3 say that he'd "finally gotten" the Employee, nor did he hear him threaten the Employee. Later, the Employee said he'd been threatened. He stated that Person 3 said the crew wasn't doing its job, but did not complain about him, the Employee or others individually.

Person 10, like Person 9, described the Employee as fair. He testified that they had 5 or 6 in the crew. He stated that there were 8 or 9 bags of trash. He said that they had cleaned 5 airplanes before lunch. He stated that Person 3 complained that the crew wasn't performing a couple of times. He stated that 7 employees could clean 8 or 9 planes. He said that only the Lead or a Supervisor could decide whether to take short cuts.

Person 6, the Local Chair, testified that the Employee stated at the investigatory hearings that there were 6, not 7, on the crew that night. He stated that the Employee was not carrying a coffee cup. He stated that the Union ended the hearing because they felt it was a mockery--going after one individual. He agreed that the Union could have asked to correct the number from 7 to 6.

The Employee testified that he had not had any training. He testified that he never had any verbal or written warnings. He did agree that he had received fueling training and training for his CDL license. He agreed that when the crew wouldn't use the check list, Person 3 said that he'd take care of it and use of the list was discontinued. He stated in connection with the November 1991 long lunch that the Employer allowed "Hookey Pau." This meant that when the aircraft were finished the men could relax. Person 3 accepted this practice. He said, "You finish your job, I won't bother you." However, this did not include leaving the property. The Employee testified that between November, 1991 and March, 1993 no supervisor said that he wasn't doing his job or gave him a written warning. He claimed that Person 3 came in 1 or 2 hours late and was not around to be notified if they were running late. On occasion, he told them to take short cuts if they were falling behind. On the night of March 9, 1993 they had finished cleaning 4 planes by the lunch break. He claimed that they tried to get Person 3's advice, but he wasn't around. He told Person 1 about 5:00 a.m. there would be a carryover. Person 1 had a walkie-talkie and notified Person 2, the shift foreman. When the Employee got to the Maintenance Control Office, Person 3

gave him an envelope with the statement that he was being held out of service pending investigation. He also described the earlier confrontation which led to the threat and Person 3's subsequent offer of an apology which he refused. Under cross-examination, he agreed that he didn't need training. He agreed that he knew he was on slippery ground after November 18, 1991. He agreed that as a Lead he received extra pay for the added responsibilities. He stated that for 6 men to clean 10 planes required short cuts. He agreed that there was a Phase crew that did heavy cleaning. He admitted that if he knew his crew couldn't complete the assignment, he should tell his supervisor. He stated that his problem with the CDL license was the Employer's fault because they couldn't find a doctor's slip. He stated that he didn't know what Category I and Category II violations were. He did not sign for or receive a copy of the Rules of Conduct. He admitted that he had access to the Employer Policy Manual. He testified that he knew that if he hit a fellow employee on the head, he could be fired. He also agreed that going AWOL or failing to do his job could have the same result.

The Union urged that his offense on March 9-10, 1993 was different from that of November, 1991. It was not similar. The Union claimed that at both earlier hearings it had stated that there were only 6 in the crew on March 9-10. It urged that the memo on the November, 1991 incident was not presented at the grievance hearing and that it can't be used, according to Article XVIII B of the CBA. The Union urged that a foreman was one of those guilty of leaving early or coming in late. He should have been reprimanded. Also the Employer failed to pursue the threat by Person 3 which was reported to management. The Union urged that the employees found Person 3 hard and tyrannical. His car was spread with a chemical, but no culprit was found. The Union claimed that Person 3 threatened Person 11, but Person 5 said that Person 3 only spoke in a loud voice. In summary, the Union asked that the demotion be rescinded, that the Employee be made

whole for losses, that his personnel file be purged of the disciplinary reports and that the threat by Person 3 be pursued by management. The Union noted that the Employer has often been rated #1 in State 1 and the U.S. It noted that there was no documentation of previous complaints. The Employee had many years of service and was in a difficult position between the crew and management. Finally, Person 3 was never around to be notified of problems.

DISCUSSION

There was conflicting testimony as to whether there were 6 or 7 members of the crew on March 9-10, 1993 and whether the crew should have been able to complete the assignment. In view of the animosity between the Employee and Person 3, it appears probable that the former was not sorry that the latter was left with one plane un-cleaned and one not spot-checked at the end of the shift. It also appears probable that Person 3 was not sorry that the Employee had failed in his duty to notify Person 3 in time that his crew would not complete their assignment. Testimony showed that their hostility caused them to avoid speaking to each other, even when their duties required communication. In analyzing the testimony about the time required to clean planes, it was difficult to reach a decision. The Union should certainly have protested the statement of 7 in both Person 4's and Person 5's minutes. On the other hand, the Employer apparently counted Person 7 as being present when he actually was on vacation. This conflict was not resolved. If there were 7 on the crew, the cleaning of 10 planes and the spot-check of one should have been completed. If there were only 6, it was questionable, in view of the fact that the crew decided to do a full cleaning with no short cuts, the crew supported the Employee, who was lenient, to say the least.

However, the charge against the Employee was not primarily that his crew didn't complete their assignment but that the Employee neither notified Person 3 in a timely fashion nor saw to it that the crew used enough short cuts to complete the assignment. He admitted this failure. The Employee and two other witnesses claimed that the crew had completed 4 planes by the lunch break. (Person 9 claimed that they had completed 5.) From this the Union argued that the crew was on schedule to complete the assignment, because the larger planes normally were done first. However, the minutes of the earlier hearings made no mention of the progress by the lunch break and as noted above, the Union did not protest either Person 4's or Person 5's report of 7. Thus at a date nearly 10 months after the event, the testimony as to witnesses' memory of progress by the lunch break was unconvincing. There was no valid excuse for not notifying Person 3 long before 5:00 a.m. when the Employee told Person 1, who called Person 2 who told Person 3 that there would be a carryover.

This leaves several other issues raised by the Union. One question was whether the November 18, 1991 demotion and suspension for being AWOL with some members of his crew can be considered. Clearly it remained in his personnel file for two years. However, as the Union pointed out, unless the new offense is of a similar nature, the Employer will not use reprimands more than one year old during grievance hearings. The Employer argued that the offense was similar but not identical. It involved "failure to do job assignment, careless workmanship, or unacceptable job performance." (Category II—Item 13.) The fact that the Employee was demoted in both cases suggests that the offenses were similarly "unacceptable job performance" as the lead. There is also the question of whether "reprimand" includes a suspension and demotion. My conclusion is that although a reprimand is a type of discipline, it is milder than a

suspension or demotion. These do remain on the employee's record for two years as provided in Article XVIII, #B.

Another question was whether the Employee was responsible for the fact that several members of his crew were found by Person 5 to have been among those who left early or arrived late to catch flights to neighbor islands. At least one supervisor was guilty, although he, as well as a Union member, had reported the violations. The March 1, 1993 notice was a warning. However, because of the widespread violations and the fact that no discipline was assessed, except for the person who was on a last-chance warning, the Employer can hardly single out the Employee for penalty when the other leads or the guilty foreman or the guilty workers were not disciplined. The general principle that a lead should be aware of where the members of his crew are is valid to the extent that it is enforced. In this case, it was not enforced.

Another question is whether the fact that Person 3 threatened the Employee should be considered. The fact that an apology was necessary shows that it was inappropriate behavior for a supervisor to a lead. On the other hand, the Employee's refusal to accept the apology and shake hands when Person 3 offered showed a stubborn hostility. It appeared that Person 4 was correct when he stated that Person 3 was not popular but was doing his job,

As a newcomer who tried to change some of the sloppy habits of the old timers, it is not surprising that he ran into resistance.

There were at least two issues which were brought up but were found to be red herrings. The first one was the check list which was introduced in 1990 or before. When the Employee and others refused to sign it, Person 3 said that he would take care of it and its use was discontinued. This was certainly not evidence that he was not cooperating with the crew--quite the opposite. And it was dropped before the incident involved here and no one was disciplined. The second issue was

a letter issued by the Employer warning the Employee that unless he got his CDL license, he would be demoted. He claimed that the problem was caused by the Employer losing the doctor's report. In any case, he obtained the license without penalty so this also was a non-issue.

Person 5 raised the question of timeliness of the third step grievance hearing. However, that issue was not pursued further either at that hearing or at the arbitration hearing.

Still another question is whether the fact that Person 3 failed to document the delinquencies of the Employee should be considered. Person 4 advised him to do so, but left it up to Person 3 whether he did anything about it. There is no question but that documentation would have been desirable. In fact, the sequence of verbal warning and written warning ahead of suspension would be normal for a Category II offense such as failure to perform work as required. For this reason and because of the fact that he could not be penalized for the delinquencies of his crew, the suspension was too severe. The hearing decision must be considered as a written warning.

The demotion is quite another matter. The testimony and record showed that the Employee performed as a member of his crew, participating fully in their practices. His responsibility was to direct and supervise their activities toward Employer goals. He failed to carry out this responsibility. Instead he and his crew opposed the efforts of Person 3 to improve their performance. There is no basis for returning him to the lead position until he proves that his attitude has changed from one of opposition to one of cooperation. It can be hoped that Person 4's decision to review his performance in March, 1995 will show such a change. It can also be hoped that Person 3 will meet him halfway and that while not friends, they will be able to work together to get the job done.

AWARD

The demotion stands with the review in 1995 promised by Person 4. The suspension shall be rescinded because of the failure to utilize progressive discipline. The record shall remain with a written warning in place of the suspension,