

**Horowitz #1**

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

This arbitration arises pursuant to the 1994-2000 Agreement between the Employer and the Union. The parties concur the grievance in question has been processed pursuant to the provisions of Article XVIII of the Agreement and the matters at issue are properly in arbitration before the System Board of Adjustment.

**MATTERS AT ISSUE**

Grievance No. A04294-FLLCG presents the following issues to be decided in arbitration:

1. Was the termination of the Employee, pursuant to Article X, Paragraph F.3 just and proper?
2. If not, what shall be the remedy?

**BACKGROUND**

The Employee was hired by the Employer as a Cabin Serviceman on May 4, 1972. He was promoted to Ramp Serviceman (RSM) on June 22, 1974. Prior to his transfer to Airport 1 in June 1992, his first small station, the Employee served as an RSM at many other airports. The Employee was assigned the late shift (about 10:15 p.m. to 6:45 a.m.) for most of his tenure at City 1, including the period relevant to his termination.

All RSM's on the late shift at City 1 were required to call Customer Service Supervisor Person 1, at home if necessary, if they were going to be absent. This procedure was necessary to assure

adequate coverage for late night or early morning flights at the small station. Person 1 testified that he informed all RSM's at the station who work the late shift, including the Employee, about this procedure in February 1994. The Employee, however, denied that he was ever advised of this procedure.

The Employee worked on October 10, 1994, the day he later claimed to have injured his back in the "pit" of a B-767 at the beginning of the shift. He did not miss any work that evening, and he worked his next shift on October 11, 1994. The Employee then had regular days off (RDO's) on October 12 and 13, 1994. It occurred that the Employee never returned to work thereafter.

Customer Service Supervisor Person 1 testified the Employee did not notify the Employer that he would be absent on or after October 14, 1994. Person 1 attempted to contact the Employee by telephone on October 16, 1994, but was told by his wife that he no longer lived at home. On October 24, 1994, Person 1 left a note on the Employee's time card to "contact us ASAP." Person 1 then wrote the Employee on October 28, 1994 reiterating the need to contact General Manager Person 2 or Person 1 regarding his absence. On November 3, 1994, Person 1 mailed the Employee a notice advising he was being separated pursuant to Article X, Paragraph F.3 of the Agreement for not properly notifying the Employer of his absence from work since October 14, 1994.

For his part, the Employee testified that he called in sick to the ready room every day from October 14, 1994 until November 7, 1994 when he received the notice of separation. The Employee alleged each day an RSM took the call and presumably informed management. The Employee claimed no one answered the phone on one day between October 23 and 27, 1994, so he went to the station, could not find Person 1, and marked an "N" on his schedule. The Employee testified that he tried to call Person 1 many times and went three times to the station to

see him, all without success, during this period of absence. The Employee testified that he was not concerned with failing to find Person 1, because everyone knew he was out sick.

The Employee did not file a worker's compensation claim with the State 1 about the alleged back injury on October 10, 1994 until December 13, 1994. The Employee testified that he mentioned the injury to Lead RSM Person 3 on the day he was injured and tried unsuccessfully to file a claim with the Employer during his absence after October 14, 1994. The Employee stated the only medical care he received for the injury was "biomagnetic treatments" on October 15 and 16, 1994 from a physician friend who was visiting from New York. The Employee said that he was not given any documentation from the doctor which would describe those treatments or his medical condition during this period of absence.

The Employee testified he filed the instant grievance with the Employer on November 8, 1994, the day after receiving the notice of separation dated November 3, 1994. The grievance alleged the Employee incurred a back injury on October 14, 1994 and the Lead on his shift was notified "that he would be off work pending his doctor's diagnosis and recommendation." The grievance was processed through the steps of the contractual appeals procedure without resolution.

Thereafter, the Union duly submitted the matter to arbitration herein.

At the second step grievance hearing on November 15, 1994, the Employee claimed that he told Lead RSM's Person 4, Person 5, or Person 3 on October 14, 1994 that he would be out sick for a protracted period. He stated that he was having marital problems.

## **EXCERPTS FROM THE AGREEMENT**

### **ARTICLE X -- SENIORITY**

F. An employee covered by this Agreement shall lose his seniority status and his name shall be removed from the seniority list under the following conditions:

3. He is absent from work for two consecutive days without properly notifying the Employer of the reason for his absence and not then if a satisfactory reason is given for not so notifying the Employer;

## **POSITIONS OF THE PARTIES**

The Union contends the separation of the Employee was not just and proper under the circumstances of this case. The Union asserts that supervision was notified of the Employee's absences by notations on the posted weekly schedules as well as by the biweekly time cards approved for him. It is said the Employee made every effort to inform management that he would be absent and that calling the ready room was the accepted practice at this station. The Union also claims the discharge was not proper because the Employer had authorized his sick leave during this period of absence. For these reasons, the Union seeks reinstatement for Employee with full back pay and benefits.

In its turn, the Employer maintains the separation of the Employee was just and proper under Article X, Section F.3 because he failed to notify the Employer properly of his absence from October 14, 1994 through November 3, 1994. It is said the Employee had been aware of the proper method of notification but instead was totally uncommunicative during the entire period of absence.

The Employee also said that he tried unsuccessfully to contact other RSM's when he was unable to reach management. At the third step hearing on April 13, 1995, however, Employee maintained that he called other RSM's daily in the ready room and asked them to report his absence.

The weekly posted work schedules presented in evidence contain an "N" on each scheduled work day for the Employee during his period of absence. This notation usually indicates an employee will be out sick. The record in these proceedings, however, does not reveal who, how, or when those "N's" were placed by Employee's name on the weekly posted work schedules.

Three biweekly time cards were completed by the Employee during his period of absence. Customer Service Supervisor Person 1 signed for the Employee and approved the time card for the period ending October 15, 1994. The time card for the period ending October 29, 1994 was completed by the Employee and approved by Person 1. A time card for the period ending November 12, 1994 was completed by the Employee but was not approved for submission to payroll. An "N" was placed by each work day on all three time cards during the relevant period. Person 1 explained that management did not ordinarily withhold paychecks from employees in such situations until all the circumstances could be determined.

The Employee precluded supervision from contacting him directly by not providing the Employer with his correct address or telephone number during his period of absence. Also undermining the credibility of the Employee is the claim his absence was caused by a back injury suffered at work on October 10, 1994. There was no corroboration from Lead Person 3 that Employee reported the injury at the time. The Employee completed the remainder of his shift that evening and worked the late shift the next day without incident. The testimony that his back was treated by a doctor friend visiting from New York that weekend defies credulity. There was no documentation from this physician presented during the grievance appeals process or at arbitration which would verify Employee had been diagnosed or treated for any injury. Nor was the Employee examined or treated by any other doctor during his lengthy absence. From this

record, it is not possible to credit the Employee's claim that his back condition prevented him from performing his duties during the time in question.

The evidence further indicates the Employee knew or should have known the proper procedures for reporting his absence. As a veteran RSM, the Employee was aware that supervision needed to know on a daily basis the status of every RSM. Proper notification was critical on the late shift because substitute personnel are not always available on short notice at a small station. Person 1 testified credibly at arbitration that the Employee was told of the proper procedures for reporting an absence. Even if the Employee had not been aware of these procedures, he should have known he was obligated to inform the Employer of his absence.

The Employee has not been honest about his efforts to contact management or his medical condition during this period. Accordingly, the Employer urges the termination of the Employee be sustained.

## **OPINION OF THE ARBITRATOR**

The evidence establishes the Employee did not properly notify supervision of his absence from October 14, 1994 through November 3, 1994. Customer Service Supervisor Person 1 testified credibly that he was never notified of the Employee's whereabouts or status by any Lead, Ramp Serviceman, or the Employee throughout that entire period. Person 1 called the Employee at his last known residence, left a note on his time card, and sent him a letter requesting he contact management.

The Employee testified that he made every effort to contact his supervisor during his absence, but this testimony does not withstand scrutiny. Had the Employee actually called or come to the station as often as he claimed during regular working hours, he could easily have left a note or

message if Person 1 or other responsible employee was not present. The Employee testified that he called the ready room daily, but this assertion contradicts his account of his actions at the second step grievance hearing. At that time, the Employee claimed to have told one of the Lead RSM's that he would be absent and was thereafter unable to reach any RSM's in the ready room. When it became clear that none of the Leads were told by Employee that he would be absent, time cards do not substitute for direct contact with a supervisor during an extended absence, particularly when no information had been given about the nature or expected duration of his absence. Accordingly, the Employee's claim of ignorance regarding the procedures for reporting an absence does not excuse his failure to keep the Employer apprised of his status during the period in question.

Article X, Section F.3 provides for the loss of seniority when an employee fails to notify the Employer for two consecutive work days that he will be "absent from work" unless "a satisfactory reason is given." The separation of a bargaining unit employee pursuant to this provision was sustained in Grievance No. A14217-JFKMM. In that case, the System Board upheld the 1989 termination of a Mechanic who was absent for at least two weeks with only one direct call to management which did not convey a possibility the absenteeism would continue indefinitely. The Board determined there was no reason for that Mechanic to have failed to notify the Employer of his continuing absence. In this case, the Employee has not presented any satisfactory reason for not contacting management directly during a longer period of absence or not telling anyone at the station his status, where he could be reached, the reasons for his absence, or how long he expected to be out.

In conclusion, the record establishes the Employee failed to notify the Employer of his absence from October 14, 1994 to November 3, 1994. Article X, Section F.3 of the Agreement provides

for removal from the seniority list of any member of the bargaining unit who fails to notify the Employer of absence for two consecutive days without an ill satisfactory reason. The Employee did not provide in this proceeding a satisfactory reason for his failure to inform the Employer about his status during an extended period of absence. It follows the separation was just and proper under the labor contract. The grievance must therefore be denied.

## **AWARD**

1. The termination of the Employee, Employee, pursuant to Article X, Paragraph F.3. was just and proper.
2. The grievance is denied.