

Libkuman #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

Introduction:

This arbitration involves a grievance between the Union on behalf of the Employee and the Employer brought pursuant to the Agreement effective November 1, 1993 to October 31, 1997 which is the collective bargaining agreement between the parties. The parties have agreed that all of the "Grievance Procedures" leading up to the "Arbitration" procedure provided in said Agreement including Article XV of the Agreement have been satisfied or waived and that this case is properly in arbitration before the undersigned arbitrator who was selected by agreement of the parties. The last grievance procedure was a Step 3 procedure resulting in a letter decision dated May 26, 1995. The parties waived the Step 4 System Board of Adjustment review and proceeded by agreement directly to this arbitration. Thus this arbitration is an appeal from the Step 3 hearing resulting in a May 26, 1995 letter decision which denied the Union and the Employee's grievance and upholding the Employee's termination. This arbitration is a hearing de novo on all issues.

The arbitration proceeding took place on November 28, 1995 before the undersigned arbitrator at the offices of the Employer. The arbitration commenced at 10:00 a.m. and concluded at approximately 7:00 p.m. Numerous exhibits were also introduced. Based on the testimony of the witnesses, exhibits and arguments of the parties and their representatives, the following is the arbitrator's Decision and Award.

Decision:

Findings of Fact:

The following is what the arbitrator determines are the facts in this case by the weight of the evidence. Person 1 was the Manager of Security for the Employer. In February 1995 he saw an employee who was on workmen's compensation leave and another former employee traveling on an Employer flight from City 1 to City 2. He determined that the employee was traveling by using a "reused coupon". A "reused coupon" was a coupon or ticket that had been previously used by a paying passenger then used a second time by another person. The original passenger's name would be whited out and the passenger's name using the tickets written in. Thus a "reused coupon" made it possible for a passenger to fly without buying a regular ticket.

Person 1 then conducted an investigation of the City 2-City 1 flights and located about 30 coupons that had been "reused" in this manner. He did not attempt to locate all of the "reused coupons" which might have existed in the Employer's records. He determined that the coupons were "reused" by removing the whiteout and exposing the original purchaser's name, then contacting the original purchaser and determining that they had used the coupon on the original date stated on the coupon. Person 1 knew the coupon was used a second time because the coupon was used on a flight occurring on a date not stated on the coupon. This was possible because gate personnel apparently did not have time to check the dates on each coupon.

On March 22, 1995 Person 1 went to City 2 to interview the employees about the "reused coupon" problem. All interviews were conducted in the presence of Person 2 the Customer Service Manager for the Employer at the City 2 Terminal. Person 1 had the 30 "reused coupons" in a three ring book which he would show or offer to show to employees who were interrogated. During these interviews it was clear that the subject matter was "reused coupons" with the

original users name whited out and another user's name written in. Person 1 would advise each person interrogated that he was conducting an investigation into the "reused coupon" problem and that the party could request union representation. This procedure was confirmed by Person 2.

Person 3 who was an Employer Ticket Agent was interviewed first. He admitted to engaging in the sale of "reused coupons" beginning in 1990 up to March 1995. He signed a typed statement on March 23, 1995 confirming his involvement in the sale of "reused coupons" on a fairly large scale. He implicated the Employee in the "reused coupon" problem by stating that on one occasion he purchased coupons from the Employee and by stating he knew the Employee and a Person 4 were involved in the selling of coupons. When Person 3 left the interview on March 22nd he talked briefly with the Employee, and indicated that he had implicated the Employee in the "reused coupon" problem.

The Employee was then interviewed by Person 1 on March 22, 1995 again with Person 2 present. Person 1 advised the Employee of the nature of the investigation and the fact that the Employee could request a union representative to be present, and advised the Employee that his name had been mentioned in connection with the "reused coupon" problem. The Employee said that for a period of one to one and a half years he took about 20 coupons, sold four for \$20.00 to \$25.00 to a relative of his wife, which apparently was his wife's cousin, and gave the rest away. He stated that coupons could be obtained by employees either at the gate or in the load room.

While Person 1 did not go into great detail with the Employee on how tickets could be obtained by other employees, it eventually was determined that if passengers did not show up for flights there would be more coupons than passengers. The other employees working at the gate or in the load room could obtain these extra coupons, and the passenger count from the aircraft would still agree with the ticket count in the load room. It was clear during this interview that Employee

understood that the coupons being discussed where coupons obtained in this manner, which were then whited out and sold or given away to passengers who reused the coupons. Apparently other employees at the gate did not check the dates on the tickets, so passengers with "reused coupons" were flying without paying the Employer for the ticket.

During subsequent grievance proceedings the Employee stated that he had obtained coupons from his wife and had exchanged these coupons when they were about to expire with other passenger's who were about to board Employer flights. His wife apparently worked for the Department of Education and was provided coupons for inter-land business flights. She would fly on the Employee's "greenie" privileges and thus save the coupon she was supposed to use. While the Employee may have exchanged some of his wife's coupons which were about to expire for coupons with a longer expiration date, there was no explanation as to how his wife came into possession of so many coupons, and thus this would not account for all of the twenty or so coupons which the Employee sold or gifted over the one to one and a half year period.

"Greenie" privileges were not to be used for business. Thus the Employee, by selling or gifting his wife's coupons, would again be depriving the Employer of the revenue it would have obtained had the passenger purchased a regular coupon. The Employee also testified at the arbitration that he his wife's cousin had not paid for the four tickets the Employee thought they purchased for \$20.00 to \$25.00. There was no logical explanation as to why these facts were discovered so late in these grievance proceedings.

The credible evidence in this case indicates that the Employee engaged in the sale of "reused coupons" on two occasions, once a sale to Person 3 and then a sale to his wife's cousins. The Employee also gave away "reused coupons". He may also have exchanged, in the manner described above, some of his wife's coupons, which were accumulated through the use of

"greenie" privileges, which he then gifted to persons who would otherwise have had to purchase a coupon. All of these activities would deprive the Employer of revenues it would have otherwise received from passengers who would have had to purchase a regular coupon. In the instances where the Employee sold coupons, he would personally profit monetarily. All of these activities would violate items 1, 2 and 13 of Article C of the Employee Handbook.

The Employee also has made the argument that his conduct with regard to "reused coupons" or exchanging coupons was about the same as other persons who only received short suspensions. It is not possible during this arbitration to compare the Employee's case with other employees who were disciplined. However, the Employee Handbook clearly states that the type of activities in which the Employee was engaged constituted grounds for termination. Thus the decision to terminate the Employee is consistent with the Employer policies contained in the Employee Handbook.

Conclusion:

The activities of the Employee with regard to selling and gifting "reused coupons" and gifting coupons obtained from his wife deprived the Employer of paying passenger revenues, and violated items 1, 2 and 13 of Article C of the Employees Handbook.

Award:

Based on the above "Decision" the grievance of the Employee and the Union is hereby denied and the termination of the Employee effective April 16, 1995 is upheld.