Rubin #1

IN THE MATTER OF ARBITRATION BETWEEN:

Employer

AND

Union

A hearing was held on October 12, 1995, on the following stipulated issue: "Was the discharge of the Employee for just cause? If not, what shall be the remedy?" A record was made, and briefs were filed. The System Board of Adjustment deadlocked on the issue, and the matter was thereupon submitted to this Board of Adjustment.

The Employee, a Utilityman, was discharged on April 29, 1994, with the issuance of the form PE-1, Unsatisfactory Performance Report, signed and authored by Person 1, Manager of Line Maintenance:

> On November 18, 1991, you were issued a verbal warning, on July 2, 1992, you were issued a written warning, on April 4, 1993, you were issued a final warning and on February 1, 1994, you were issued a second final warning, all for regarding your attendance. Since the second final warning your attendance is as follows: 5 days sick on one occasion, reported late - 2 occasions, left work area without authorization - one occasion. Your attendance continues to be unsatisfactory. Your employment with the Employer is terminated effective immediately. (sic)

The discharge was triggered by the Employee's being away from her assigned work area on April 26. Acknowledging that the Employee was absent then, the Union contends that the Employer's handling of the matter is so fraught with procedural faults as to require the return of the Employee to her position with back pay. I will first summarize the circumstances of Employee's last absence from her work assignment.

A Utility person, the Employee was assigned to service flights at the Airport 1. Little time is available for servicing the returning and continuing flights which are typically scheduled for short stops. To provide as complete service as can be accomplished in the short time, Utility workers are assigned in pairs to service each flight. One of two women of the four Utility persons on the 3pm to 11pm shift, the Employee was assigned with Utility person Person 2 to service three flights including flight number 2192 scheduled to arrive at 8:45 pm and depart as flight number 2200 at 9:05 pm.

The flight arrived, but the Employee was not present and Person 2 began the servicing alone. Lead Utility Person 3 noticed that Person 2 was working alone and asked her where the Employee was. Person 2 did not know, and Person 3 worked the flight with her. A statement written by Person 3 (C-4) reported that Person 1 called in at about 9pm, when he informed Person 1 of the Employee's absence. Person 3 saw the Employee again at 9:40 pm, and directed her to punch the clock "as per Person 1". Neither Person 2 nor Person 3 appeared to testify.

Person 4, Utilityman, saw Person 3 servicing the flight with Person 2, and asked for the Employee. In his statement (C-5), Person 4 stated that he saw the Employee at about 9:45 pm, "after Person 3 had gone down the hallway to get her. Person 3 had asked her to punch the time clock, which she did not do. She just walked out the door to the ramp area." Person 4 was not called to testify.

The Employee explained that she had left the work area for a shorter period of time than reported. She had used a friend's car to drive to work. The friend called to exchange her car for the Employee's. The Employee left work and drove to a location nearby where the auto exchange was made. She then returned and stayed in the women's rest room which is used by the female utility workers between assignments as a ready room. The Employee further explained that she

had not planned to service flight 2192 with Person 2. It was the practice for the Utility workers to service assigned flight alone, and to alternate the assigned flights. Person 2 and she had agreed that Person 2 would service flight 2192 and she would service a later flight. The Employee denies that she was absent for the time reported by Person 3 and Person 4, stating that she spent the time in the ready room.

The Employee also testified that she had tried to inform her Lead Utilityman (presumably Person 3) that she would be away to make the auto exchange. She could not find him and instead informed Lead Mechanic Person 5. Person 5 was not called by either party to testify.

The Employer stresses that this failure of the Employee to be at her assigned work area was the last of many violations of the posted and applied rules of attendance which have been in effect for a number of years. (C-3) The violated rules of the POSTED RULES OF CONDUCT which warn "...infractions of any rules listed below may lead to disciplinary action or discharge. Such discipline may include warnings (oral/written), suspensions without pay or, in cases of serious violations, dismissal without further warning may result where the facts warrant." The ATTENDANCE rules violated by the Employee during her tenure on the job include

> "1. Report to work as scheduled and on time. Unsatisfactory attendance will not be tolerated. 2. Call in when absent. All absences must be reported in accordance with departmental guidelines. 3. When on duty, do not leave Employer premises without authorization. 4. Remain at work in your assigned area until your tour of duty ends unless authorized by a supervisor to leave early."

The Employee's failure to be at work to service the assigned flight finally caused the discharge. The Employer stresses that Employee had exhausted all of the measures which could be taken with progressive discipline. The oral and written warnings repeatedly reminded the Employee of the essential need for her attendance.

In fact, the final written warning was repeated with a second final written warning. All of the warnings alerted the Employee that a termination would be in the offing should she not improve her attendance. The Employee's unauthorized absence from assigned work on April 26, and her attempt to conceal her absence by not punching the time clock, was all the more serious as a continuing defiance of the many previous written warnings.

Referring to Article 14(C), the Union claims that the Employer could not refer to any action taken more than five days before the date of the discharge. This provision requires that the notice of discharge be in writing containing the charge, and "Such notice shall be presented to the employee not later than five (5) days from the time of the incident upon which such charge(s) is based..." This provision prohibited Person 1 from referring to any of the disciplines and incidents listed in his letter of discharge, other than the Employee's absence on April 26. In addition, Article 17 provides that "Any disciplinary letters issued to employees covered by this Agreement shall not remain in their personnel record for a period of more than one (1) year."

Again, the notice of discharge should not have listed the warnings preceding April 29, 1994, for justification. Additionally, the five-day absence should not have been listed because it had not been followed by a timely discipline.

Though contending that the Employer could not refer to the prior warnings, the Union offered evidence by testimony of the Employee that illness had caused her absences. The Employee had submitted letters from her doctor, which described her illness and recommended that accommodations be made for her.

Finally, the Union holds that absence from the assigned work area is not part of the attendance program. Despite its inclusion in the rules of conduct in the attendance program, the Employer has handled such absences separately. The Union offered a number of resolved issues indicating

that employees cited for absence from work areas were given warnings distinct from the progressive discipline for lack of attendance.

The Union refers to the letter of agreement of January 10, 1988, included in the Agreement, which contains the following part cited as justification for Employee's absences caused by illness:

> It is not the intent of the Attendance Control Program to discipline an employee for the legitimate use of sick leave benefits. The policy intends to correct the attendance record of those employees who frequently report absent to stretch a weekend or are simply claiming to be ill because they do not feel like coming to work.

The Employer reports that it had given the Employee forms as long ago as 1992 and 1993 to fill, requesting and defining the accommodation needed for reason of her illness. She did not return these forms. Finally, as recently as April 8, 1994, Person 1 wrote to the Employee's doctor (C-10), including the form for the Employee to post with the doctor's "medical documentation". Neither the doctor nor the Employee responded before April 29. The Employer offers that the Employee's absence from her assigned work area on April 26 was by itself sufficient cause for discharge after the years of unsatisfactory attendance and absence from work.

A copy of the attendance control program in effect at the time of the termination was not submitted, despite my request at the hearing and later after the receipt of the briefs. Possibly, the program may have had its own provision for the retention of records of oral and written warnings for progressive discipline. It would have been unrealistic for an effective progressive discipline program for attendance control to operate within one year. However, it does not appear to me that the Employee was terminated for her admittedly bad attendance, for whatever reason, in the years before her last year of employment. The discharge was triggered by her absence from work on April 26, 1994, which convinced Person 1 that any number of warnings would not suffice.

If the Union's position that warnings and other disciplines issued before April 26 or 29, 1994, apply, by the same token its evidence regarding the Employee's illness and charges of harassment in 1992 and 1993 is similarly inapplicable. However, the Employer tried a number of times to obtain from Employee the necessary information by which it could arrange to accommodate to the handicap reportedly caused by her illness. The Employee did not respond at all. Finally, after her last five-day absence, the Employer tried once again by letter to the Employee's doctor to obtain the information and documents. It did not receive any response prior to the discharge.

On careful consideration, and repeated study of the testimony in the record, I have concluded that the discharge was with cause. Her testimony is simply not credible. None of the employees she cited in support of her excuses were called to testify on her behalf. The substantial evidence is that the Employee absented herself from her work area from 7 pm to 9 pm, despite the assignment to service with Person 2 a flight scheduled to arrive at that time. Finally she left work to exchange autos, not because she was ill. The rules of conduct list absence from a work area as one of the forms of absence for which there could be forms of discipline including "dismissal without further warning". The elicited and substantial facts established cause. The Union's grievance is not sustained.