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April 25, 2008

Glen Rotella
Labor Relations Specialist
Federal Aviation Administration
15000 Aviation Blvd., AWP-16
Hawthorne, CA 90261

Kevin Sills, Staff Representative
National Air Traffic Controllers Association
1325 Massachusetts Ave. NW
Washington, DC 20065

RE: ARBITRATION: Transmittal of Award and Billing for Services: FAA/NATCA [REDACTED]
[REDACTED] Grievant) - Case Number (NC) WP-07-045 [REDACTED]

F10-8248WP
Rcvd 10-19-11

Dear Counsel:

Transmitted herewith are my Award and Invoice in the above matter. Thank you very much. It was a pleasure working with you.

Sincerely,



Philip Tamoush

Enclosures (Award and Invoice)

SOURCE: F10-8248WP-R
ITEM #12
RCVD 10-19-11

ISSUE

The parties stipulated to the following issue:

Whether the FAA's 30-day suspension of [REDACTED] was for such cause as will promote the efficiency of the service. If not, what shall the remedy be? (Transcript page 5-6)

The parties also stipulated that neither the Agency nor the Union was raising any arbitrability issues or challenges to the subject grievance on any grounds, including, but not limited to, procedural or substantive issues. In addition, the parties have mutually agreed that this matter is properly before the designated arbitrator for resolution.

And, finally, counsel stipulated that witnesses [REDACTED], [REDACTED], [REDACTED], and [REDACTED] if they testified, would attest to their written statements provided in the case files. (Transcript page 6)

BACKGROUND AND SUMMARY OF FACTS

This matter involves the appeal of Grievant, [REDACTED] through his Union, the National Air Traffic Controllers Association, of his 30-day suspension for "intimidating, abusive, disorderly, disruptive, or other inappropriate behavior" (from the initial Letter of Suspension, Joint Exhibit 1). The parties could not reach agreement in discussion about proposed resolutions to the grievance filed, and the matter proceeded to arbitration before the undersigned.

More specifically, the suspension of [REDACTED] was the result of an incident which took place on October 18, 2006, while he was on duty as an Air Traffic Control Specialist in the [REDACTED]. As will be indicated further, the 30-day suspension was meted out because of not only this incident, but prior discipline for similar forms of misconduct.

The Letter of Proposed Suspension (December 1, 2006, Joint Exhibit 1) states the basis of the suspension succinctly:

"On October 18, 2006, while on duty on position Local Control, you had a disagreement with ██████████ regarding his handling on N6758N, MO-21. You became very upset with ██████████ and the pilot with whom you were dealing. As a result, in a loud and unprofessional manner you screamed at the pilot 'Get off my Freaking Runway.' Your response to this incident in the tower was disruptive, rude, unprofessional and overheard by our co-workers and other pilots on frequency.

"Your loss of temper and subsequent outburst caused you to direct several hostile and profane comments towards ██████████. Therefore, ██████████ had to be recalled from his break and you were relieved from position. ██████████ description of your demeanor was consistent with ██████████ description of your behavior on the date in question. ██████████ described you as being 'Loud, obnoxious, cursing and threatening.' In addition, employee ██████████ provided a statement regarding subsequent behavior after you had been relieved from your position. He stated he '[I] drove up to the tower at 11:45 AM and ██████████ started to yell and swear at me about his fellow controllers, ██████████ and ██████████ was so angry and loud, every other word [was] a swear word. Families located at the public gazebo outside the tower observed this outburst, got in the[r] cars and left.' In addition, there were three (3) Hotline complaints made by your co-workers on October 23, 2006, November 14, 2006 and November 21, 2006 respectively. The complaints all attest to your temper, outbursts, rudeness and hostility towards them. Further, one complaint specifically states, ██████████ can be heard on recorded lines, calling pilots, freaking idiots and that your behavior is unprofessional and disruptive.'

"Reason: Use of language or remarks, which are insulting, abusive or profane.

"On October 18, 2006, you exited the building, your unprofessional and hostile demeanor was validated by ██████████, the ██████████ whom you encountered as she escorted guests into the facility. You approached her and due to her having to escort the guests into the facility, she was unable to immediately address your complaints at that time. As a result of her unavailability, you approached ██████████ who was arriving for duty. At the time co-worker ██████████ met you as he arrived at the tower, he reported you used profane language toward him and to him in describing your opinions about your other fellow workers. Specifically, he stated you advised him '██████████ was a fucked-up idiot and stupid,' that ██████████ was going to kill someone and that you would not work with that 'fucked-up idiot again.' ██████████ also described your conduct as threatening; according to his statement, he was unable calm you down. He attests that you would not stop your tirade and in his opinion, displayed an unfavorable image. ██████████ reported there were civilian guests in the area who overheard your negative and profane remarks and in his opinion, your comments and demeanor in their presence reflected poorly on the image of the facility and the agency, as a whole."

CONTENTIONS OF THE PARTIES

The hearing in this matter was transcribed and Counsel argued orally at the end of the hearing.

The full transcript is incorporated herein by reference. The following is a brief summary of the parties' positions.

Contentions of Management

Management contends that there is no question regarding the justification for the imposition of the 30-day suspension. Eyewitness accounts from fellow employees in the record, both signed and Hotline complaints (Joint Exhibits 9 through 15) are clear in expressing the hostile environment created. The Grievant admits his behavior on October 18 was inappropriate and unprofessional, nonetheless, he continues to justify it as he has past misconduct. The Grievant has served suspensions in the past for similar charges. He was given a "last-chance agreement," which apparently had no effect on him. He had been issued letters of reprimand for insubordination and loss of temper. Clearly the Grievant has shown a pattern of the type of behavior involved in the incident of October 18 without letup. It must be noted that the Grievant's disruptive comments to fellow employees and pilots in this current instance, were also heard over the public address system by members of the public who were in the observation area during the tirade that was taking place. The suspension should be sustained and the grievance denied.

Contentions of the Union

The Union contends that the Agency has not met its burden of proof to establish that the 30-day suspension was for "such cause to promote the efficiency of the service." Employees routinely have a variety of emotional responses to the frustrations of the difficult job they perform. Other employees have made such responses without being suspended for such a long time. The Manager, in meting out the 30-day suspension, relied upon past incidents about which he was uninformed. There was no issue of safety or negligence in reviewing the events of October 18. ██████████ was reacting to problems created by the disoriented pilot and the Ground Controller at the time. That has to be noted in reviewing the extent of the penalty. Documents (Joint Exhibit 8, for example) indicate that a 14-day suspension was considered. Instead the Agency precipitously applied the maximum 5 suspension. The Agency should have mitigated the penalty based on the Douglas Factors review,

including noting ██████████ long service. It must be noted that ██████████ was ill on October 18, with flu-like symptoms, and that certainly affected his behavior, and should have been considered as mitigating. He came in as a special favor to his Supervisor.

The Grievant has trained other employees; served as "Controller In Charge," without incident. Rather than working with ██████████ knowing he was close to retirement, the Agency decided to mete out the maximum penalty. ██████████ has been treated more severely than other employees on the eve of his retirement. The grievance should be sustained, and the 30-day suspension overturned and Mr. ██████████ should be awarded back pay with all interest and benefits.

DISCUSSIONS. FINDINGS & CONCLUSIONS

This appears to be a straightforward issue of progressive discipline, in light of the incident itself of October 18, 2006 and the aggravation of past incidents. While the time may have run with regard to eliminating references to past discipline, with regard perhaps to evaluating what the current penalty should be, the arbitrator cannot ignore the fact of the history of similar events. The Grievant has been permitted deferential treatment for years with regard to his outbursts and general demeanor and behavior; notwithstanding his general satisfactory performance as an Air Traffic Controller. The 2006 incident was indeed mitigated from a potential termination due to the special circumstances of ██████████ illness that day and aggravation caused by the disoriented pilot and the failure of his Ground Controller to perform appropriately. However, none of that excuses the admissions by the Grievant of his own culpability. This is in consideration of all the Douglas Factors.

From a review of all aspects of this case, it is clear, even to ██████████, that his behavior was inappropriate; notwithstanding his illness. It appears to be a continuation of the normal behavior which originally resulted in the "last-chance agreement," which could have justified his termination this time, thus losing many retirement benefits. The Acting Controller-In-Charge wrote it well when he

indicated on his return to the tower that [REDACTED] was agitated, loud, obnoxious, cursing, and threatening. [REDACTED] went on a tirade. I told him to stop yelling at least two times, which he ignored." (Joint Exhibit 11) That essentially says it well, and was not refuted at all by the Grievant. The undersigned is left really with no choice but to deny the grievance, and sustain the penalty. It is recognized that the Grievant has since retired with full benefits, thus relieving the Agency of potentially future interpersonal issues.

AWARD

1. The grievance is denied.
2. The 30-day suspension of [REDACTED] was for such cause as will promote the efficiency of the service. The suspension was for just cause.

Respectfully submitted,

A handwritten signature in cursive script that reads "Philip Tamoush". The signature is written in dark ink and is positioned above the typed name.

Philip Tamoush
Impartial Arbitrator

April 25, 2008
Torrance, California