

ARBITRATION OPINION AND AWARD

In the Matter of the Arbitration

between

ISSUE:

FEDERAL AVIATION ADMINISTRATION

Discipline: Inappropriate  
Statements; Failure to Follow  
Directions [REDACTED]

and

NATIONAL AIR TRAFFIC CONTROLLERS  
ASSOCIATION, AFL-CIO  
Case No. NC-08-739336 [REDACTED]

Impartial Arbitrator

Philip Tamoush  
P.O. Box 1128  
Torrance, California 90505-0128  
(Principal Office & Mailing Address)  
(800) 747-9245  
249 W. Jackson Street - Suite #130  
Hayward, California 94544-1811

Hearing Held  
August 14, 2008  
[REDACTED]

Record Closed  
November 3, 2008

Award Issued  
December 13, 2008

Appearances

For the Agency: Dan Castrellon  
Labor Relations Specialist  
15000 Aviation Blvd  
Lawndale, CA 90261

For the Union: Brian P. Sherry  
John Paiva  
NATCA Representatives  
1325 Massachusetts Ave. NW  
Washington DC 20005

\*NC-08-73936-EMT  
(see FI-6880, corrected report,  
pg. 19, rec'd 8-18-11)

SOURCE: FO-824800-R, ITEM #13  
RCVD 10-19-11

## ISSUE

The parties agreed to the following stipulated issue:

Was the FAA's 10-Day Suspension of [REDACTED] for such cause as will promote the efficiency of the service? If not, what shall the remedy be? (Joint Exhibit 9)

The parties also stipulated at there were no challenges to the Grievance being arbitrated on any grounds, including procedural or substantive issues. In addition, the parties stipulated that the matter was properly before the undersigned Arbitrator.

## RELEVANT WRITTEN LANGUAGE

### I. ARTICLE 10 DISCIPLINARY/ADVERSE ACTIONS

**Section 3.** Disciplinary/adverse actions shall not be taken against an employee except for such cause as will promote the efficiency of the service. Any action taken by the Agency shall be supported by a preponderance of the evidence.  
(JX-1)

### II. Human Resource Policy Manual (HRPM)

1. **EMPLOYEE RESPONSIBILITIES:** All employees are responsible for conducting themselves in a manner, which will ensure that their activities do not reflect discredit on the Federal government and the FAA. Employees must observe the following basic on-the-job rules:

...  
d. Exercise courtesy and tact at all times in dealing with fellow workers, supervisors, contract personnel and the public. Support and assist in creating a productive and hospitable work environment.

...  
h. Observe and abide by all laws, rules, regulations and other authoritative policies and guidance, written and unwritten. (JX-6)

## BACKGROUND AND SUMMARY OF FACTS

This matter involves the appeal of [REDACTED], Air Traffic Control Specialist, through his Union, the National Air Traffic Controllers Association, of his 10-day suspension for violation of Standards of Conduct. The parties could not reach agreement over the level of discipline meted out,

and the matter proceeded to an arbitration hearing before the undersigned, jointly selected by the parties.

More specifically, the Appellant is not only an Air Traffic Control Specialist, but an active Union Representative at the [REDACTED] Airport Traffic Control Tower. The [REDACTED] facility employs only approximately nine employees; thus, it is critical that employees do work well together.

The Grievant, Mr. [REDACTED], was suspended for 10 calendar days for the following "reasons and specifications":

**Reason No. 1** – Making false, unfounded, disparaging, disrespectful, or other inappropriate statements to or about others.

**Specification** – On numerous occasions during the past year, you have referred to [REDACTED] personnel by race or nationality (i.e., "white controller", "black supervisor"). You were counseled on June 15<sup>th</sup>, 2006, that it was inappropriate behavior and to stop doing it. You made the same references, again, on July 5<sup>th</sup> and yet again in a phone conversation with the [REDACTED] ATM on July 13<sup>th</sup>.

**Reason No. 2** – Failure to carry out orders, directions, assignments, etc., given by a superior official.

**Specification** – On June 15, 2006, within a minute or two of being given a decision letter which said that you were to be suspended for 5 days, you became highly agitated and declared that you were suddenly so ill that you needed to go to the hospital. You told me that it was my responsibility to call an ambulance to come get you. After I made it clear that I was not going to call an ambulance, you continued to state that you were sick and didn't think you could work your assigned shift. You asked what I expected you to do and I told you to wait outside the office while I spoke with someone about the situation. While the Operational Supervisor and I were trying to speak with someone on the phone, you called on the interphone and were told to wait for a few minutes until the phone conversation was finished. You began to bang on the office door and when I went to the door and told you not to come in, you opened the door and started to come into the office. In order to open the door, you would have had to use your key to access the lock.

(JX-2, Letter to [REDACTED] from [REDACTED], Manager, July 31, 2006)

The Grievant has been representing employees at the [REDACTED] Tower for several years. Based on his testimony and in observing his mannerisms, it is clear that the Grievant is an active Union Representative, presenting himself as an "equal" in the Labor-Management process, in which he was responsible as Union Representative. The facts are essentially undisputed regarding the substance of what occurred leading up to Mr. [REDACTED] suspension.

The parties were not able to resolve their differences regarding this matter and it proceeded to arbitration.

### CONTENTIONS OF THE PARTIES

The arbitration hearing in this matter was transcribed and is incorporated herein by reference. Additionally, Counsel for both parties filed written briefs which are also incorporated here. Following is a brief summary of their positions.

Management contends that it has applied the Standards of Conduct (JX-6) and the Table of Penalties (JX-7) in meting out the 10-day suspension. Each offense indicated in the disciplinary letter (JX-2) carries with it a possibility of a 5-day suspension if a first offense, and a 10-day suspension if a second offense (JX-7, Conduct Offenses #6 and #22). In this case Grievant was penalized five days for each offense, even though the offenses together constituted second offenses because of a prior 5-day suspension for other offenses committed by the Grievant (see Joint Exhibit 5, Suspension of May 18, 2006).

The Grievant's persistent references to the race and ethnic references, notwithstanding that they may have been in a grievance-discussion context, are unacceptable. The Grievant has been told, various times in the past, not to refer to employees and supervisors using their racial or ethnic characteristics. However, in the grievance meeting of July 5, 2006, the Grievant persisted again in using such terms, after being asked to stop that activity. That level of disrespect and, essentially insubordination, cannot be tolerated and the Grievant must be made to realize this.

With regard to his refusal to obey an order, the Grievant could have remained outside the door of his Manager's office. Instead, he decided unilaterally to enter, thus disobeying a direct order. The fact that the Grievant was ill should not impact on any supposed justification for his actions. The grievance should be denied and the Management actions sustained here.

The Union contends, primarily, that Mr. ██████████ has merely been carrying out his own duties as Union Representative in attempting to discuss straightforwardly, and with accuracy, the issues of the discrimination complaint being filed by his fellow employees and his active representation of them in being concerned about alleged discrimination. His use of terminology was absolutely necessary, especially at the Grievant's hearing, to assure Management's understanding of the situation. The Grievant should not be disciplined for carrying out his responsibilities in an appropriate manner.

With regard to disobeying direct orders, the Grievant was clearly ill, had been vomiting at various times during the day, and had to speak with his Manager in order to get permission to leave the facility or to have an ambulance called for him. He used his passkey to enter his supervisor's office merely to convince her to call the ambulance, or let him take leave. There is no justification for discipline in this case and the 10-day suspension should be overturned, the grievance sustained, and Mr. ██████████ made whole.

#### **DISCUSSIONS, FINDINGS & CONCLUSIONS**

This case involves primarily the classic clash in Labor-Management relations between an employee acting in his job capacity for the Agency versus acting as a Union official in his representation capacity. Here, Mr. ██████████ is clearly an "activist" in attempting to carry out his representational activities, sometimes, it would appear, to the detriment of his subordinate relationships in his Controller job.

In the first instance, the matter deals with a form of "insubordination" in failing or refusing to cease referring to employees and supervisors by an ethnic or racial designation. It appears to the undersigned that there may be an overreaction by Management. We did not have the benefit of ██████████ testimony who was the percipient actor in the attempt by Management to control the

Grievant's insistence on demonstrating the essence of the allegedly discriminatory activities. While nothing in this opinion should lead anyone to conclude that unnecessary, or unwarranted, references to race or ethnic identity are acceptable, here it just appears to the undersigned that Mr. ██████████ was attempting to carry out his responsibilities in describing to Ms. ██████████ and others the kinds of issues faced by some employees of racial or ethnic minorities. In his representational capacity, Mr. ██████████ was presenting information regarding discrimination claims, not only by him, but mostly by other employees who had signed petitions relative to alleged discrimination by Management. In this case, it just does not appear that a 5-day suspension was justified relative to any alleged insubordination to his Management, notwithstanding how grating his comments may have appeared to managers. His comments relative to race/ethnic identity may have been somewhat extreme, but did not constitute disrespect or inappropriate statements in the context in which they were provided, notwithstanding Ms. ██████████ order that he cease using such language. So long as the comments were made in the context of a Labor-Management meeting, the discipline appears to be too harsh.

Relative to the second charge regarding insubordination by not remaining outside his Manager's office, here the Grievant's actions seem to be a similar overreaction. Here, Mr. ██████████ appears to be taking advantage of his apparent illness to deliberately disobey an order of his Manager. He was told to remain outside until his Manager resolved his and other issues, and he did not. Certainly his actions and reactions appear to be related to the 5-day suspension which had been delivered to him regarding his previous activities. In this case, the reaction of Management appears appropriate.

It would appear that the discipline in this case is regarding a "second offense" when one reviews the record of Mr. ██████████ prior actions in May 2006. A 5-day suspension is minimally called for and can be justified by the record in this case. 6

In summary of his conclusions on this matter, the undersigned believes and finds that Mr. ██████████, while perhaps acting aggressively, did not exceed the bounds of his representational

responsibilities in describing the discrimination and alleged harassment issues by referring to employees and supervisors by their racial or ethnic identity. He did not step over the bounds permitted by the "equality" provided in the Labor-Management relationship. However, with regard to his disobeying the order of his Manager to remain outside her office, he did exceed the boundaries. His actions and reactions for the whole afternoon relative to his illness and wanting to be excused from work were clearly an overreaction. That discipline will be sustained.

AWARD

1. The FAA's 5-day suspension of [REDACTED] for such cause as will promote the efficiency of the service dealing with his use of racial/ethnic terms in meetings with his Management was not justified.
2. The FAA's 5-day suspension of [REDACTED] for his failure to carry out the orders of his Manager not to enter her office was for such cause as will promote the efficiency of the service.
3. The FAA is ordered to reduce [REDACTED] 10-day suspension to a 5-day suspension and to take the actions necessary to repay five days of the 10-day suspension. The undersigned will resume jurisdiction over this matter solely to resolve any issues relative to the reduction of the suspension from 10 days to five days.

Respectfully submitted,



Philip Tamoush

December 13, 2008  
Torrance, California