Teamsters Broken Promises at United Airlines

IBT - SWA Mechanics Contract Betrayal 2002

During their 2002 contract negations Southwest mechanics negotiators fought for a paid lunch for their midnight mechanics including full retro pay which was clearly defined in their tentative agreement. During contract negotiations Southwest Airlines mechanics won the right in their tentative agreement to a paid lunch for graveyard shift mechanics with full retro-activity from amendable date.

SWA mechanics had turned down a previous T/A by over 97% that did not include a paid lunch for the graveyard shift mechanics.

SWA mechanics Retro-active pay given away by Unelected Teamsters leaders The SWA mechanics negotiating committee was shocked to find out after ratification that two appointed Teamsters officials who were not part of the negotiating committee made a secret deal in a hotel room. These union bosses betrayed their negotiating committee and members. IBT Local 986's very own Clacy Griswold and Mr. Chandiramani had made a secret oral agreement in the hotel room of the Southwest CEO Parker to give back the mechanics retroactive pay for the midnight mechanics the paid lunch.
You can read part of the arbitration covering this betrayal at
IBT 986 Appointed Union Rep Clacy Griswold betrays Southwest mechanics 2002

Don't let this happen to you at United in our current IBT secret negotiations.
The Southwest Airlines mechanics voted the Teamsters off the property January 23, 2003.
The mechanics at United stand to lose even more contractual rights with the Teamsters and their self-serving secret negotiations as they attempt to merge our two contracts into one agreement.

It is time for change; the Teamsters do not represent our mechanics. The last two years of IBT representation prove that beyond a shadow of a doubt. Do not allow the Teamsters to make any more mistakes concerning your future and your contract.

Providing a Democratic Voice for the UAL Mechanics and Related Class and Craft

INTRODUCTION

Full retroactive pay was the *sine qua non* of the Southwest/Mechanics Agreement. Without it there could be no agreement; the members would sooner strike.

The year 2001 saw an eruption of alleged wildcat job actions – the end product of the Railway Labor Act, which allows air carriers to save millions in labor costs by dragging out the negotiation process. Southwest mechanics knew that only a rigid adherence to full retroactive pay would neutralize the Carrier's incentive to resort to delay in these and future negotiations.

Nevertheless, even with the contractual guarantee of "full retroactive pay" provided for in Letter of Agreement 1 (LOA 1), the mechanics rejected the tentative agreement of May 8, 2002. It was not even close – over 97% voted no.

In order to secure membership ratification, a critical element introduced into the new tentative agreement was the paid lunch for the graveyard shift. The parties agreed that this change was overdue. Paid lunch for the graveyard shift was already becoming an industry standard. It was an important compensatory element for graveyard shift employees who suffered inferior working conditions. It was the indispensable means by which graveyard shift employees – who constitute the majority of the Southwest mechanics' group – were induced to ratify the tentative agreement dated September 3, 2002.

The paid lunch "deal" was allegedly reached in private negotiations between two Company representatives and two unelected Teamster representatives, which transpired in CEO Parker's hotel room. The Company witnesses presented testimony and documentary evidence that the Teamsters' revised written proposal expressly provided

for a non-retroactive implementation as of the date of signing (DOS). Nevertheless, in drafting the final language for Article 5, CEO Parker excised any reference to a DOS implementation date and made no change to LOA 1 to indicate that the paid lunch was to be excluded from the contractual guarantee of "full retroactive pay." Indeed, another change was allegedly made in the implementation date – from DOS to date of ratification (DOR) – again, without the benefit of any written amendment.

CEO Parker tacitly admitted that his drafting held the potential for misleading the voting membership into believing that the paid lunch was retroactive. Vice President Sokol heard first hand that the rank-and-file expected paid lunch to be part of their "full retroactive pay." Nevertheless, the Company made no effort to communicate the purported intention to make the paid lunch non-retroactive.

The mechanics' expectation was based on the written language of the tentative agreement. The term "full retroactive pay" had always been interpreted expansively for the purpose of putting the employees in precisely the position they would have been in if the contract had been signed and ratified on the amendable date. In other words, full retroactive pay meant **full** retroactive pay.

More than one Company witness testified that the only thing that contradicted the mechanics' expectation was an **oral** agreement between Company and Teamster representatives that never found its way into the written agreement. But to allow such an oral agreement to prevail over the plain written language circulated to the mechanic group is not only inequitable, it is flatly prohibited by the Agreement's express terms. To put it another way, as a matter of law, the mechanics are entitled to the Agreement that they ratified, not to an unpublished one reached in CEO Parker's hotel room.

The Southwest mechanics surrendered their collective right to strike and shut down the Company's operations based on a written tentative agreement that on its face provided for a retroactive paid lunch. Moreover, the evidentiary record supports the conclusion that the Southwest mechanics would not have surrendered their right to shut down the Company's operations without the application of full retroactivity to the paid lunch.

The Company has obtained the benefit of this bargain; it is time for the mechanics to receive the benefit that they fairly expected. The grievance should be sustained and the paid lunch paid retroactively to the amendable date of August 16, 2001.

PRINCIPAL RELEVANT CONTRACTUAL PROVISIONS

Article 3, Section 1 – Status of Agreement

> It is expressly understood and agreed that this Agreement supersedes any and all Agreements now existing or previously executed between the Company and any Union or individual, affecting the craft or class of employees covered by this Agreement.

Article 24, Section 6

> Any deviation from this Agreement may be made by mutual agreement between the Company and the Teamsters – Airline Division. Such mutual agreement must be in writing and signed by the parties thereto.

Article 5, Section 1 – Hours of Service – Five Day Week

a. Eight (8) consecutive hours, ~~exclusive~~ inclusive of a meal period of not to exceed thirty (30) minutes for the graveyard shift, and exclusive of a meal period not to exceed thirty (30) minutes for all other shifts, shall constitute a standard work day.

b. Forty (40) hours, consisting of five (5) consecutive eight-hour days, worked within seven (7) consecutive days, will constitute a standard work week.

Article 5, Section 2 – Four Day Week

a. Ten (10) consecutive hours, ~~exclusive~~ inclusive of a meal period of not to exceed thirty (30) minutes for the graveyard shift, and exclusive of a meal period not to exceed thirty (30) minutes for all other shifts, shall constitute a standard work day.

b. Forty (40) hours, consisting of four (4) consecutive ten-hour days, worked within seven (7) consecutive days, will constitute a standard work week.

Letter of Agreement No. ~~2~~1

Those persons who are Employees of the Company as of the date of ratification (DOR), shall receive full retroactive pay ~~F~~for the period between August 16, ~~1995~~ 2001, and the ~~date the Company receives official notification of ratification~~ DOR, based on the difference between each month's old pay scale and the rates in Article 15, calculated for all hours worked at the applicable rate which would include vacation or paid sick time.

The Company agrees to pay retroactivity pay not later than forty-five (45) days after ratification.

STATEMENT OF FACTS

On August 16, 2001, the collective bargaining agreement between Southwest Airlines and the Teamsters became amendable. Approximately nine months later, Southwest and the Teamsters submitted a tentative agreement dated May 8, 2002 to the Mechanics and Related Employees for ratification.

Letter of Agreement 1 (LOA 1) of the tentative agreement provided for "full retroactive pay." (Jt. Ex. 3 at 89).[1] The operational language of LOA 1 had been adopted from the prior agreement without any significant change. (Jt. Ex. 3 at 89; Tr. 187-88). As CEO Parker testified, the provision of full retroactive pay at Southwest was an "historic practice." (Parker, Tr. 188). Moreover, the concept of "full retroactive pay" had always been applied liberally in order to put the affected employees in the position they would have been had the new agreement been signed and ratified on the amendable date of the prior agreement. Thus, despite LOA 1's reference to Article 15 pay rates, mechanics always received full retroactive pay for non-Article 15 compensation elements such as shift differentials and holiday pay. (Hatcher, Tr. 39-41; Patrick, Tr. 73-75; Sokol. Tr. 169; Parker, Tr. 211). LOA 1's reference to full retroactive pay for "all hours worked" was also liberally construed to include vacation and sick time. (Patrick, Tr. 75; Sokol, Tr. 169; Parker, Tr. 206). Moreover, the Company agreed that "hours worked" under the Agreement should be equated with Article 5's definition of Hours of Service. (Sokol, Tr. 169).

For the mechanic group, full retroactive pay was a strike issue because the failure to obtain full retroactivity would increase the incentive of the Company to exploit the Railway Labor Act's major dispute resolution process by resorting to delay tactics. (Hatcher, Tr. 32; Patrick, Tr. 61; Langer, Tr. 122). Such Fabian tactics, and the alleged wildcat job actions which they provoked, were the historical context in which the collective bargaining agreement was negotiated. See, e.g., Delta Air Lines, Inc. v. Air

[1] Although the citation used here is to the tentative agreement dated September 3, 2002, the highlighting confirms that this language was carried over virtually intact from the prior CBA. As CEO Parker testified, the LOA 1 retroactivity language was "virtually identical" to that contained in the prior CBA and had been negotiated "years" before the issue of paid lunch had ever been raised. (Parker, Tr. 187, 188).

Line Pilots Association, 238 F.3d 1300 (11th Cir. 2001); United Air Lines, Inc. v. International Association of Machinists, 243 F.3d 349 (7th Cir. 2001).

The mechanics rejected the May 8 tentative agreement by over 97%. (Tr. 32-33, 62, 123). Whereas the rejected tentative agreement did provide for "full retroactive pay," it did not provide for a paid lunch for the graveyard shift. (Tr. 33, 61-62, 123, 136). In returning the Teamster negotiating committee to the bargaining table, the membership instructed the negotiators to obtain this contractual amendment. (Patrick, Tr. 80). Teamster Shop Steward Howard Langer testified that the graveyard shift paid lunch was an important issue to both the Union's membership and leaders. (Tr. 123).

For a variety of reasons, both the Company and the Teamsters ultimately agreed that graveyard shift employees were entitled to a paid lunch. First, the graveyard shift paid lunch was increasingly an industry standard that prevailed at other carriers. (Correll, Tr. 218; Chandiramani, Tr. 319). Second, paid lunch was an important means of compensating graveyard shift employees for the substandard working conditions that are inherent in working the back side of the clock. (Sokol, Tr. 157-58). Third, the paid lunch reflected the workplace reality that Southwest management frequently fails to release graveyard shift employees from all duty during their meal period. (Hatcher, Tr. 33-36; Patrick, Tr. 62-63; Sokol, Tr. 158-59).[2] Despite their contractual entitlement to pay for working through their meal period, the junior status of many graveyard shift employees renders them reluctant to pursue their just compensation. (Patrick, Tr. 62-63).

[2] Under the Fair Labor Standards Act, a meal period cannot be discounted from hours worked unless the employee is "completely relieved from duty for the purposes of eating regular meals. … The employee is not relieved from duty if he is required to perform any duties, whether active or inactive, while eating." 29 CFR § 785.19.

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The proposal that originated from the membership did not exclude paid lunch from LOA 1's contractual guarantee of full retroactive pay. (Chandiramani, Tr. 322-23; Correll, Tr. 253) Nevertheless, on or about August 27th -- the 11th hour of negotiations for the new tentative agreement -- Sam Chandiramani amended the paid lunch proposal by providing that it would become effective at the date of signing (DOS). (Chandiramani, Tr. 322-23; Correll, Tr. 220). According to Mr. Chandiramani, he explicitly referenced DOS in his revised written proposal to the Company in order to "entice" the Company negotiators into accepting the proposal. (Tr. 323).

Subsequent negotiations over the paid lunch proposal were conducted by two unelected Teamster officials who had no voting rights on the negotiating committee – Mr. Chandiramani and Clacy Griswold. (Tr. 90-91). Chandiramani and Griswold assumed control over this aspect of the negotiations despite the protests of other Union committee members who asserted that it was inappropriate that secret negotiations be conducted without the participation of the Union's elected representatives. (Tr. 90-91). Nevertheless, CEO Parker testified that the paid lunch was negotiated, and agreed to, in private negotiations with Chandiramani and Griswold, which took place in his hotel room on August 29, 2002. (Parker, Tr. 182, 190).[3]

Chandiramani allowed Southwest CEO Parker to draft the change to Article 5 that implemented the paid lunch. (Chandiramani, Tr. 342). While the Company's written counter-proposal did limit the paid lunch to the 10-hour graveyard shift, it did not contain any provision restricting the effective date to DOS or excluding the paid lunch from LOA

[3] Mr. Chandiramani testified that the oral agreement was later orally amended from DOS to DOR [date of ratification] in front of the full negotiating committee pursuant to his "pleading." (Tr. 331-32). Nevertheless, Vice President Sokol had no recollection of the DOR oral amendment and insisted that actual implementation had been DOS. (Tr. 155-156).

1's "full retroactive pay." (Tr. 95; U. Ex. 3). Further negotiations led to the extension of the paid lunch to the 8-hour graveyard shift, but, once again, did not introduce any DOS or other language providing for non-retroactivity. (Tr. 109; Jt. Ex. 3 at 11). The full negotiating committee never received any written proposal from the Company excluding the paid lunch from the "full retroactive pay" guaranteed by LOA 1, and no change was made to the language of LOA 1 subsequent to the changes to Article 5. (Patrick, Tr. 72-73, 101; Sokol, Tr. 161; Parker, Tr. 188). At least two of the Union negotiators understood the Company's omission of limiting language to confirm that the paid lunch was retroactive. (Tr. 95). As negotiator Ken Patrick testified: "after the language came out, to me it seems clear that it wasn't the Company's intention not to pay for the paid lunch." (Tr. 98).[4]

The majority of rank-and-file mechanics shared this conclusion. They read LOA 1's contractual guarantee of "full retroactive pay" as including retroactive payment of the paid lunch. (Hatcher, Tr. 38, 42; Langer (shop steward), Tr. 124). Indeed, both rank-and-file mechanics and their elected leaders believed that the central goal behind retroactivity – i.e., demonstrating to the Company that it would not obtain a financial gain by resorting to delay tactics – would be frustrated by the exclusion of paid lunch from LOA 1's guarantee of "full retroactive pay." (Hatcher, Tr. 38; Patrick, Tr. 73)

Company witnesses testified that the sole basis for asserting the non-retroactivity of the paid lunch was the existence of certain "oral agreements" that had never been incorporated into the written document circulated to the mechanics for the purposes of

[4] During the hearing, Company counsel suggested that Mr. Patrick had been derelict in his duty as a Union representative based on his failure to communicate the non-retroactivity of the paid lunch. However, Mr. Patrick believed that the Agreement did provide for a retroactive paid lunch and, therefore, cannot be faulted for failing to communicate what he considered to be an untruth.

ratification. (Chandiramani, Tr. 340-41; Faulk, Tr. 314-16). In other words, the Agreement contained no language that communicated the exclusion of the paid lunch from "full retroactive pay."

CEO Parker testified that he raised the concern as to whether the exclusion of the paid lunch from LOA 1's retroactivity guarantee was "clear" and posed the question: "Are people going to be confused about that?" (Parker, Tr. 184). Yet, notwithstanding his assumption of the responsibility for drafting the implementing language, his status as an attorney, and his prior position as Southwest's General Counsel, he made no effort to avert the confusion that he anticipated.

Vice President Sokol also conceded that the written agreement "didn't define" the term "full retroactive pay" to exclude the paid lunch. (Tr. 148). Sokol further testified that the failure to expressly exclude retroactivity for the paid lunch left rank-and-file members "confused" and "very angry" when they learned of the exclusion. (Tr. 148-49). Nevertheless, prior to the finalization of the ratification process, the Company took no action to communicate to the employees its position concerning the non-retroactivity of paid lunch. (Langer, Tr. 124; Sokol, Tr. 149, 151).

Union witnesses testified, without contradiction, that the mechanics would probably not have ratified the tentative agreement if the existence of an oral agreement excluding the paid lunch from full retroactive pay had been communicated to them. (Hatcher, Tr. 48; Patrick, Tr. 78; Langer, Tr. 127). Indeed, Vice President Sokol did not contest Mr. Hatcher's analysis that the contract probably would not have been ratified in the absence of the employees' understanding that they would receive pay retroactively for their meal period. (Tr. 48).

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The Agreement expressly provides that its written terms supersede all prior agreements and that all modifications of its written provisions must be "in writing and signed by the parties hereto." (Jt. Ex. 3 Article 3, Section 1 and Article 24, Section 6).

Throughout October and November, 2002, the Teamsters filed grievances seeking full retroactive pay for the graveyard shift's paid lunch. (Jt. Ex. 2). On January 27, 2003, the Aircraft Mechanics Fraternal Association (AMFA) replaced the Teamsters as the collective bargaining representative of the craft or class of Mechanics and Related Employees at Southwest Airlines. Southwest Airlines, Inc., 30 NMB 182 (2003).