

IN THE MATTER OF THE)
)
ARBITRATION)
)
BETWEEN)
)
NORTHWEST AIRLINES, INC.)
(The Employer))
)
AND)
)
ASSOCIATION OF)
FLIGHT ATTENDANTS-CWA)
(The Union))
)

OPINION

AND

AWARD

OF

THE SYSTEM BOARD OF
ADJUSTMENT

Union Grievance
AFA Grievance No. 88-00-02-045-09

HEARING: January 19, 2010

HEARING CLOSED: March 1, 2010

SYSTEM BOARD OF ADJUSTMENT MEMBERS:

Sylvia P. Skratek, Neutral Member
David Driscoll, Company Member
Kathy Collias, Union Member

REPRESENTING THE EMPLOYER:

Susan Kramer, Managing Director
Labor Relations, Northwest Airlines, Inc.
Department A1170
2700 Lone Oak Parkway
Eagan, MN 55121-1534

REPRESENTING THE UNION:

Peter Swanson
Staff Attorney
Association of Flight Attendants-CWA
8011 34th Avenue S., Suite 220
Bloomington, MN 55425

APPEARING AS WITNESSES FOR THE EMPLOYER:

Julie Hagen Showers, Senior Vice President of Inflight Services (Retired)

APPEARING AS WITNESSES FOR THE UNION:

James Yung, Flight Attendant, AFA/Northwest Airlines Negotiation Committee Member

Robert Cannatelli, Flight Attendant, AFA President of LEC 92, Boston

BACKGROUND

Northwest Airlines, Inc., a wholly owned subsidiary of Delta Airlines (hereafter “the Employer” or “the Company”) and the Association of Flight Attendants-CWA (hereafter “the Union”) agreed to submit a dispute to the System Board of Adjustment (hereafter “the Board”). A hearing was held before the Board at the Union’s offices in Bloomington, Minnesota on January 19, 2010. During a pre-hearing conference the parties agreed that the issue was properly before the Board and should be decided on its merits.

At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions. Daniel M. McMahon of Metropolitan Court Reporters, Inc. recorded the proceedings.

The parties were provided the opportunity to submit closing arguments which were recorded by Mr. McMahon and forwarded to the Board in a timely manner. The record was closed as of March 1, 2010. An executive session of the Board was held via teleconference on April 1, 2010. The award in this case is based upon the evidence, testimony, and arguments put forward during the hearing and in the parties’ closing arguments.

STATEMENT OF THE FACTS

In April of 2009, the Company introduced a uniform change for the flight attendants of Northwest Airlines. The uniform had been designed by Richard Tyler for the flight attendants of Delta Air Lines and had been launched with Delta in 2006. As Northwest flight attendants joined the “Delta team” they were provided with core ensemble items from which to choose their personal uniform collection pieces and several optional uniform collection items that they could order at their own expense. (Ex. C2) The Company had moved to a common uniform and one uniform policy and image standard for all flight attendants.

One notable change in the uniforms was the lack of a serving garment for a flight attendant who worked “up front” in what had been referred to as World Business Class Service (Northwest) and what is currently referred to as Business Elite (Delta). As a Northwest flight attendant either a serving apron or a serving vest (Ex. U1) could be worn while providing service up front. Both garments were machine washable and were provided by the Company at no cost to the flight attendant. The Delta uniform standards provide for a “female serving garment” or “male apron” however neither of these items are allowed in the Business Elite or World Business Class cabins. (Ex.C1, pp. 8, 12, 14) There is no provision for a serving garment up front and flight attendants are required to wear a jacket, a vest, or a dress when serving up front. Only the blue dress is machine washable. The vest is not provided as part of the core ensemble items.

A grievance dated April 1, 2009 was filed by the Union claiming that the Company’s requirement that flight attendants working in Business Elite positions must wear their jacket, a vest, or a dress without supplying all of these garments violates Section 19 of the Agreement as well as past practice. As a remedy, the Union requests that the Company “furnish to every pre-merger Northwest Flight Attendant a vest free of charge or allow the flight attendants to wear their serving aprons in all classes of service”. (Ex. J2) The parties were unable to resolve their differences and the matter was submitted to arbitration.

STATEMENT OF THE ISSUE

The parties were unable to agree upon a statement of the issue and provided the Board with the authority to frame the issue. The Union proposed the following statement of the issue: Did the Company violate Section 19 of the contract and past practice when it instituted a change, i.e. the Richard Tyler Collection, in the flight uniform standards for Business Elite, a/k/a first class service? The Company proposed the following statement of the issue: Did the Company violate Section 19 of the Contract when it modified its uniform standards for Business Elite or first class service?

After reviewing the testimony and evidence as well as the collective bargaining agreement the Board determines that the issue is as stated below:

- Did the Company comply with the terms of Section 19 of the Agreement when it instituted a change in the uniform standards for Business Elite or first class service?
- If not, what is the appropriate remedy?

ANALYSIS

Applicable Contract Language

SECTION 19

UNIFORMS

A. General

Flight Attendants shall wear standard uniforms as prescribed by Company regulations at all times while on duty and at such other times as may be prescribed.

B. Basic Uniform Items

Flight Attendants shall be required to purchase the initial basic items of the standard uniform. The Company shall pay for all basic items of the uniform requiring replacement due to normal wear after the waiting periods described in paragraph F. of this Section, and/or due to a partial or complete uniform change.

1. Basic pieces of the uniform shall consist of the following for female Flight Attendants:

Item	Quantity
a. Coat	(1)

b. Choice of Ensembles (2)

Ensemble A:

Jacket (1)

Skirts and/or pants (any combination) (2)

Blouses (any combination of long or short sleeves) (3)

-or-

Ensemble B:

Dresses (2)

c. Serving Garment (2)

d. Belt (1)

2. Basic pieces of the uniform shall consist of the following for male Flight Attendants:

Item	Quantity
a. Coat	(1)
b. Ensemble	(2)
Jacket	(1)
Pants	(2)
Shirts (any combination of long sleeve, short sleeve or summer style)	(3)
Tie	(1)
c. Serving Garment	(2)
d. Belt	(1)

C. Optional Uniform Items

The Company shall make available, at the Flight Attendant's expense, the following optional items of the current female and male Flight Attendant uniform:

1. Sweater-long sleeve/vest
2. Muffler
3. Gloves
4. Short Sleeve Summer blouse (Female)
5. Epaulette Slides (Male)
6. Scarf (Female)

J. Joint Uniform Committee

Within six (6) months of the date of signing of this Agreement, the Vice President Inflight Services and the MEC President, or their designees, shall meet to establish a Joint Uniform Committee.

2. The Committee shall meet twice a year to review uniform related issues which shall include, but not be limited to the following:
 - c. Planned changes in any uniform items, color, material or style including the addition of uniform items;
 - d. Redesign of any existing uniform item(s) for safety, function and comfort;

Position of the Union

The Union contends that it is protecting a benefit that was provided to its members during a time of concessionary bargaining. While the Union lost both benefits and wages it was able to obtain the elimination of the international serving jacket (Ex. U2) The jacket was replaced by a washable serving garment and in exchange for that replacement the Union agreed to give up the previously provided international laundry expense. The Company has now replaced the washable serving garment with uniform pieces that are dry clean only and that are not as comfortable as the washable serving garment. The only comfortable option available to a flight attendant is the vest which is not provided by the Company. The Union maintains that this loss of the washable serving garment is contrary to the language in the Agreement and the deal that was negotiated by the parties for the successor to the “yellow book” agreement. (Ex. J5) The Union emphasizes that during negotiations for the “white book” the parties removed the international serving jacket from the standard uniform pieces, removed the modifier “domestic” from the “serving garment” listing and; added the Joint Uniform Committee in Section 19J. (Ex. J6) An additional change to the “white book” was the elimination of the international laundry expense contained at Section 4G. After the elimination of the international serving jacket, flight attendants working international first class service could wear a jacket or the serving garment, which was a butcher block apron. When the Company instituted the Richard Tyler Collection in April 2009 it eliminated the serving garment from international first class leaving only the option of a jacket or a dress unless the flight attendant purchased the vest. This is contrary to the understanding established at the negotiations for the elimination of the international serving jacket. Specifically the jacket would be replaced by a serving garment. Although Showers testified that the parties never discussed what would replace the serving jacket, she was not

actually present at the bargaining table when the jacket was discussed. The evolution of the language in the Agreement illustrates that the parties intended to expand the serving garment from being merely a domestic uniform piece to being also an international uniform piece. When viewed in conjunction with the \$100,000 savings realized by the Company due to the elimination of the jacket, it is clear that the Company was looking for cost savings and was willing to accommodate the change in the serving garment that had been sought by the flight attendants to accomplish such savings. The Company is now attempting through unilateral action to change the negotiated bargain by changing the uniform standards for international first class service, and in doing so is shifting the cost of uniform maintenance to the flight attendants thereby increasing the economic concessions that the Union made in negotiations. The Union asks the Board to find that flight attendants shall be permitted to wear their serving aprons in international Business Elite class service and that the Board order the Company to reimburse all flight attendants working in that class of service since April 1, 2009 for any dry cleaning expenses related to the cleaning of the vest, jacket or dress.

Position of the Company

The Company reminds the Board that the Union has the burden of proving that the Company violated a specific provision of the Agreement. In this matter the Company argues that it has the right to modify its image and uniform standards under Section 19A. The uniform standards for Business Elite and World Business Class do not allow a female serving garment or male apron and always require that an outer garment be worn during inflight service. The standards define an outer garment as being a blazer or reversible vest. (Ex. C1, pp. 6, 7, 11 and 14) Further clarification of these standards is found in Union Exhibit 4 which states that a “vest, blazer, or dress must be worn.” The Company asserts that there is no contract language that restricts the Company from establishing these requirements nor is there any language that guarantees flight attendants the right to use aprons in Business Elite or World Business Class and there is no language that requires the Company to provide a vest.

The Company maintains that Section 19A reserves to the Company broad control over its uniform and image standards. This provides the Company with flexibility to change and update its uniform and image standards without being forced to engage in bargaining which can often be

extremely protracted. While the Union has obtained some limits on the Company's broad discretion the Union has never negotiated any restrictions prohibiting the Company from requiring flight attendants to wear their uniform jacket in Business Elite or World Business Class nor has the Union ever negotiated language guaranteeing flight attendants the right to wear serving aprons in that class. The Company has complied with the Agreement in transitioning to the Richard Tyler Collection.

According to the Company, the language of the Agreement is clear and unambiguous and the Board should not consider either bargaining history or past practice. The Company reminds the Board that an arbitrator may not ignore clear contractual language, and may not legislate new language, since to do so would usurp the role of the labor organization and the employer.¹ Furthermore even where an agreement is silent, that silence must be interpreted as a management right reserved. Even if the Board were to find that an ambiguity exists, the evidence at the hearing did not clarify the ambiguous terms. If the Board were to consider bargaining history it must include the "manifested intent of the parties during negotiations and not the undisclosed intent."² Although Union negotiators expressed their disdain for the international serving jacket, there were no discussions as to what would happen on a going forward basis with respect to the use of serving garments. As Showers testified, no commitment was made in her presence that the flight attendants would not have to wear an international serving jacket in the future. Additionally, the Union's assertion that the elimination of the international laundry expense was tied to the elimination of the international serving jacket, was not supported by any testimony or evidence that this assertion was communicated to the Company during negotiations.

The Company also contends that there is no evidence of any past practice of the Company providing a vest to the flight attendants for free and reminds the Board that a past practice will not be given effect unless it is well established: unequivocal; clearly enunciated and acted upon; readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties.³ While it is true that the Company provided male flight attendants with a blue "serving vest" as shown in Union Exhibit 1 as a domestic serving garment

¹ Elkouri & Elkouri, *How Arbitration Works*, Fifth Edition, 1997, pages 470-472 and 482.

² Elkouri at page 502.

³ Elkouri at page 632.

that particular vest was replaced by a butcher style apron over ten years ago. This does not amount to a past practice but rather demonstrates the Company's compliance with the terms of the parties' Agreement. The fact that the Company moved from vests and smocks to aprons without any change in the language is evidence of the Company's prerogative to alter its uniforms. Additional evidence is the Company's decision to make the international serving jacket optional in 2000, six years before it was removed as a basic piece from the Agreement. Showers' predecessor had decided to relax the standards and allow flight attendants to wear the main cabin serving garments in first class on domestic flights and World Business Class on international flights.

The Company reminds the Board that it is empowered only to interpret and apply the provisions of the Agreement and given the testimony and evidence in this matter, there has been no contract violation. To support its position, the Company has provided the Board with several arbitral authorities. The Company asks that the grievance be denied in its entirety.

Discussion

In order for the Board to find that the language at Section 19 of the Agreement is clear and unambiguous as asserted by the Company, the Board would have to ignore the context in which the language was negotiated. Clear and unambiguous language on its own generally does not convey one unambiguous meaning without reference to the context in which the language arose. The use of rules in aid of contract interpretation do not depend upon any determination that there is an ambiguity but are used in determining what meanings are reasonably possible as well as in choosing among possible meanings. The presence or absence of ambiguous meaning in the agreement can only be established in light of all relevant information. The meaning of a writing can only be found by interpretation in the light of all the circumstances that reveal the sense in which the writer used the words. While some arbitrators will strictly construe that contract language on its face is sufficient to declare it as being clear and unambiguous there are other arbitrators who subscribe to the view that words have no absolute meaning and can only be understood in context.⁴ Strict construction is not appropriate where a legitimate claim has been

⁴ St. Antoine, Theodore J., ed., *The Common Law of the Workplace: the Views of Arbitrators*. BNA, Inc., Washington, D.C. , 2005, pp. 69-73.

made that the language appears as it does in the agreement as a result of negotiations that were intended to accomplish a desired outcome for one or both parties. The Company has emphasized that the parties often engage in protracted negotiations and as the testimony of both Showers and Yung illustrated the negotiations in this matter occurred over several years beginning with the Company's formal opening proposal as of December 1, 2004. During these negotiations: the Company declared bankruptcy in September of 2005; two tentative agreements were not ratified; Union representation changed from the Professional Flight Attendants Association to the Association of Flight Attendants; and the Union was given a concessionary target of 195 million dollars per year. (Tr. pp. 15-19) Prior negotiations beginning in September of 1996 resulted in a tentative agreement in April of 1999 that failed to ratify in August of 1999. (Tr. P. 82) The Board cannot ignore those protracted negotiations and rely simply on the stated language in one section of the Agreement. It must examine the situation of the parties at the time of the negotiations and view the circumstances as the parties viewed them to determine the meaning of all of the applicable language contained in Section 19 of the Agreement. The Board must consider all aspects of the parties' negotiations of the language as well as the practices that led to the changes in the Agreement and the practices that have occurred since the language was placed into the Agreement. Simply put, while the Company emphasizes that Section 19A clearly and unambiguously allows it to prescribe the standard uniforms, Section 19A does not stand alone but is in fact part of a Section that contains the negotiated agreement between the parties as to what is considered to be the basic pieces of the uniform.

As the Board reviews the history of the language of Section 19, it finds that the 1987-1993 Agreement (Ex. J3) did not contain a listing of the basic uniform pieces but rather provided that the "Company regulations will describe which items are to be considered 'basic'". In the 1993-1996 Agreement (Ex. J4) the parties set forth the basic pieces of the uniform including a domestic serving jacket or smock and an international serving jacket. In the 2000-2005 Agreement the domestic serving jacket is now called a domestic serving garment and remains a basic uniform piece as does the international serving jacket. (Ex. J5) Also in that Agreement is a provision at Section 4G for the reimbursement of reasonable and necessary laundry expenses for flight attendants engaged in international flying. The language of 4G disappears in the subsequent Tentative Agreement (Ex. J6) and the new 4G is entitled *Passports and Visas* as was

Section 4H in the prior Agreement. Clearly the laundry reimbursement language was deleted and Section 4 was reorganized. That same Agreement no longer contains a domestic serving garment and an international serving jacket but simply provides for a serving garment as a basic uniform piece. While the Company would like the Board to find that the change in terminology is insignificant, it cannot reach such a conclusion. Collective bargaining agreements evolve over the years of the relationship between the parties and each change carries with it some meaning. The testimony of Yung was compelling. He was present during the negotiations on the language in dispute. He emphasized that the international serving jacket was “really disliked” by the flight attendants. “It was a cumbersome jacket that doesn’t breathe well. It was very hot, really hard to work in...It wasn’t something that you throw in the washing machine”. He further testified that if the international serving jacket was eliminated the basic serving apron would be worn up front. (Tr. pp. 20-21) While Showers maintained that there was no discussion in negotiations and never any commitment as to what would replace the international serving jacket (Tr. p. 98) she could not confirm that she was actually present during the discussions of the matter. While the Board appreciates that Company representatives Eric Edmundson, Renee Raming and Andrea Johnson were involved in negotiations and provided briefings to Showers (Tr. pp. 80-81), it is impossible to know if their third party briefings were accurate. As stated by Arbitrator Richman, *Where one witness testifies of his own knowledge while another testifies as to what a third person told him, it is reasonable to credit the direct testimony over the hearsay to resolve a conflict.*⁵

The removal of the word “domestic” as a modifier of the serving garment as well as the deletion of the international serving jacket leaves only one interpretation: a serving garment will be provided to a flight attendant as a basic uniform piece regardless of what class of service is being provided. The Company’s provision of a serving garment that can only be worn in the main cabin ignores the fact that a flight attendant is entitled to a serving garment as a basic uniform piece regardless of which cabin they are working. While the Company may not want the flight attendants to wear the apron in World Business Class or Business Elite, that is not sufficient reason for the Company to say it has fulfilled its obligation under the Agreement. The Company cannot simply point to Section 19A and state that it has a right to prescribe the uniform

⁵ T. J. Maxx, 113 LA 533, 537 (1999)

standards and then ignore the provisions at Section 19B that specifically states that the “Basic pieces of the uniform shall consist of” two (2) serving garments. Nor can the Company claim that the ensemble jackets and dresses fulfill the obligation to provide a serving garment. As is clearly stated at Section 19B subsections 1b and 2b, those are basic items that must be provided in addition to the serving garment found at subsections 1c and 2c. The Company may prescribe what the serving garment is but it must also provide it as a basic uniform piece under the terms of the Agreement. This finding is consistent with the conclusion reached by Arbitrator Richard Bloch in *Northwest Airlines and International Brotherhood of Teamsters, Local 2000, Case 02-207 FA/IBT-NWA* (March 6, 2003 at page 3) that Section 19A of the labor agreement providing that “Flight Attendants shall wear standard uniforms as prescribed by the Company regulations at all times while on duty and at such other times as may be prescribed...reflects the broad understanding that dress policy remains the prerogative of the company, except where otherwise explicitly stated”. In this matter, Section 19A is modified by the language at Section 19B which explicitly states at Sections 1 and 2 that the basic pieces of the uniform “...shall consist of the following...” and specifies at subsections 1c and 2c that the serving garment is one of the basic pieces of the standard uniform.

The Board may not ignore the negotiations history between the parties that resulted in the elimination of the international serving jacket as part of the previously discussed protracted concessionary negotiations. While the Company is correct that no direct linkage was shown between the elimination of the international serving jacket and the elimination of the international laundry expenses found at Section 4G of the yellow book, the fact remains that the Union was unhappy with the international serving jacket and that a practice had evolved that permitted the wearing of the domestic serving garment in the up front cabin. At the time that the jacket was eliminated from the Agreement, the practice had been in place for several years and continued until the introduction of the Richard Tyler collection. Whether or not the Union would have been less likely to agree to the elimination of the laundry expenses if the jacket had remained since it was a serving garment that required cleaning on a regular basis is not relevant to the determination in this matter. What is relevant however are the additional changes that were made to Section 19B.

The Company's claim that there was no discussion of what garment would replace the international serving jacket fails in light of the fact that another change was made to Section 19B of the Agreement: the elimination of the word "domestic" as a modifier to serving garment at Subsections 1c and 2c. When these two changes are viewed together it is clear that the parties understood that the elimination of the international serving jacket would be accompanied by the inclusion of a garment that had previously been designated as specific only to domestic as now being appropriate for all. The inclusion of the previously domestic only serving garment was consistent with the practice that had been put in place on an optional basis in 2000 by Showers' predecessor (Tr. p. 95) and that continued to be the practice up until March of 2009. (Testimony of Cannatelli, Tr. p. 59)

The Company's contention that Section 19A clearly and unambiguously allows it to prescribe the standard uniforms for flight attendants is correct however it must do so within the limitations set forth at Section 19B. Section 19B, subsections 1c and 2c provide for a Serving Garment that is in addition to the items provided in subsections 1b and 2b. As the negotiations for the Agreement illustrated, that prescribed serving garment has been the same for all cabins for several years prior to and after the negotiations. That is not to say that the Company may not prescribe a different serving garment for the up front cabin but if it is to do so, it must provide that garment as part of the basic uniform pieces and it must be in addition to the pieces provided at subsections 1b and 2b.

CONCLUSION

Based on all of the foregoing and for the reasons set forth in the Analysis above, the System Board of Adjustment concludes that the Company did not comply with the terms of Section 19 of the Agreement when it instituted a change in the uniform standards for Business Elite or first class service.

Given the fact that the Company has forbidden the currently provided serving garment in Business Elite (Ex. U3, pp. 58 and 64) and has made no provision for a serving garment in Business Elite the Board hereby orders the Company to adhere to the terms and conditions of Section 19B, subsections 1c and 2c and provide all flight attendants with a serving garment that may be worn in Business Elite.

As provided at Section 19A of the Agreement the Company may prescribe the uniform item that will fulfill the basic uniform item entitled "Serving Garment" in Section 19B. If the Company determines that the optional vest shown at pages 19 and 24 of Company Exhibit 2 and approved for wear in Business Elite as shown on Union Exhibit 4 is to be the serving garment as identified in Section 19B subsections 1c and 2c, then all flight attendants who have previously purchased that vest shall be reimbursed for all costs associated with such purchase.

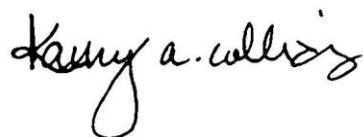
Alternatively, the Company may prescribe that the previously prohibited serving garment may be worn in Business Elite or the Company may prescribe and provide an entirely different item to fulfill the requirements of a serving garment for wear in Business Elite. Finally, the Board recognizes that Flight Attendants may have incurred cleaning costs directly associated with the wearing of the dress, vest, or jacket as a serving garment in Business Elite for the time period beginning with the launch of the Richard Tyler Collection in April 2009 until such time as a serving garment is provided however there was no evidence provided to the Board that would enable it to determine an appropriate calculation of such costs and therefore will remand that matter to the parties for further discussion and resolution. If the matter cannot be resolved within sixty days of the issuance of this decision then the parties shall submit that matter to the System Board for a final determination.

Respectfully submitted on May 7, 2010 by



Sylvia Skratek, Neutral Board Member

Concurring



Kathy Collias, Union Board Member

Dissenting (please see following pages)

David Driscoll, Company Board Member