In the Matter of the Arbitration Between

SOUTHWEST AIRLINES INC

Grievance SWA-3590 et. al

AND

AIRCRAFT MECHANICS
FRATERNAL ASSOCIATION (AMFA)

Hearing held May 6, 7, 18 and 19, 2015

Before Richard I. Bloch, Esq.

APPEARANCES

For the Union
Nick Granath, Esq.
Lucas K. Middlebrook, Esq.

For the Company
Thomas E. Reinert, Esq.
Kevin Minchey, Esq.

OPINION

Facts

At Southwest Airlines facilities, when an aircraft needs to be moved on the ground from one location to another, there are classifications (in addition to pilots) who sit in the cockpit, configure the aircraft as required and ride with it to have the plane towed[1] to the new location. The process of controlling the aircraft during its movement, powering the aircraft APU and hydraulics, configuring

[1] In all cases, a tug moves the plane. "Taxiing," on the other hand, denotes a plane moving on its own power: That is not involved in this case. (Tr., 84:5.)

radios and communicating with the tug operator and/or tower is referred to by the parties, and herein, as "brake riding." The current matter arises under the CBA's Article 2 , the "Scope Clause", presenting the question of under what circumstances the Company must assign brake riding to Aircraft Maintenance Technicians ("Mechanics" or, occasionally "AMTs") at Southwest.

There is no dispute that, while the Company frequently assigns brake riding to Mechanics, it has also assigned Pilots, Ramp and other Ground Operations supervisors, as well as outside vendors, to the same function, on occasion, at various stations. In response, the Union has filed some 160 grievances during a time period between 2013 and 2015.[2] The parties were unable to resolve the underlying question and, accordingly, submitted it for resolution by arbitration. The matter was heard in Dallas, Texas on May 6, 7, 18 and 19, 2015. At that time, witnesses were presented and made available for cross examination, a verbatim record was kept and each side presented testimonial and documentary evidence. Following the close of the hearings, the parties submitted post-hearing briefs.

[2] Co. Ex. 2.

Issue[3]

Does the Company violate the Collective Bargaining Agreement by assigning non-bargaining unit employees, under certain circumstances, to perform brake riding functions?

Union Position

The Union does not claim exclusive jurisdiction of brake riding. It concedes there are certain situations -- when bargaining unit Mechanics are not staffed at a location or not present on a shift, for example -- when other personnel may be assigned the work duties at issue. It contends, however, that the history of assignments, both in terms of negotiated agreements, an arbitration resolution, and past practice, requires the conclusion that brake riding, "at AMFA staffed stations and subject to certain accepted limitations"[4], must remain within the Mechanic classification. By allowing Ground Operations employees to perform these tasks and by contracting out, or "blending", the work with outside vendors, it is claimed, the Company violates the CBA. As remedy, the Union requests that the Company be ordered to cease and desist these assignments at all Company locations and that it be required to compensate affected AMTs at a rate of four hours per offense.[5]

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[3] The parties differ as to the precise scope and appropriate characterization of the issue, as will be discussed in greater detail below.

[4] Union Closing brief, p.7.

[5] See Union Ex. 14, The AMFA Grievance Form in Case No. SWA-3590. This "lead" Grievance, is relatively narrow, complaining that "The Company is outsourcing the brakeriding portion of our

Company Position

To prevail in this Scope case, the Company argues, the Union must prove that the work at issue been exclusively relegated to Mechanic personnel. However, says the Company, neither the CBA nor past practice supports the conclusion that brake riding is exclusively the work of AMFA covered personnel. Absent such showing, there is no violation in assigning brake riding tasks to others, nor can the Union prevail on the claim that performance of the work by outside vendors amounts either to improper subcontracting or to "blended" work under the CBA. It requests that the grievance be denied.

Relevant Contract Provisions

ARTICLE 2—SCOPE OF THE AGREEMENT

* * *

2. This Agreement extends to and covers all Employees covered in Article 4 who normally and regularly spend a majority of their time in the performance of covered work. All aircraft maintenance work, plan maintenance work and ground equipment maintenance work is recognized as

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line maintenance work responsibilities to a third party, also causing a blended work environment." This, it says, violates Article 2(11) which defines "Blending" as "maintenance and repair work performed by persons other than Employees covered by this Agreement at locations where Southwest maintenance personnel are stationed and on-duty and such work is comprised of tasks customarily performed by Mechanics on the Southwest Airlines Co. System Seniority List". It is clear from the record, however, that the objection is substantially broader than outsourcing, which generally connotes subcontracting to a third party. While the Union does, in fact, protest brake riding by vendors, it also challenges assignments to other Southwest personnel outside the ATM bargaining unit. Both parties address these contentions. For purposes of this Opinion, both scenarios will be reviewed.

coming within the jurisdiction of the Union and shall be performed by Employees subject to this Agreement unless otherwise provided in this Article.

3. The Company shall not contract out work when such contracting out results, or will result, in a reduction in force for any Employee covered by this Agreement. The parties agree that the Company may (a) continue to contract out work heretofore customarily contracted out, subject to this Article and the parties' subsequent agreements to increase work done in-house, (b) return equipment parts or assemblies to the manufacturer or to a manufacturer-approved repair station for repair or replacement, (c) contract out any work when the Company's facilities and equipment are not sufficient, or qualified personnel are not available, or where Employees available do not have the experience and ability to perform the work required, and (d) contract out work at any location where such work has not heretofore been performed by unit Employees on a regular basis, or at any location where the Company has not heretofore maintained permanent maintenance facilities or Employees. If the Company has need for contracting out work presently performed by Employees covered by this Agreement, the Company will so notify the Union by written notice on a form agreed on by the parties. The Company will notify the Union of new or additional subcontracting in writing on a form agreed on by the parties.

i. If after the effective date of this Agreement, the Union believes the Company is abusing the right to contract out, provided in this Article, it shall notify the Company in writing of such belief not later than five (5) days after the receipt of such notification.
ii. The Company and the Union shall proceed to resolve the issue up to and including the final and binding arbitration decision.

* * *

11. The Company shall not engage in blended work without the written consent of the Union's designee. The consent shall be based upon the criteria set forth in Article 2 paragraph 3. For

> purposes of this Agreement, the term "blended work" shall mean maintenance and repair work performed by persons other than Employees covered by this Agreement at locations where Southwest maintenance personnel are stationed and on-duty and such work is comprised of tasks customarily performed by Mechanics on the Southwest Airlines Co. System Seniority List.

> ARTICLE 4—CLASSIFICATIONS
> 4. MECHANIC—AIRCRAFT
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> The work of the Mechanic shall include all work generally recognized as Mechanic's work performed by the Company in its airline operations in and about Company shops, maintenance bases and maintenance stations, including but not limited to checks, dismantling, overhauling, repairing, fabricating, assembling, welding, erecting and painting all parts of aircraft, aircraft engines, radio equipment, instruments, electrical systems, heating systems, hydraulic systems and machine tool work in connection therewith. Mechanics must hold valid Federal licenses as required by Federal Law for their assignment.

Analysis

In this jurisdictional dispute, the parties agree that brake riding an aircraft for the purpose of repositioning *for maintenance purposes* is exclusively Mechanics' work. But, as will be noted and discussed below, the function of repositioning an aircraft solely for operational purposes, such as gate changes having nothing to do with maintenance, has long been shared with supervisory staff and pilots, among others, often in situations where, for one reason or another, Mechanics were unavailable. That fact -- the sharing of brake riding -- is

not in dispute; the Union claims, however, that these were special accommodations absent which Mechanics must receive the work.

The Company proposes that the jurisdictional question in this case may be resolved by reference to a maintenance/operational distinction. When the aircraft is being moved for maintenance purposes, says the Company, it is appropriate (and contractually mandated) that Mechanics to be in control. But, merely repositioning a plane for purposes unrelated to maintenance[6] may properly be done by other trained employees outside the Mechanic classification, says the Company:

> The reason that Mechanics have performed brake riding on Southwest is that when Technical Operations takes control of an aircraft, and until it relinquishes control, it makes sense for technical operations employees to be responsible for moving the aircraft from the terminal to maintenance hangar and back… When Ground Operations is responsible for moving an aircraft for service, between gates or from a parking pad to the terminal, there is no reason for Mechanics to be involved, other than if they are just the most convenient and available qualified employees to perform the task. In the Company's view, the historical practice in the stations where Mechanics are staffed is that Mechanics perform most maintenance moves, but only some operational moves.[7]

The Union, for its part, directs the Arbitrator's attention to widespread practices of "customarily" assigning ATMs to brake ride, without regard to

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[6] The Company observes that Article IV, ¶4 requires, among other things, that Mechanics hold federal licenses for their assignments. That one need not be licensed in this manner to brake ride is not, in and of itself, dispositive of the fact that the task is non-maintenance in nature. More compelling is the fact that it is in no way related to maintenance and, for that reason, can be shared with other Southwest employees such as pilots and supervisory personnel.

[7] Company Closing brief, p. 31, citations omitted.

maintenance/operational distractions. AMFA claims "ownership," or at least the right of first refusal, on certain, but not all, brake riding assignments. It says:

> Importantly, the issue is *not* whether all brake riding is "exclusive" work to AMFA. The proper issue is framed from grievance and the Union's case: It is whether brake riding—to the *extent* of the scope of the lead grievance, ie at AMFA staffed stations, subject to certain accepted limitations—is *covered* work. Covered work is the contractual measure in Article II, ¶2—not exclusivity to the entire system or craft.[8]

The differing approaches to the jurisdictional question in general, and "exclusivity" in particular, reflect markedly different approaches to the essential concept of work jurisdiction under this negotiated CBA. One turns, first, therefore, to the contract.

Article 2 and Exclusivity

Jurisdiction over an area of work is created through the bargaining process. This Company and Union have recorded their agreement on the protected scope of Mechanic work in Article 2 of the CBA--the "Scope" clause. Aircraft Mechanic jurisdiction is described as follows:

> All aircraft maintenance work, plant maintenance work and ground equipment maintenance work is recognized as coming within the jurisdiction of the Union and shall be performed by Employees subject to this Agreement unless otherwise provided in this Article.[9]

[8] Union Post Hearing brief pgs. 7-8.
[9] Article 2,¶2, see *supra*, p. 5.

By this language, the parties agree the intended scope of protection extends to "All maintenance" work in the listed areas. Work that is non-maintenance in nature may not be claimed as being within the Mechanics' jurisdiction. The agreement on that scope is unambiguous. The unavoidable impact of this language is that, from a purely contractual standpoint, if a task is to be considered "owned" by the ATMs, it must be maintenance related.

The Union contends, however, that, by practice, local understandings and arbitration fiat, the more limited scope of Article 2 has been expanded. Where, as here, Mechanics are frequently, even "customarily," assigned brake riding in certain circumstances ("at AMFA staffed stations, subject to certain accepted limitations"[10]) those particular assignments, albeit not related to maintenance, must be considered "covered work" and therefore protected. The test, according to the Union, is:

> Whether *that* brake riding work that the parties agree has in the past been done by Union labor and is now subcontracted out to third party vendors is *covered* work that 'belongs' to AMFA by virtue of a specific grant to it in the CBA's scope provision, Article 2, ie the work 'recognition' clause that deems [a]ll aircraft maintenance work…recognized as coming within the jurisdiction of the Union.[11]

Summarizing the two approaches: The Company reads Article 2, ¶2 as defining "maintenance" work as "covered" and exclusively reserved to bargaining unit ATMs. Non-maintenance tasks involving repositioning, it argues, cannot

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[10] See n.4, *supra*, p.3.
[11] Union Closing brief, p. 7.

properly be claimed as exclusive to the Union. AMFA, for its part, contends that work "customarily" performed by Mechanics, including non-maintenance tasks must, by virtue of past practice, necessarily be considered bargaining unit work so long as it is performed under the same circumstances in which it has been customarily assigned.

For the reasons that follow, the finding is that the Union's arguments surrounding the interpretation and application of the Scope clause lack force and that the grievance must, accordingly, be denied. Article 2 establishes the nexus to "maintenance" as the *sine qua non* of Mechanics' jurisdiction and weighs heavily in support of the Company's argument in this case. Article 2, ¶2 begins with the admonition that "this Agreement extends to and covers all Employees covered in Article 4 who normally and regularly spend the majority of their work time in the performance of covered work….." The Union correctly observes that, inherent in the concept of "covered work" is the notion of job security.[12] Designating a particular task -- here, brake riding -- as "covered work," however, means that, for purposes of job security, it is work that must be performed exclusively by the classification in question. There would be little force to this agreement on job protection if the assignment by management were discretionary, rather than mandatory. It is true, as the Union argues, that the precise detailing of each and every function to be covered under the concept of covered tasks has not been listed in this labor agreement; it rarely is in any CBA. Says the Union:

[12] See Union Closing brief, p. 31, which references Article I, reflecting a "purpose" of the labor agreement as being "the continuation of employment."

> Just as with most if not all labor contracts, the discrete tasks or details of tasks that make up covered work are not delineated with exhaustive specificity in the AMFA contract. Much is implied by general language and by practice."[13]

But the Scope clause is explicit in broadly identifying "All aircraft *maintenance* work, plant *maintenance* work and ground equipment *maintenance* work" as reserved to ATMs. Nothing in Article 2 expands its scope beyond work that is maintenance related.

It is true that practice may, in certain situations, enhance and expand written negotiated commitments. If a particular practice is sufficiently strong, unbroken, identifiable and, in general, capable of being regarded as a manifestation of the parties' joint intent with respect to future conduct, it will be accepted, in the appropriate case as rising to the level of a written agreement.

The practice in this case shows that *some* brake riding has been assigned to Mechanics some of the time; and that, in certain locations, *all* brake riding has been assigned to them some of the time. But it does not show that all brake riding has been so assigned all of the time. The record here demonstrates that brake riding for non-maintenance tasks has been customarily performed not only by Mechanics, but also employees outside the bargaining unit, including pilots and ground supervisors, as well as third party vendors who have been routinely assigned, around the system, to move aircraft for operational repositioning. According to the record, many of these assignments have occurred in stations

[13] Union Closing brief, p. 32.

that staff no maintenance employees or, alternatively, in situations where, for one reason or another, a Mechanic was not reasonably available at the time of the need for repositioning. The local understandings that have been reached, from time to time, serve to clarify the locally agreed-upon needs and priorities in terms of assignment, often giving Mechanics at least a right of first refusal if they are available to do the work. But these accommodations did not serve to re-define repositioning as maintenance work. Nothing has modified the contractual dictates of Article 2, which require that, for the Mechanic to "own" the assignment, it must be maintenance related. But, says the Union :

> And *practice* makes work that is *related* to "aircraft maintenance" and performed by covered employees, that is AMFA mechanics, their covered work.[14]

This claim misses the point. If work is, in fact, "related" to 'aircraft maintenance', " that work is AMFA Mechanics' covered work. That result, however, stems not from "practice," but from the parties 'agreement in Article 2. Periodic, even "customary" assignments to non-maintenance functions do not necessarily cause those tasks to somehow become "aircraft maintenance" related,

The Sauter Case

The Union contends, however, that the terms of a 2001 System Board of Adjustment Award[15] codified the protection sought here. The grievance in that

[14] Union Closing brief, p. 32, italics in the original.
[15] Co. Ex. 6. The Company refers to it, instead, as a "grievance settlement."

particular case was filed August 3, 2001[16] by Mechanic Ken Sauter, the Grievant, stating:

> It has been brought to their attention that the Ramp Personnel are being trained to ride brakes during push back or relocation of a/c. Training took place in HOU on Wednesday, August 1, 2001.[17]

As remedy, the grievance sought, among other things, an agreement that, "no ramp will Ride Brakes at station with MX now or in the future." Management responded:

> It is the Maintenance Department's intention in cooperation with Ground Operations Department to continue training G.O. Supervisors to assist in the brake-riding, push back or relocation of aircraft. This procedure has been established to ensure timeliness in aircraft utilization across the entire system when the need arises. This grievance is respectfully denied.[18]

The matter was subsequently forwarded to the SWA/IBT[19] System Board of Adjustment. A four-person Board issued an October 2001 "Disposition" on the grievance, entitled "Ramp Riding Brakes,"[20] which stated:

> At locations and shifts where there are no SWA Mechanics, Ramp Supervision Personnel may ride the brakes for repositioning. However, when & if such stations are manned by SWA Mechanics, this work will be done by SWA Mechanics.
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> Per Article II Para 3.

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[16] See Case No. SWA-1170 (Co. Ex. 6.)
[17] *Id.*, p. 2.
[18] *Id.*
[19] The International Brotherhood of Teamsters was, at that time, representing the Mechanics bargaining unit.
[20] Co. Ex. 6.

> The Company will continue to train Ground Operations Supervisor from stations without Southwest Mechanics to brake ride. It is mutually agreed that when & if Mechanics are stationed that SWA Mechanics will perform said duties. Only exception is if no Mechanic available on a particular shift, then Grd Ops Supr will assist in the movement of the aircrafts.[21]

The first paragraph states that Ramp supervisors may ride brakes at locations and on shifts where there are no Southwest Mechanics, with the unqualified admonition that, at the point such stations are staffed by that classification, the work will be that of Mechanics. The second paragraph, however, modifies the staffing-based prohibition of Paragraph 1. That language reflects mutual agreement that the work will be performed by Mechanics, (in circumstances outlined by the first paragraph), but with the added proviso that "if no Mechanic [is] *available* on a particular shift," Ground Operations Supervisors may assist in repositioning. This exception clearly reflects the parties' agreement that, notwithstanding the staffing and, indeed, possible assignments of Mechanics to a particular shift, there may be situations where those bargaining unit members are, for one reason or another, not "available," for the assignment, in which case non-bargaining unit supervisors may be assigned. This Board Disposition contains no global prohibition on the assignment of non-Mechanics. Rather, it reflects a compromise that reflects these parties' practice of in recognizing the Mechanics' ownership of the task in some circumstances, but

[21] *Id.* The above-quoted Disposition is in certain, but not all, respects clear. The general content of the Disposition is directed to circumstances under which Ramp Supervisors (also referred to in the second paragraph as Ground Operations Supervisors) may ride brakes. Article 2, ¶3, on the other hand, deals with contracting out work to third party vendors.

accepting assignments outside the bargaining unit in cases where there are no Mechanics staffed at a particular station[22] or where they may be staffed, but are unavailable on a particular shift.[23]

Two observations that may be made of this are: (1) The resulting agreement reflects the intent of both parties to attempt to work cooperatively, to whatever extent possible, to accommodate work place necessities, but (2) from a contractual standpoint, nothing in that negotiated resolution reflects an existing right on the part of Mechanics to own non-maintenance related brake riding exclusively, nor does it create such right. The "availability" proviso may reasonably be read as a "first refusal" option for ATMs, but it also connotes a situation where, because a Mechanic is on-shift, but steeped in maintenance work, that employee may properly be considered unavailable, such that, by agreement, the task will be assigned elsewhere. That arrangement, while entirely sensible, in no way settles the issue on exclusive jurisdiction throughout the Southwest system. It may, with equal force, be seen as the parties' agreed on rules as to the orderly management of a shared task.

Whatever the underlying intent, the Disposition is not one that survived subsequent labor agreements. This conclusion rests both on the bargaining history of later contracts and, significantly, on the practice of the parties in more recent years. That practice, acknowledged and relied upon heavily by both

[22] See ¶1 of the Disposition.
[23] See ¶2.

parties in this case, reflects, in the final analysis, a continuation of the same cooperative intent, but also acceptance of the premise that, in practice, brake riding related to operational needs, not maintenance, is a shared function.

Following resolution of Grievance SWA-1170,, and through subsequent contracts, the explicit Scope clause language referring to "maintenance" tasks has remained unchanged. There is no evidence the parties sought to incorporate into Article 2 the cooperative practices and shared assignments. Significantly, practices of shared brake riding continued. There were open and continuing examples of widely varying practices with respect to brake riding by Operations personnel.[24] In the overall, to the extent practices exist, they are reasonably characterized as parties at local stations resolving brake riding issues on the basis of which trained personnel are available to perform the task.[25] While, at certain stations, Operations related brake riding would be performed by Mechanics, sometimes on a first refusal basis[26], it is clear enough that the overall understanding was to use whatever trained personnel would be "available" to

[24] There are currently some 250 ramp agent supervisors, operations agent supervisors, customer service agent supervisors, and other assistant station managers and station managers qualified to ride brakes. (See Company Exhibit 20, Tr., p. 426.)

[25] See the testimony of Company witness Tompkins, who stated that with the exception of 14 maintenance stations out of 96, it is the ramp personnel that performs operational brake riding moves, over the past several decades. (Tr., pgs. 375-376.)

[26] While the evidence on this is not entirely clear, it appears that, in Philadelphia, at least, in 2012, the parties jointly understood the obligation to check first on Mechanic availability, turning then, if necessary, to Ramp & Ops personnel, with the last resort being an outside vendor. Increasing Mechanic staffing was not an option there and, as indicated earlier, is not here sought as a remedy. (See Union Ex. 10.)

keep the operation going.[27] The Fort Lauderdale station, for example, has been staffed with Mechanics since 2012, but according to the evidence, ramp supervisors have routinely, even exclusively, performed brake riding at all times , without objection prior to the 2015 grievance.[28] The evidence, taken in its entirety, does not support the Union's claim that particular practices associated with operational brake ride assignments must be regarded as a jurisdictional mandate.

Blended Work and Outsourcing

These findings require the conclusion that the Union's claims concerning blended work must also be denied. The labor agreement defines blended work as an external vendor being brought in house to perform "maintenance and repair work" side by side with the bargaining unit.[29] The intended goal of this provision is to protect the jurisdiction of the worker. But the protection in all cases proceeds on the assumption that the work being performed by the bargaining unit employee is, in fact, that employee's work. The answer to whether it is, or is

[27] See the testimony of Jack James, a 31-year employee at the airline who testified to this observations concerning brake riding:

> When I worked Dallas line, as Mechanics, we rode brakes, de-iced, and fueled. But I mean, in a pinch, we would use a supervisor. I rode brakes as a coordinator. Pilots rode brakes. It was whoever—whoever—we could get it done.

This was important, he testified:

> To take care of our customers…we did whatever we had—we had to do to move the airplanes (At p. 441.)

[28] See Tr., pgs. 392-394.

[29] See Art.2,(11), *supra*, p.5-6.

not, is contained in the Scope clause which, for the reasons set forth above, does not extend beyond maintenance related duties. The finding, then, is that the performance by vendors of brake riding for the purpose of operational repositioning, as distinguished from maintenance related duties, does not amount to a violation of the prohibition against blending.

In summary, the bargained Scope language of the labor agreement is clear: The jurisdiction of the Mechanic classification under this CBA has been drawn as having a necessary relationship to maintenance. All maintenance related brake riding has been, and is to be, done by Mechanics. There have been, and are, numerous situations where brake riding is performed by ATM's in non-maintenance operational situations such as repositioning. Over the years, the parties have worked together to avoid recurring disputes as to precisely which classifications should be assigned in such situations. These various local practices of accommodation were both sensible and consistent with the cooperative relationship between this Union and Company and their history of accommodating each other in order to "pitch in to get the job done."[30] They did not, however, serve to redefine a Scope clause that has consistently defined the mandatory jurisdiction of Mechanics as being maintenance related. The practice, to the extent the various local arrangements may be so characterized, reflects the performance of brake riding by various classifications as a shared task. Over time, particularly when the needs of the Company have expanded, it is at least

[30] See Company Closing brief, p. 1., Union Closing brief, p. 54 *et seq*.

understandable, indeed, predictable, that some mixed practices would engender misunderstandings and potential disputes, as this one has. The contractual reality, however, is that even where, as here, a specific task is "customarily" assigned a classification, that fact may not, in and of itself, reflect an intention on the part of the bargaining parties to confer ownership. To so hold would be to ignore both the evidence of consistent sharing and the essential part of the Scope clause that ties Mechanics' jurisdiction to the requirement that their protected tasks be maintenance related. Operational-based brake riding is not. For these reasons, the grievance must be denied.

AWARD

The grievance is denied.

RICHARD I. BLOCH, Esq.

Date: Oct. 19, 2015