

P.L.B. No. 6312
Case No. 269
Award No. 269

**PUBLIC LAW BOARD
NO. 6312**

**Parties to
Dispute:**

**UNITED TRANSPORTATION UNION
AS THE REPRESENTATIVE OF
G.W. BAXTER**

Vs.

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)
SYSTEM DOCKET NO. OC-UTU-SD-2055**

**Statement of
Claim:**

Portland Crew Base Conductor G. W. Baxter claiming eight (8) hours for the Carrier's violation of Rule 19(a) of the parties' agreement at his away-from-home crew base, Spokane, Washington on March 15, 2005, for not being provided a hotel room in a timely manner, i.e., it was not provided until one (1) hour and fifteen (15) minutes after he went off duty.

BACKGROUND FACTS

The record shows that the instant claim, originally submitted under date of March 15, 2005, and, during the handling on the Property, changed to March 19, 2005, involves Claimant's layover point at Spokane, Washington. Claimant went off duty at Spokane on March 19, 2005, at 1:45 a.m. Spokane was his layover point before working back to his home crew base at Portland, Oregon. Because Claimant was not provided lodging until 3:00 a.m. on March 19, 2005, he requested continuous time payment from the time he reported at Portland, Oregon, until he was provided lodging at Spokane. After the claim was denied, the Organization submitted

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an appeal, which appeal was denied on the Property. The matter now stands properly before this Board for adjudication subject to the Carrier's claim of a procedural flaw under Rule 24.

Before the Board, the Organization asserts that under Rule 19(a), the Parties have contemplated that lodging to be provided by the Carrier will be provided in a timely manner. A wait of one hour and fifteen minutes, as Claimant was subjected to, the Organization argues, cannot be considered timely. In this regard, the Organization relies on the Federal Railroad Administration's (FRA) December 30, 1990 Memorandum, "suitable food and lodging at designated terminals; hours of service act interpretation" and the interpretation therein that, for purposes of the Hours of Service Act, a reasonable period of time for lodging to be provided is 30 minutes. The Organization proffers that it would be unreasonable to believe that the Carrier can hold an employee at a layover point with the hours of service clock "ticking" despite the fact that the time clock for pay purposes has "stopped because the employee is supposed to be taking rest ... [but] cannot due to a lack of room at the rest facility, which the Carrier is required to provide in accordance with Rule 19(a)." According to the Organization, being held at a layover point without pay was a major concession on the part of employees in return for which the Carrier is only obligated to provide a hotel room and a small meal allowance. An appropriate remedy, the Organization insists, is based on the "minimum day rule."

According to the Carrier, a procedural flaw exist in the case, because under Rule 24, the claim was not filed within 30 days. Additionally, the Carrier asserts that the Organization has

made only the bare assertion that Claimant had to wait one hour and fifteen minutes for access to his lodging and this assertion by itself does not constitute proof sufficient to satisfy the Organization's burden of proof. Moreover, the Carrier asserts that Rule 19(a) mandates that suitable lodging be provided by the Carrier at its expense, which obligation the Carrier asserts was satisfied on the date in question. No part of Rule 19 or any other rule in the Controlling Agreement, according to the Carrier, stands for the proposition that the Carrier is liable if "motel personnel" do not have "a room ready for an employee immediately upon the employee's arrival." The Carrier reminds the Board it does not have power to rewrite the Parties' Labor Agreement. Finally, the Carrier claims that the FRA memorandum of December 30, 1990 cannot be considered applicable to the instant case.

OPINION OF THE BOARD

The Board finds that the Carrier's reliance on the alleged procedural flaw was made for the first time on September 5, 2006, when the Carrier's Director of Labor Relations denied the claim. Thus, the Carrier made no mention of the alleged procedural flaw in the initial denial of May 11, 2005, and did not assert the procedural flaw in its position in the joint submission that the Parties fashioned on May 18, 2006. Under these circumstances, the Board finds that the Carrier waived its reliance on any claim of a procedural flaw, which is in keeping with the

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traditional arbitral rule that such claims should be raised at the earliest opportunity. Moreover, the Board notes that the record is devoid of any evidence of prejudice having been visited on the Carrier by way of this asserted procedural flaw. Consequently, the Board will treat the merits of the claim.

As to the merits of the claim, the Board is mindful of the limitations on its jurisdiction and its inability to rewrite the Parties' Agreement. This observation, however, does not detract from the Board's responsibility to interpret the Parties' Agreement, as it must do in this case regarding the language of Rule 19(a). That Rule states:

When a crew or individual members thereof are released from duty at a location other than the designed crew base of the assignment for more than four hours, each member of the crew so released will be provided suitable lodging at the Corporation's expense and will receive a meal allowance of \$5.00. A second allowance of \$5.00 will be provided after being held an additional 8 hours. Effective November 1, 1994, such meal allowance shall increase to \$6.00.

It is clear to the Board that a literal application of Rule 19(a) would not be reasonable. That is to say, the Carrier's obligation to provide "suitable lodging" at its expense is not an obligation, the Board finds, that could be satisfied simply on the basis that such lodging was provided regardless of how much time expired from the employee's release from duty and the time the accommodations were made available. Put differently, there is a implied duty of good faith and reasonableness in the exercise of all contractual rights and obligations. Hence, the Board finds that the Carrier's contractual duty to provide suitable lodging to employees falling

within the reach of Rule 19(a) extends to an obligation on the Carrier's part to provide a suitable lodging within a reasonable period of time after the employee's release from duty.

The foregoing observations raise the question of what is a reasonable period of time under Rule 19(a) regarding providing the Carrier's obligation to provide suitable lodging. The Board finds that the 30 minute rule set forth by the Federal Railroad Administration in 1990, which was arrived at after the FRA "solicited comments from representatives of rail management and labor, and after analysis", is sufficiently analogous to the Carrier's duty to provide suitable lodging that the Board, absent contractual intent to the contrary, will accept it as a standard of reasonableness.

In the instant case, because of the unrefuted record evidence that Claimant had to wait more than 30 minutes, the claim should be sustained. As for a remedy, the Board finds that the "minimum day rule" fits the violation and will Award same as a remedy.

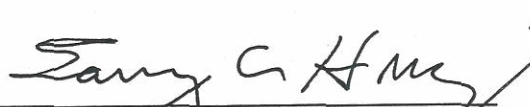
AWARD

The claim is sustained and Claimant is entitled to eight (8) hours penalty pay for violation of Rule 19 by the Carrier.


DATE: 7/25/07



THOMAS N. RINALDO, ESQ., NEUTRAL MEMBER



LARRY C. HRICZAK
CARRIER MEMBER
I DISSENT
8-2-07



C. A. IANNONE
EMPLOYEE MEMBER
A.A.S.