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**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**Award No. 40243
Docket No. MW-37760
09-3-03-3-124**

The Third Division consisted of the regular members and in addition Referee Elizabeth C. Wesman when award was rendered.

**(Brotherhood of Maintenance of Way Employes
PARTIES TO DISPUTE: (
(CSX Transportation, Inc.**

STATEMENT OF CLAIM:

“Claim of the System Committee of the Brotherhood that:

- 1. The Agreement was violated when the Carrier failed and refused to allow SPG 5XT9 employe P. Ruggieri’s request for single occupancy room accommodations on April 2, 2002 and continuing [System File D21117102/12(02-0271) CSX].**
- 2, As a consequence of the violation referred to in Part (1) above, Claimant P. Ruggieri shall now be allowed a single occupancy lodging room as needed to accommodate his medical condition.”**

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

This claim has been advanced to the Board for resolution by both the Carrier (which filed its notice on September 13, 2002) and the Organization (which filed its notice of intent on March 20, 2003). As is noted in the Third Division Award 40241 and in Third Division Award 31388 (Marx), irrespective of which party files its notice of intent with the Board, the burden of persuasion remains the same. In this case, as in Award 40241, the burden is upon the Organization as the moving party on the property. Accordingly, as the Board noted in the two above-cited Awards, because the Submissions in both cases are identical, and the exhibits are identical, as one would expect, the Carrier adopted the wording of the Organization's statement of claim. Hence, the Board will rule on the present docket. (See Award 31388, above).

At the time the present case arose, the Claimant was regularly assigned by bulletin to SPG Gang 5XT9 working away from home in South Carolina. The Carrier's corporate lodging policy, initially distributed in June 1994 and revised in May 2001, provided for double occupancy of employees required to stay overnight away from home in hotels. This is in accordance with Appendix G of the Parties' Agreement as stipulated by the Award of Arbitration Board No. 298 and subsequently revised by the Parties. The policy provides that "on Gangs of more than one man, two employees will stay in each room, except that the Foreman of the Gang will be entitled to a separate room."

On March 19, 2002, the Claimant submitted a "to whom it may concern" note from his physician stating that the Claimant suffered from "anxious depression and suspected post traumatic stress syndrome." In that note, the physician recommended that the Claimant be allowed to "live alone in a hotel room at night." Specifically, the physician noted that, given a single room, the Claimant would work better during the day for being better rested and, because he also had trouble sleeping at night, would not be a disturbance for any roommate. On April 2, 2002, Chief Medical Officer T. G. Cook notified the Claimant that he had received the physician's note, but that he determined the note did not justify authorization for a single room. The CMO stated that assigning the Claimant a single room would be left to the discretion of his supervisors and that he "should discuss this matter further with them."

The Organization filed a claim protesting the Carrier's decision on April 25, 2002. It asserted that "in certain instances where medically necessary, the Carrier has allowed single occupancy room accommodations." It insisted that based upon the Claimant's medical evidence he should be granted a single room. In a hand written note attached to the claim, the Claimant pointed out that another employee, with a similar medical condition – post traumatic stress disorder - had been assigned a single room and he deserved the same courtesy.

The Carrier denied the claim on June 23, 2002, and restated the Chief Medical Officer's initial response that he "was unable to grant such request based upon the medical information provided." The Carrier noted that the Claimant had been notified by the Manager of Human Resources that if he wished to be considered to meet the criteria of a single room, "his physician would have to submit additional information regarding his condition." In its appeal, dated June 28, 2002, the Organization stated that, despite the Carrier's request for additional information, because the Carrier officer had "clearly shown that [he] had no intent to involve [himself] with the issue," it saw no benefit in forwarding information to him, "just to have [him] dump it somewhere else."

Following a conference held on August 13, 2002, the Senior Director Labor Relations reaffirmed the Carrier's declination. The Carrier acknowledged that it had granted another employee a single room for medical reasons, but pointed out that his "request was granted upon sufficiently detailed and documented medical information" provided to the Medical Department.

There is no dispute on the record that the Carrier allowed single occupancy to another employee when it deemed there was a medical justification for doing so. However, the Organization failed to prove that the Carrier's action was in any way discriminatory toward the Claimant in requiring him to provide additional medical documentation before granting him a single room on those days he was required to work away from home. For reasons not clear on the record, the Organization elected to progress the claim without any effort to provide the CMO with additional medical information. There is no showing on the record that such a request by the CMO was unreasonable, nor is there any evidence that the Carrier set a standard for the Claimant not required of other employees making a similar request.

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In light of the foregoing, the Board has no basis upon which to sustain the claim.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an Award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 21st day of December 2009.