

BEFORE PUBLIC LAW BOARD NO. 5953

UNITED TRANSPORTATION UNION

and

**NATIONAL RAILROAD PASSENGER CORPORATION
(AMTRAK)**

System Docket OC-UTU-SD-398

Case No. 17

STATEMENT OF CLAIM:

E. Daugherty claiming compensation for not being called for work on his rest day for each of the following dates: October 7, 14, 21, 28, 1995, November 4, 11, 18, 25, 1995, December 2, 9, 16, 23, 1995, January 6, 13, 27, 1996, and February 3, 1996.

FINDINGS

This claim arose when the Claimant discovered that his application to be assigned for work on his rest days was mistakenly showing his rest day as a regular work day. As a result, the Claimant was not being called in to work on his rest days as he had requested. Claimant subsequently submitted a penalty time claim on February 21, 1996, for the dates of October 7, 14, 21, 28, 1995, November 4, 11, 18, 25, 1995, December 2, 9, 16, 23, 1995, January 6, 13, 27, 1996, and February 3, 1996.

The Carrier denied the Claimant's claim for backpay contending that the claims for the dates in October, November and December were not submitted within the 30-day time limit defined by Rule 24(a).

The Organization argues that the Claimant submitted claims as soon as he was made aware of the mistake that the Carrier had made. Therefore, the Organization argues

that the Claimant should be allowed latitude under the time limit provision based upon his first knowledge of being aggrieved.

The parties being unable to resolve the issue, this matter came before this Board.

This Board has reviewed the procedural argument raised by the Carrier, and we find it to be without merit. The record reveals that the Claimant had no knowledge of the Carrier's error until on or about February 5, 1996, when he questioned the office of Crew Management as to why he was not being called to work on Saturdays. After he questioned the Carrier, the Carrier realized it was mistakenly showing Saturday as a regular work day for the Claimant. Once he became aware of the Carrier's error, the Claimant timely filed the penalty claims on February 21, 1996. This Board recognizes that there is a time limit for the handling of claims. However, the Claimant cannot be faulted for not filing his claims earlier since he first received knowledge of the Carrier's error on February 5, 1996. Therefore, this Board finds that the claim was timely filed.

With respect to the merits of the claim, this Board finds that since the Claimant had listed himself as available to perform the work on the dates in question, if he was eligible, he should have been called. The record does not have sufficient information in it to determine which of the sixteen Saturdays the Claimant would have been eligible to work. However, this Board finds that on the dates that he would have been eligible to work, he is entitled to be compensated. The Claimant had listed himself as available to work on those dates, and if there was work and he should have been called based upon his seniority, he is entitled to compensation in the amount of wages that he would have

earned had he been properly called.

Consequently, this Board finds that the claim is sustained. The parties are directed to jointly review the records of the Saturdays between October 7, 1995, and February 3, 1996, to determine if employees in the Claimant's position were called to work on those dates. To the extent that employees were called in to work on those dates and the Claimant would have been eligible to work had he been called, he shall be paid the appropriate compensation for those dates.

AWARD:

Claim sustained in accordance with the above findings.



PETER R. MEYERS
Neutral Member



CARRIER MEMBER
(WATSON DISSON ATTACHED)
Dated: 9-10-98



ORGANIZATION MEMBER
Dated: 6/5/98

PUBLIC LAW BOARD NO. 5953

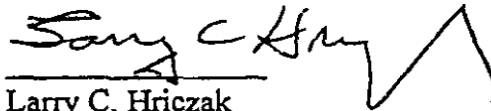
Case No. 17

Carrier Member's Dissent

The majority of this Board has exceeded its authority in this award which is limited to interpretation of the labor agreement. This Board lacks the authority to rewrite a rule of the labor agreement which it has in essence done in this award.

Rule 24(a) is clear and unambiguous with regard to the time limits for filing a claim. It specifically states that "Any claim for compensation alleged to be due arising out of the application or interpretation of this Agreement may be made by an employee or, on his behalf, by a duly accredited representative, and must be submitted in writing, in duplicate, to the officer of the Corporation designated to receive time claims, **not later than 30 days from the date of occurrence on which the claim is based.**" This award erroneously extends that period to commence from the time when claimant first received knowledge of the occurrence on which his claim was based. The Board lacks the authority to rewrite Rule 24 in that fashion.

I VIGOROUSLY DISSENT.

A handwritten signature in dark ink, appearing to read "Larry C. Hriczak", with a large, stylized flourish extending to the right.

Larry C. Hriczak
Carrier Member

PUBLIC LAW BOARD NO. 5953

CASE NO. 17

ORGANIZATION MEMBER'S CONCURRING OPINION

The conclusion of the majority is based on the record, which clearly indicated that the Claimant's first knowledge that the Carrier had in fact mistakenly entered Saturday in the computer as a regular work day, thereby depriving the Claimant of the possibility of working on Saturday, a rest day, was on February 5, 1996. In the same way the Carrier is allowed latitude under the time limit provision of an agreement to charge an employee for a rules violation based upon the Carrier's first knowledge of an incident of alleged misconduct, so to should an employee be allowed the same latitude based upon the employee's first knowledge of being aggrieved. This was the principle the majority applied in reaching our findings, i.e., the 30 day time limit provision in Rule 24 (a) started on February 5, 1996, that being the date Claimant was made aware of the Carrier's error.

The Carrier wants to preserve their right to argue "First Knowledge" in matters relating to charging an employee for a rule(s) infraction, but they dissent to an award that granted this same right to an aggrieved employee. The Carrier cannot have it both ways.

For these reasons, the undersigned wholeheartedly concurs with this award.


B. R. Wigent
Organization Member

and/or her