SYSTEM BOARD OF ADJUSTMENT
AFA and HAL

In the Matter of:	
ASSOCIATION OF FLIGHT ATTENDANTS-CWA, AFL-CIO,	**OPINION AND AWARD**
Union,	Grievance Concerning Trips Published Not Flown
and	Grievance No: 46-99-2-28-12
HAWAIIAN AIRLINES, INC.	
Company.	

Hearing Dates: December 13-14, 2022
Hearing Location: Honolulu, Hawaii
Date of Award: May 15, 2023

BOARD MEMBERS

Union Member: Scott Henton
Company Member: Kalani Sloat
Neutral Member: John B. LaRocco

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OPINION OF THE BOARD

I. INTRODUCTION

On November 16, 2012, the Association of Flight Attendants-CWA (Union) initiated a grievance claiming that Hawaiian Airlines, Inc. (Company) violated the applicable Collective Bargaining Agreement by failing to pay flight attendants the proper credit hours for certain trips that were allegedly published, but not flown. [Joint Exhibit 2] Following a grievance hearing held on August 14, 2013, the Company denied the grievance in its decision dated August 23, 2013. [Joint Exhibit 3] On January 13, 2014, the Union submitted the grievance to this System Board of Adjustment (Board). [Joint Exhibit 1] The parties stipulated that the grievance is properly before the Board for a decision on its merits. [TR 5]

The parties were unable to stipulate to the issue presented to the Board.

The Union states the issue as follows: Whether the Company violated Section 3.R.2.c.(1) and/or all related sections of the Collective Bargaining Agreement and if so, what shall the remedy be? [TR 5]

The Company frames the issue as follows: A flight attendant works grouping 1. The return segment for grouping 1 is delayed. The delay for the return segment of grouping 1 causes the flight attendant to be unable to work grouping 2. The Company pays and credits the flight attendant for the greater of the actual or scheduled hours for grouping 1 and grouping 2. Does this pay and credit practice violate the Collective Bargaining Agreement? If so, what is the remedy? [TR 5 and 6]

The Board has the authority to adopt the Union's statement of the issue, the Company's statement of the issue or to formulate its own statement of the issue.

At the conclusion of the hearing, the parties opted to file post hearing briefs in lieu of closing oral arguments. The Neutral Member of the Board received the briefs on March 10, 2023 and the matter was deemed submitted.

II. PERTINENT AGREEMENT PROVISIONS

Section 3 of the April 3, 2020 to April 2, 2025 Collective Bargaining Agreement (Agreement) is entitled "Compensation".

Section 3.I provides:

> Removal from Trips with Pay Protection: In the event a Flight Attendant does not return to her/his domicile in time to originate or is illegal to originate her/his next sequence of trips for the following day, she/he shall receive no less than scheduled or actual flight time pay and credit, whichever is greater, plus segment credits, including pay as described in Paragraphs A. and C. of this Section, for all trips missed. [Joint Exhibit 5]

Sections 3.R.2.a, 3.R.2.b and 3.R.2.c read:

> 2. International[1]
>
> a. During each on-duty period, Flight Attendants shall be paid and credited for the actual time flown or the time scheduled to be flown, whichever is greater, including First Flight Attendant Compensation, on a segment basis. The foregoing shall apply to a Flight Attendant's published schedule.
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> b. When a Flight Attendant reports for flight duty at the airport, she/he shall receive the greater of (1) or (2) below, but in no case shall her/his pay and credit be less than two (2) hours.

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[1] Under the Agreement, all flights that are not intra-Hawaiian Islands flights are international flights. [TR 37] [Footnote added to clarify Section 3.R.2]

(1) A minimum flight time pay and credit she/he was scheduled to fly or actually flew in that duty period, whichever is greater, or

(2) Trip rig - The scheduled (published) or actual trip hours, whichever is greater, at the rate of one (1) hour of pay and credit for each four (4) trip hours.

c.

(1) Pay and credit for trips published but not flown, as provided for by other Sections of this Agreement, shall be included to determine a Flight Attendant's total pay and credit for the entire on-duty period.

** Example: Total time away from domicile thirty-six (36) hours

	(A)	(B)
	Block Time or Flown Schedule	Trip Rig 1:4
Trip I	1:01	
Trip II (not flown)*	1:08	
Trip III	2:02	
	4:11	
Pay and Credit Calculation:		9:00
Block Time	4:11	
Total Pay and Credit	9:00	

*Trip canceled or equipment substituted.
**Example does not apply to Section 3.S. where time is made up.

(2) As an exception to 3.R.2.c.(1)., if a Flight Attendant misses the outbound segment of the hub turn due to operational reasons (inbound flight late, inbound flight canceled) she/he will receive pay and credit for the outbound

> segment(s), and has the option to make up the remaining balance of the grouping (return segment(s)). This applies only to a Flight Attendant who scheduled her/himself for the hub turn. Such Flight Attendant who has indicated her/his desire to make up the missed segment(s) will be given the same priority as Vacation Make-up. [Joint Exhibit 5]

Section 2 of the Agreement sets forth numerous definitions. Section 2.AY reads:

> "What she/he normally would have earned" means pay and credit which a Flight Attendant's schedule would have produced (actual or scheduled credited hours, whichever is greater) or what she/he actually flew in a duty period, whichever is greater. It is understood that this Paragraph includes pay as outlined in Paragraphs A., C.1., and C.3. of Section 3. [Joint Exhibit 5]

III. BACKGROUND AND SUMMARY OF THE FACTS

On February 27, 1984, the Union and the Company entered into a Letter of Agreement entitled "DC-8 Flying Worldwide". [Union Exhibit 1] Retired Flight Attendant Sharon Soper explained that the parties entered into the February 27, 1984 Letter Agreement because the Company was expanding beyond its Hawaii service with the introduction of the DC-8 aircraft.[2] [TR 22-23] Item 16 of the February 27, 1984 Letter Agreement added a new Paragraph U to the section on Compensation in the applicable Collective Bargaining Agreement. Paragraph U provided:

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[2]For many years, Soper was the MEC President. She never missed a bargaining round until her retirement. [TR 20-21]

> Pay hours credited to the flight attendants for trips published but not flown, as provided for by other Sections of this Agreement, shall be included to determine the flight attendants' total pay and credit for the entire on-duty period. [Union Exhibit 1]

Soper declared that Paragraph U was the Union's first successful attempt to obtain a compensation guarantee for flight attendants when a flight was canceled. She elaborated that Paragraph U provided that the guarantee was the flight attendant's schedule for any particular day. If the flight attendant was unable to fly or not legal to fly, the flight attendant would still receive pay for flights published on the flight attendant's schedule. [TR 23-25]

Soper testified that the language from the Letter Agreement was incorporated into the 1993 Collective Bargaining Agreement. [TR 33, 26] Soper pointed out that the example did not yet appear in the provision. Soper was uncertain as to exactly when the negotiators added the example to Section 3.R.2.c.[3] [TR 27]

What is presently Section 3.R.2.c.(1) appeared in the 1996 to 2000 and the 2001 to 2004 Collective Bargaining Agreements although, it was not yet labeled as c.(1). The language was essentially the same as the original language except for minor changes in the wording of the opening clause. In the 2009 to 2011 Collective Bargaining Agreement, the parties added the paragraph on hub turns to Section 3.R.2.c so that the prior language, which was brought forward, was labeled 3.R.2.c.(1) and the new hub turn language was Section 3.R.2.c.(2). [Company Exhibits 1, 2, 3 and 4] Thereafter, Section 3.R.2.c was unchanged up to and including the current Agreement. [Joint Exhibits 4 and 5]

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[3] The example is part of Section 3.R.2.c of the 1996 Agreement. [Company Exhibit 3]

Soper related that the parties added the hub turn exception to Section 3.R.2.c as part of a restructuring deal so that the Company could achieve some savings. [TR 27]

Flight Attendant Martin Gusman described the hub turn exception. A hub turn is created by joining the inbound flight of one grouping with the outbound flight of another grouping with a minimum turn time of 1 hour (and the duty period cannot exceed 14 hours).[4] Prior to the hub turn exception, if a flight attendant missed a hub turn trip, the flight attendant was paid for the entire missed hub turn. The exception provides that the Company pays the flight attendant for the outbound trip from the hub and not the following segments. [Union Exhibit 3; TR 67-70] Gusman related that the Union does not dispute how the Company pays flight attendants for hub turns. [TR 71]

This dispute concerns the situation where a flight attendant is scheduled for two consecutive groupings and is unable to fly the second grouping because something went awry during the operation of the first grouping that caused the flight attendant to either arrive after the departure of the first flight in the second grouping or the flight attendant arrived too late to obtain the legal, minimum rest before the departure of the first flight in the second grouping. In other words, the flight attendant has overlapping trips on one day: a delayed flight from grouping 1 that the flight attendant worked and the first flight of grouping 2 that the flight attendant could not work. The Board will refer to this scenario as "the overlapping trips day". The Union and the Company submitted into the record two examples to illustrate the compensation dispute regarding the overlapping trips day.

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[4]Flight attendants bid for groupings that constitute a hub turn through the preferential bidding system. [TR 69]

The first example is Flight Attendant Garret Shon Nakamura who had consecutive scheduled groupings from December 29, 2016 to January 5, 2017. The two group pairings were H6109 and H6105. Pairing H6109 was Honolulu (HNL) to Chitose (CTS) with a layover and return trip ending on January 1, 2017. Pairing H6105 began on January 2, 2017 with a HNL to Brisbane (BNE) flight followed by a layover and a return trip to HNL. Nakamura's flight from CTS to HNL was canceled or delayed. He worked a CTS to HNL flight a day later which rendered him unable to operate pairing H6105 because the outbound flight to BNE departed on the same day (January 2) that Nakamura arrived in HNL, i.e. the overlapping trips day. The table below depicts the scheduled value and actual value (in credit hours) for each flight in the two groupings, as well as the compensation, expressed in credit hours, that Nakamura received.

Trip	Scheduled	Actual	Compensation
HNL-CTS	10:20	10:34	10:34
Layover			
CTS-HNL	7:10	Not Flown	7:10
CTS-HNL	7:10	7:10	7:10
HNL-BNE	10:00	Not Flown	10:00
Layover			
BNE-HNL	9:25	Not Flown	9:25
	TOTAL COMPENSATION		**44:19**

[Union Exhibit 4; Company Exhibit 8]

The Union avers that the above calculation of Nakamura's credit hours constitutes the correct application of Section 3.R.2.c.(1).

Robert Baiocchi is Manager of Crew Scheduling. He oversees crew payroll as well as scheduling. His team handles about 1,000 schedule clarification requests a year. [TR 146-148]

Baiocchi testified that Nakamura was not paid correctly. He speculated that the mistake was not detected because crew payroll did not audit the pairings. Baiocchi explained that, instead of being paid for five segments, Nakamura should have been paid the greater of the value of either the CTS-HNL flight or the HNL-BNE flight on the overlapping trips day. Baiocchi emphasized that Nakamura should not have been paid both the full value of the return trip from CTS plus the full value of the outbound trip to BNE on the overlapping trips day. [TR 187-188]

Under the Company's calculation of compensation, Nakamura should have received 10:34 for HNL-CTS; 7:10 for the CTS-HNL flight that did not operate; 10:00 for the scheduled value of HNL-BNE, which was greater than the value of CTS-HNL flight on the same day; and, 9:25 for BNE-HNL. According to the Company, Nakamura should have been compensated a total of 37:09 credit hours.

The second example is Flight Attendant Alex Woo who had consecutive scheduled trip groupings from September 17, 2022 to September 22, 2022. The two group pairings were H3221 and H3277. Pairing H3221 was HNL to Haneda (HND) with a layover and a return trip ending on September 19, 2022. Pairing H3277 began on September 20, 2022 with a flight from HNL to Narita (NRT) followed by a layover and a return trip. Woo's flight from HND-HNL was canceled or delayed. He worked a HND to HNL flight a day later which rendered him unable to operate pairing H3277 because the outbound flight departed on the same day (September 20) that Woo arrived in HNL, i.e. the overlapping trips day. The table below depicts

the scheduled value and actual value in credit hours for each flight in the two groupings, as well as the compensation, expressed in credit hours, that Woo received.

Trip	Scheduled	Actual	Compensation
HNL-HND	8:25	8:29	8:29
Layover			
HND-HNL	7:50	Not Flown	7:50
HND-HNL	7:50	8:08	
HNL-NRT	8:20	Not Flown	8:20
Layover			
NRT-HNL	7:35	Not Flown	7:35
	TOTAL COMPENSATION		**32:14**

[Union Exhibit 5; Company Exhibit 9]

The Company contends that the above calculation of Woo's credit hours constitutes a correct application of Sections 3.I, 3.R.2.a and 2.AY.

Flight Attendant Kerri Ruiz testified that Woo was under compensated.[5] Ruiz explained that Woo should have been paid the actual time for the HND-HNL flight that Woo worked (since it was greater than scheduled time) and pay protected for the 8:20 value of the HNL-NRT flight which Woo could not work. Pursuant to the Union's calculation, Woo should have received 8:29 for HNL-HND; 7:50 for HND-HNL (not flown); 8:08 for HND-HNL; 8:20 for HNL-NRT (not flown); and, 7:35 for NRT-HNL (not flown). The Union claims Woo should have received 40:22 credit hours. [TR 92-93]

[5]Ruiz is an Executive Secretary of the Union Council in Honolulu. [TR 82-83]

The Nakamura and Woo examples evince that the crux of the dispute between the parties is whether the flight attendant should receive the full value of the return trip and the full value of the outbound trip on the overlapping trips day or the greater value (of scheduled or actual) of the two trips. The Union seeks compensation for five segments while the Company submits that compensation for four segments is proper.

Ruiz testified that she solicited information from flight attendants and about a handful of flight attendants were paid correctly while another handful were paid incorrectly. [TR 101, 105-106]

At first, Soper testified that the example in Section 3.R.2.c.(1) did not involve overlapping trips, but she later related that the example does not negate the possibility of overlapping trips. [TR 38-39, 51] Baiocchi was certain that the example in Section 3.R.2.c.(1) does not deal with the overlapping trips day. However, Baiocchi also declared that the example in Section 3.R.2.c.(1) does not provide enough information to determine if the example is displaying the overlapping trips day. [TR 153, 175] Terrance Chariandy, former Company Director of Crew Scheduling, asserted that the example in Section 3.R.2.c.(1) does not refer to overlapping trips and the Union representatives never articulated to him how the example applies to the overlapping trips day. [TR 128-129]

Chariandy testified that Section 3.I applies to the overlapping trips day by providing that a flight attendant's pay should be the greater of scheduled or actual value because Section 3.I specifically concerns removing a flight attendant from a trip. Chariandy emphasized that there is not any provision in the Agreement that provides for a flight attendant to receive full credit hours for two flights on the overlapping trips day. [TR 130]

Soper acknowledged that the language in Section 3.I and 3.R.2.a should be considered when there is an overlapping trips day. [TR 45, 46, 32] Soper also acknowledged that Section 3.I has an impact in determining a flight attendant's pay in a situation where a flight attendant does not fly a trip that is published. [TR 40]

Baiocchi declared that Section 3.R.2.c.(1) refers to other sections of the Agreement and the other sections most applicable to the overlapping trips day are Sections 3.R.2.a and 3.I. Baiocchi testified that the Company's method of paying flight attendants for the overlapping trips day conforms to the definition of what a flight attendant normally should have earned per Section 2.AY of the Agreement. [TR 152-155]

Gusman testified that the additional types of pay referred to in the provision are items like holiday pay which do not depend on the duty period. [TR 74, 76]

Soper testified that, about the time the grievance was filed, the Union began to receive complaints from flight attendants that the Company had changed the formula for paying flight attendants involved in an overlapping trips day, although she did not know when the change actually occurred. [TR 32, 47] Ruiz believed that the Company changed the formula for paying flight attendants for the overlapping trips day some time in 2012. Ruiz asserted that, prior to 2012, the Company paid flight attendants according to the same calculation that it used to pay Nakamura. [TR 99, 103]

Chariandy testified that the Company always paid flight attendants the way Woo was paid throughout his time in crew scheduling which was from 2012 to 2022. [TR 126] Chariandy was told that the formula was never different before he started working for the Company. [TR 131-132]

Baiocchi testified that the Company always paid flight attendants the greater of scheduled or actual value for an overlapping trips day. He was certain that the Company never paid the full value of both conflicting trips except for the Nakamura error. [TR 161]

IV. THE POSITIONS OF THE PARTIES

A. The Union's Position

Agreement Section 3.R.2.c.(1) requires the Company to compensate a flight attendant for the full value of published trips, along with the full value of any alternative flying that the flight attendant performs. Because the language in Section 3.R.2.c.(1) is neither plain nor unambiguous, the language must be interpreted within the context of the circumstances at the time that the negotiators adopted the provision. In the 1980's, the Company was transitioning from intra-island flying to interstate flying. Previously, flight attendants did not have any pay protection. Soper related that the purpose of Paragraph U was to provide protective pay for a flight attendant who was assigned a flight, but did not receive any credit hours because a flight on the flight attendant's schedule was canceled. In other words, Paragraph U guaranteed credit hours for trips on the flight attendant's schedule, whether or not the flight attendant actually worked those trips.

The words "trips published" in Section 3.R.2.c.(1) are trips on the flight attendant's schedule. Trips not flown are those trips which were removed from the flight attendant's schedule. Thus, the provision must mean that, at a minimum, the flight attendant is pay protected for the entirety of the flight attendant's scheduled flying.

However, there is an ambiguity in Section 3.R.2.c.(1) since it refers to other sections of the Agreement without identifying those sections. It is most sensible that the other sections concern additional pay such as holiday pay.

In the past (at least prior to 2012), the Company compensated flight attendants according to the Union's interpretation of Section 3.R.2.c.(1). At some point, the Company unilaterally changed the payment formula which resulted in flight attendants complaining to the Union which generated the instant grievance. As Ruiz related, since 2012, there is still no consistency in how the Company pays flight attendants for the overlapping trips day. Nevertheless, the past practice supports the Union's position that Nakamura represents the correct application of Section 3.R.2.c.(1).

The Company's reliance on the definition of what a flight attendant normally would have earned is misplaced because the trips published not flown situation merely gives flight attendants their normal compensation for scheduled trips that they did not fly.

The Company's reliance on Section 3.I is similarly misplaced. The Company ignores the phrase "plus segment credits" in Section 3.I. The additional segments must mean those flights that the flight attendant otherwise would have worked. In support of this interpretation, Section 3.R.2.c.(1) covers the entirety of the flight attendant's groupings, including all segments. Moreover, Agreement Section 3.R.2.c.(1) does not contain the "whichever is greater" language that is found in Section 3.I.

There would not be any reason for the negotiators to insert the hub turn exception into Section 3.R.2.c if the Company's interpretation was correct. The hub turn exception allows the Company to restrict payment to the flight attendant to just the outbound trip from the hub.

Since there is not any hub turn in the overlapping trips day, the Company is obligated to pay the flight attendants the full value of the second grouping.

The Union seeks a cease and desist order from the Board. The Union also requests the Board to issue an Order mandating the Company to compensate adversely affected flight attendants who were harmed by the Company's misapplication of Section 3.R.2.c.(1). The Union asks the Board to retain jurisdiction over the remedy.

B. The Company's Position

At the onset, the Company asks the Board not to draw any conclusion from the title of this case, that is, trips published not flown. The Union uses this title to try to persuade the Board to add language to the Agreement to manufacture a contract violation.

The Union bears the burden of proof. The Union did not present any evidence that the parties intended for Section 3.R.2.c.(1) to apply to the overlapping trips day. The example in Section 3.R.2.c.(1) refutes the Union's position because, as witnesses for both the Union and the Company testified, the example does not show the overlapping trips day.

Next, the Union's interpretation of Section 3.R.2.c.(1) would require the Board to disregard, or would render meaningless, other provisions of the Agreement which clearly apply to the overlapping trips day. Section 3.R.2.a establishes the basic compensation formula for paying flight attendants working international flights. Flight attendants are paid credit hours according to the whichever is greater methodology which is ubiquitous throughout Section 3. The overlapping trips day triggers Section 3.I. The flight attendant receives no less than scheduled or actual flight time pay and credit, whichever is greater, when the flight attendant does not return to the domicile before the first flight of the second grouping departs or the flight

attendant becomes illegal to fly the second grouping. The Board cannot add language to Section 3.R.2.c.(1) that would nullify Sections 3.I and 3.R.2.a.

In addition, on its face, Section 3.R.2.c.(1) is irrelevant to the overlapping trips day because it directs the parties apply to other sections of the Agreement. Obviously, those other Agreement sections are Sections 3.I and 3.R.2.a. Thus, even if Section 3.R.2.c.(1) is indirectly relevant, the provision cannot be applied in isolation. It must be applied in harmony with the other, related sections of the Agreement.

Next, the Union's interpretation of Section 3.R.2.c.(1) is nonsensical since the flight attendants would receive a windfall. Under the Company's interpretation, the flight attendant is already receiving the highest total compensation for grouping 1 plus grouping 2. Under the Union's absurd interpretation, a flight attendant would be paid for five segments even though only four segments were published on the flight attendant's schedule.

The Union did not submit sufficient evidence proving a past practice whereby the Company invariably paid flight attendants the way Nakamura was paid for the overlapping trips day. The record does not contain any evidence of a clear past practice over a lengthy period of time. Soper and Ruiz testified about a purported change in the method of compensating flight attendants, but both witnesses were vague about when the change allegedly occurred, as well as the nature of the change. Ruiz only collected about five instances where flight attendants were paid in accord with the Union's interpretation. The Company acknowledged that it erred when it paid Nakamura. The most likely explanation for the Company's mistake was that an audit was not performed on Nakamura's trips. On the other hand, Company witnesses confirmed that flight attendants have been compensated according to the Company's interpretation for decades.

Chariandy and Baiocchi were certain that flight attendants were always paid the way the Company paid Woo.

The Company urges the Board to deny the grievance.

V. DISCUSSION

The Union and the Company framed plausible statements of the issue. The Board will combine the two issue statements. In the overlapping trips day scenario, does the Company violate Section 3.R.2.c.(1) and/or related sections of the Agreement when it pays credit hours to flight attendants as illustrated by the Woo example? If the answer is Yes, what is the appropriate remedy? This statement of the issue encapsulates the primary facts of the compensation dispute with the primary Agreement provision on which the Union relies.

Before delving into the elementary rules of contract construction, the Board must make an important observation about the Union's burden of proof. In this case, the Union is advocating that a flight attendant must be paid substantially more credit hours than the flight attendant would have earned if nothing had gone awry during the operation of a flight in the first grouping. If the flight attendant's schedule had remained intact, the flight attendant would have been paid for four segments. The Union claims that the flight attendant must be paid for five segments. Since the Union is seeking pay protection enhancement, rather than pay protection neutrality, the Union must cite unmistakable and unequivocal contract language vesting flight attendants with the absolute entitlement to be compensated the way Nakamura was compensated. If the language in the Agreement is unclear or ambiguous, the Union bears the burden of showing, with reliable and probative evidence, the existence of a long-standing, uninterrupted, mutually recognized past practice of paying flight attendants the way Nakamura was paid.

The Board's starting point for interpreting the Agreement is to examine the plain language adopted by the negotiators and give the language its usual and ordinary meaning. In doing so, the Board must read the relevant provisions of Section 3 in a reasonable and harmonious fashion to give meaningful effect to related provisions. If the provisions are susceptible to an ambiguity, the Board can consider extrinsic evidence such as evidence of a past practice.

Section 3.R.2.c.(1) is an unusual provision since the substance of the provision originated in the February 27, 1984 Letter of Agreement, while the example following the substantive language was adopted after the provision was incorporated into the Collective Bargaining Agreement. The record does not reveal why the negotiators added the example to Section 3.R.2.c.(1), but a reasonable inference arises that the example was designed to depict trips published, not flown.

The example is slightly confusing since it includes time away from domicile. To determine the flight attendant's proper amount of pay, the trip rig supersedes the total actual or scheduled credit hours of Trips I, II and III. The example uses Trip II (the not flown trip) to calculate the total block time, but there is no hint in the example that the flight attendant could not fly Trip II because Trip I overlapped Trip II. To the contrary, the fact that the flight attendant worked Trip III strongly suggests that the example does not demonstrate the overlapping trips day. Moreover, the Union witnesses did not clearly articulate that the example depicts overlapping trip days. Since the example is supposed to illustrate how to apply the substance of Section 3.R.2.c.(1), and the example does not show overlapping trips, the logical

conclusion is that the substantive portion of Section 3.R.2.c.(1) is not likely applicable to the overlapping trips day.

The Union argues that the hub turn exception set forth in Section 3.R.2.c.(2) would be unnecessary if the Company's interpretation of Section 3.R.2.c.(1) is correct. However, the hub turn is readily distinguishable from the overlapping trips day. Unlike the overlapping trips day, both the flight inbound to the hub and an outbound flight from the hub appeared on the flight attendant's schedule (creating the hub turn). In the overlapping trips scenario, the flight attendant works a segment (on the same day as the outbound segment) that does not appear on the flight attendant's schedule. Thus, the hub turn language was necessary to carve out an exception to Section 3.R.2.c.(1) to relieve the Company of paying the flight attendant for segments after the flight attendant's outbound trip. Section 3.R.2.c.(1) still applies to many instances where the flight attendant is unable to work a scheduled flight like Trip II in the example.

Section 3.R.2.c.(1) announces that "… other sections of this Agreement shall be included to determine a flight attendant's total pay …". The use of the mandatory term "shall" means this Board must analyze other provisions in Section 3 albeit, Section 3.R.2.c.(1) does not enumerate those sections. The question becomes what other sections are applicable to the overlapping trips day.

The Company persuasively argues that those Sections are 3.R.2.a and 3.I.[6] Section 3.R.2.a establishes the basis for compensating flight attendants for international trips. The first

[6] A Union witness acknowledged that these two Agreement sections should be considered when determining a flight attendant's credit hours for the overlapping trips day.

sentence of Section 3.I precisely describes the overlapping trips day. The flight attendant cannot work the "next sequence of trips" (grouping 2) because the flight attendant did not return "… in time to originate or is illegal to originate …" grouping 2. Both sections invoke the "whichever is greater" formula which tends to support the Company's position that Woo was correctly paid. Nevertheless, Section 3.I includes the phrase "plus segment credits" which creates an ambiguity since segments are ostensibly encompassed within "sequence of trips". This ambiguous language means that the Board can consider evidence of past practice.

The Union presented only anecdotal and hearsay evidence of a past practice. Soper and Ruiz sincerely thought that there was a change in the compensation formula for overlapping trip days about ten years ago, but there is insufficient data showing that prior to 2012, flight attendants were invariably and, without any deviation, paid the way Nakamura was paid. Certainly, there is not any evidence that the Company was aware of, and condoned, a practice of compensating flight attendants in accord with the Union's interpretation of Section 3.R.2.c.(1). Moreover, Nakamura is an isolated or atypical case (along with a handful of other instances) which does not constitute a past practice.

In summary, the Union did not satisfy its burden proving that the Company violated Section 3.R.2.c.(1) or related sections of the Agreement because there is not any language in Section 3.R.2.c.(1) that unequivocally vests flight attendants with an entitlement to receive substantially more pay than they would otherwise receive. Similarly, to the extent the related sections are ambiguous, the Union did not prove a past practice supporting its interpretation of Section 3.R.2.c.(1). The answer to the Statement of the Issue is No.

AWARD AND ORDER

The grievance is denied.

Dated: May 15, 2023

_____ I concur/_____ I dissent

Scott Henton
Union Member

____ I concur/_____ I dissent

Kalani Sloat
Company Member

John B. LaRocco
Arbitrator
Neutral Member