

Canadian Railway Office of Arbitration

Case No. 2546

Heard in Montreal, Tuesday, 13 December 1994

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN COUNCIL OF RAILWAY OPERATING UNIONS
(UNITED TRANSPORTATION UNION)**

EX PARTE

DISPUTE:

Appeal of discipline assessed the record of C. Mills of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of his assignment GO 14, C. Mills booked personal rest which continued on into 4 June 1993. Because of his personal rest, he was not available to work his assignment on 4 June 1993.

Subsequently, the Company appealed to the Canada Labour Board which resulted in an order "requiring certain employees of the United Transportation Union, who were engaged in an unlawful strike at Toronto, to cease and desist their unlawful actions."

On 13 June 1993, C. Mills was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. C. Mills was subsequently assessed a 30-day suspension for "Withdrawal of services and participation in an illegal strike resulting in disruption of GO service Friday, 4 June 1993."

The Union appealed the assessment of discipline to C. Mills on the grounds that the burden of proof was on the Company to establish that C. Mills participated in an illegal strike against the Company and in view of evidence, the Company did not establish such proof.

The Union therefore requested that the discipline assessed C. Mills be removed from his personal record.

The Company declined the Union's appeal.

FOR THE COUNCIL:

(SGD.) M. P. GREGOTSKI
GENERAL CHAIRPERSON

There appeared on behalf of the Company:

K. Peel	– Counsel, Toronto
A. E. Heft	– Manager, Labour Relations, Toronto
J. P. Krawec	– System Labour Relations Officer, Montreal
D. J. Nunns	– Superintendent, GO Operations, Toronto
B. J. Hogan	– Manager, CMC, Toronto

And on behalf of the Union:

R. A. Beatty	– Vice-General Chairperson, Hornepayne
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M. K. Hayes – President, Local 483, Toronto
G. S. Ethier – Vice-Local Chairperson, Hornepayne

AWARD OF THE ARBITRATOR

The facts giving rise to this grievance are related in **CROA 2545**. The grievor, Mr. Mills, booked 24 hours' rest off his split shift GO service assignment at 08:25 hours on June 3, 1993.

The Company alleges that booking 24 hours' rest on a Thursday was inconsistent with Mr. Mills' previous pattern of booking rest, and asks the Arbitrator to infer that he acted in support of the work stoppage. The evidence of the grievor is that he booked rest to go fishing with a friend on Thursday and Friday in Lakefield, Ontario, in furtherance of a trip planned two weeks in advance. In support of that claim he provided a receipt for the Sportsman's Motel in Lakefield, showing the payment of one night's lodging on Thursday, June 3, and the rental of a motor boat for June 4, 1993.

I am satisfied that the explanation provided by the grievor is credible, having particular regard to the clear documentation which he has provided to support his explanation for his actions in booking rest. The grievance is therefore allowed. The 30-day suspension assessed against the Mr. Mills shall be stricken from his record and he shall be compensated for all wages and benefits lost.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR