

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2547

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 F.S. Agueci of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of his assignment GO 14, F.S. Agueci 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 22 June 1993, F.S. Agueci was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. F.S. Agueci was subsequently assessed 30 demerits 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 F.S. Agueci on the grounds that the burden of proof was on the Company to establish that F.S. Agueci 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 F.S. Agueci 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. Fabio Agueci, booked rest for 23 hours on June 3, 1993 at 19:19 hours. The record discloses that previously in 1993 the grievor had never booked rest in excess of 10 hours on a Thursday, and only booked rest some four times on that day.

The Arbitrator has considered the explanation of the grievor, to the effect that he intended to help his father on his day off and was positioning himself to work a baseball game extra train on the night of June 4. On balance, having regard to the normal pattern of the grievor's record of booking rest, and the fact that he was made aware of the possible work stoppage when he did book off, I find his explanation unconvincing. I am satisfied, on the balance of probabilities, that Mr. Agueci did book rest in furtherance of the unlawful work stoppage as alleged.

The grievance is therefore dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR