

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2548

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 W. Hoy of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of his assignment GO 14, W. Hoy 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 4 June 1993, W. Hoy was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. W. Hoy 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 W. Hoy on the grounds that the burden of proof was on the Company to establish that W. Hoy 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 W. Hoy 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:

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| 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:

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| 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**. Mr. Hoy booked 24 hours' rest at 09:40 on June 3, 1993. This was the first time since February 22, 1993 that he booked rest past his morning assignment on GO service for the next day. Mr. Hoy states that he booked rest to baby sit his children, as his wife was scheduled to work the morning of June 4, 1993. No documentation or further evidence was provided to substantiate the grievor's claim. In the circumstances, given the departure from the grievor's normal pattern, the Arbitrator does not find his explanation convincing, and concludes, on the balance of probabilities, that the grievor booked rest in furtherance of the illegal work stoppage. The grievance is therefore dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR