

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2549

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.J. Kennedy of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of his assignment GO 14, C.J. Kennedy 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 16 June 1993, C.J. Kennedy was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. C.J. Kennedy was subsequently assessed 10 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 C.J. Kennedy on the grounds that the burden of proof was on the Company to establish that C.J. Kennedy 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.J. Kennedy 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 background to the instant grievance is related in **CROA 2545**. Mr. Kennedy booked 10 hours' rest at 19:55 hours on June 3, 1993. This effectively removed him from service for his scheduled morning shift on June 4, 1993. It appears that he did call in for work on June 4, and returned to service at or about 14:54 hours at Mimico.

The Arbitrator finds it difficult to reconcile the grievor's decision to book rest to a point one hour beyond his regular morning start time with his statement that he did not participate in the unlawful work stoppage. It seems clear that Mr. Kennedy could have booked nine hours' rest without losing a substantial additional earning opportunity of service on the morning shift. On the whole I find his explanation unconvincing, though I would agree that his calling in the next day merited the reduction of the penalty against him to ten demerits. For these reasons the grievance is dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR