

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2551

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 S. Polley of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of his assignment GO 14, S. Polley 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 24 June 1993, S. Polley was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. S. Polley was subsequently assessed a 60-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 S. Polley on the grounds that the burden of proof was on the Company to establish that S. Polley 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 S. Polley 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 relating to the work stoppage giving rise to this grievance are related in **CROA 2545**. Mr. Polley booked 24 hours' rest at 21:11 hours on June 3, 1993. As he then had 55 demerits against his record, the Company assessed a 60-day suspension against the grievor, in lieu of demerits which would have resulted in his dismissal.

Mr. Polley clearly booked rest at a time when he knew, or reasonably should have known, that he was at risk of being considered to be participating in a concerted work stoppage which had proceeded throughout most of the day. It was rare for Mr. Polley to book 24 hours' rest, particularly on a Thursday. He claimed that he did so firstly because he was tired after a long tour of duty, and later because he wanted to help a friend on a business venture. However, the credibility of his explanation is undermined by his prior pattern of booking rest and the lack of any documentation or corroboration in respect of this friend's business activities. In the result, the Arbitrator is not satisfied that the grievor has provided a full and credible explanation for his actions. I must conclude, on the balance of probabilities, that he knowingly participated in a concerted work stoppage and therefore this grievance must be dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR