

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 2552

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 N.M. Stadnyk of Toronto.

**COUNCIL'S STATEMENT OF ISSUE:**

On 3 June 1993, after completion of his assignment GO 14, N.M. Stadnyk 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, N.M. Stadnyk was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. N.M. Stadnyk 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 N.M. Stadnyk on the grounds that the burden of proof was on the Company to establish that N.M. Stadnyk 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 N.M. Stadnyk 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 events underlying this grievance are the subject of a number of awards, and are related in **CROA 2545**. Mr. Stadnyk booked 24 hours' rest from GO service following the completion of a split tour at 19:55 hours on June 3, 1993. The record establishes that Mr. Stadnyk had not booked 24 hours' rest previously since June of 1992.

Although Mr. Stadnyk claimed that he was suffering from his allergic condition due to a high pollution count, there is no medical certificate to substantiate that fact. Although he did produce a general letter from his physician stating that he suffers from allergies, there is no medical documentation to substantiate that he was ill on the dates in question, nor is there any explanation as to why he did not book sick if that indeed was his condition.

The Arbitrator is not persuaded by the grievor's explanation, having particular regard to the break from his previous pattern of booking rest and the lack of any documentation to support his claims. The evidence leads to the conclusion, on the balance of probabilities, that he participated in the work stoppage, as alleged. His grievance is therefore dismissed.

16 December 1994

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**