

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2553

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 D. Page of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 3 June 1993, after completion of her assignment GO 14, D. Page booked personal rest which continued on into 4 June 1993. Because of her personal rest, she was not available to work her 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 23 June 1993, D. Page was required to provide a formal employee statement in connection with her booking personal rest on completion of her assignment 3 June 1994. D. Page 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 D. Page on the grounds that the burden of proof was on the Company to establish that D. Page 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 D. Page be removed from her 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
--------------	--

M. K. Hayes – President, Local 483, Toronto
G. S. Ethier – Vice-Local Chairperson, Hornepayne

AWARD OF THE ARBITRATOR

The facts concerning the work stoppage giving rise to this grievance are stated in **CROA 2545**. The evidence discloses that Ms. Page booked 24 hours' rest at or about 19:50 hours on June 3, 1993.

The grievor related to the Company that she booked rest to attend a dentist's appointment the following day and indicated that she would produce a note from the dentist to substantiate her explanation. Unfortunately, no note was produced. In the circumstances the Arbitrator has little alternative but to draw inferences adverse to the grievor's claim. Moreover, the record of her conversation with the crew dispatcher in respect of her returning to work after subsequently booking sick on June 5, 1993 does not assist in her credibility in this matter. On balance, the Arbitrator is satisfied that the evidence supports the Company's conclusion that the grievor knowingly participated in an unlawful work stoppage on June 3 and 4, 1993.

The grievance is therefore dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR