

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2554

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 M. Fraser of Toronto.

COUNCIL'S STATEMENT OF ISSUE:

On 4 June 1993, M. Fraser booked sick which continued on into 4 June 1993. Because of this, 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 23 June 1993, M. Fraser was required to provide a formal employee statement in connection with his booking sick on 4 June 1994. M. Fraser was subsequently assessed a 30-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 M. Fraser on the grounds that the burden of proof was on the Company to establish that M. Fraser 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 M. Fraser 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
M. K. Hayes	– President, Local 483, Toronto

G. S. Ethier

– Vice-Local Chairperson, Hornepayne

AWARD OF THE ARBITRATOR

The background facts of this case are found in the decision of this Office in **CROA 2545**. On June 4, 1993, Mr. Fraser was scheduled to work a 10-hour tour of duty from 15:10 hours to 01:30 hours. At 10:20 hours on the 4th, he booked sick. However the evidence discloses that Mr. Fraser was not suddenly ill. He had made his doctor's appointment several days previous, and had worked in the interim. Although Mr. Fraser advised the Company that he had a letter of explanation from his doctor, no such letter was produced. The Company submits that Mr. Fraser could have attended his medical appointment, scheduled for 11:30 hours, without missing his tour of duty commencing at 15:10 hours.

On balance, the Arbitrator must agree with the Company. It was incumbent upon Mr. Fraser to provide a full and credible explanation for his absence. His failure to provide the doctor's note he said he would provide gives rise to adverse inferences with respect to the truthfulness of his explanation. The Arbitrator is of the view that Mr. Fraser failed to discharge the onus of full and satisfactory explanation which fell upon him, by reason of the principles related in **CROA 1911**. For these reasons his grievance must be dismissed.

16 December 1994

(signed) MICHEL G. PICHER
ARBITRATOR