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Canadian Railway Office of Arbitration
Case No. 2550
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 W.W. Plewes of
Toronto.

Ex Parte Statement of Issue:

On 3 June 1993, after completion of his assignment GO 14, W.W. Plewes 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 18 June 1993, W.W. Plewes was required to provide a formal employee statement in connection with his booking personal rest on completion of his assignment 3 June 1994. W.W. Plewes 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 W.W. Plewes on the grounds that the burden of proof was on the Company to establish that W.W. Plewes 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 W.W. Plewes be removed from his personal record.

The Company declined the Union's appeal.

for the Union:

(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 events leading to this grievance are related in CROA 2545, as are the principles which apply in respect of the burden of proof. Mr. Plewes booked 24 hours' rest at the completion of his regular GO assignment at 19:35 hours on June 3, 1993. Without any supporting documentation or further elaboration Mr. Plewes explained to the Company that he booked rest because of

"prearranged appointments" for June 4, 1993. Having regard to the lack of substantiation provided in support of the grievor's explanation, and the inconsistency of his action with his prior pattern of booking rest, the Arbitrator cannot accept his explanation as being credible. I conclude, on the balance of probabilities, that Mr. Plewes booked rest on June 3, 1993 in support of a concerted illegal work stoppage. For these reasons the grievance must be dismissed.

16 December 1994 (sgd.) MICHEL G. PICHER
ARBITRATOR