



Canada Industrial Relations Board

Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8
Fax/Télécopieur: 813-895-9493

Our File: 31022-C

Document No.: 547505

November 14, 2016

2016 CIRB LD 3726

BY FAX

Mr. Denis W. Ellickson
CaleyWray
Labour/Employment Lawyers
Suite 1600
65 Queen Street West
Toronto, Ontario
M5H 2M5 416-366-3293

Mr. Nizam Hasham
Legal Counsel - Litigation and Labour
Canadian Pacific Railway Company
Toronto Yard, General Yard Office
2025 McCowan Road
Toronto, Ontario
M1S 5K3 403-205-9202

Dear Sirs:

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and a complaint of unfair labour practice filed pursuant to section 97(1) thereof by Teamsters Canada Rail Conference, complainant, alleging violation of sections 50(b), 94(1)(a), 94(3)(a), 94(3)(b), 94(3)(e) of the *Code* by the Canadian Pacific Railway Company, respondent. (31022-C)

Further to the case management teleconference held in the above-referenced matter on September 29, 2016 and after consideration of the submissions of the parties filed on October 14, 2016 and October 24, 2016, the Board has decided to schedule a hearing in this matter.

The Board composed of Ms. Ginette Brazeau, Chairperson, Messrs. Richard Brabander and Norman Rivard, Members, has concluded that it has the necessary jurisdiction to determine the following outstanding questions:

1. whether the Board's Order (748-NB) prohibits the employer from relieving unionized crews of their responsibilities and training trainees while unionized crews sit in the locomotive or elsewhere on a train;
2. whether the Board's Order (748-NB) prohibits the employer from using managers to perform bargaining unit work when unionized employees are on layoff or have been recalled from layoff.

The Board has concluded that the question of whether the employer's practice of forcing employees to take rest is beyond the scope of the Board's interpretation of its Order and therefore, will not be considered by the Board in the context of this proceeding.

The Board has considered the employer's preliminary issues and dismisses the argument that the Board is *functus officio*, or that the union is stopped from bringing these questions forward.

The Board notes that the above-referenced complaint was filed with the Board in April 2015, approximately three months after the Board's Order was issued. The allegations brought forward by the union in the complaint make it necessary for the Board to determine whether the examples provided fall within the prohibited conduct enumerated in the Order. The Board is of the view that the issues raised in the complaint concern the interpretation of the Board's Order.

The Board also recognizes that the complaint was filed 18 months ago and is still outstanding due to several circumstances, including the Board's assessment that the parties' efforts were best focused on the interest arbitration process that proceeded before the Honorable Justice Adams. This process concluded in December 2015. The Board then dealt with an application to file the said Order in the Federal Court of Appeal for enforcement. This was the second application made by the union to file the order in Court. It became apparent in these applications that the parties have a different interpretation of the Order. As the Board stated in *Canadian Pacific Railway Company*, 2016 CIRB LD 3611:

The parties in this case have a legitimate difference of opinion with respect to the interpretation and application of the order. The Board is of the view that transposing the parties' dispute to the court for further litigation over the interpretation of the order will not assist the parties in resolving the issues that gave rise to the order in the first place.

The Board will hear the parties on March 8, 9 and 10, 2017 at the Board's offices located at 1 Front Street West, Suite 5300, Toronto, Ontario.

The union is to provide the Board and the employer, no later than **February 24, 2016**, with an outline of the relevant facts and its position with respect to those facts as it relates to the two questions noted above. The union, at the same, will also provide its Book of Documents and its

Witness Statements (forms attached). The employer is to provide the same information by no later than **February 28, 2017**.

Please take note of section 47(2) of the *Canada Industrial Relations Board Regulations, 2012*, which provides that, where a person who is notified of a hearing does not appear, the Board may proceed and dispose of the matter in the absence of that person. If any party requires an adjournment, that party must first consult with the other parties, as described in the Board's Information Circular No. 4, which is available on the CIRB Website.

The fact that the Board has scheduled this case for hearing does not prevent the parties from resolving the above-cited matter. The parties may contact the Board should they wish to avail themselves of Board assistance pursuant to section 15.1 of the *Code*.

For the Board,



Ginette Brazeau
Vice-Chairperson

c.c.: Ms. Lisa Rotatore (CIRB-Toronto)



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**WITNESS IDENTIFICATION FORM/
FORMULAIRE D'IDENTIFICATION DU TÉMOIN**

**BOARD FILE(S)/
DOSSIER(S) DU CONSEIL :**

**NAME OF WITNESS/
NOM DU TÉMOIN :**

**HOME OR BUSINESS ADDRESS/
ADRESSE PERSONNELLE OU TRAVAIL :**

OCCUPATION/EMPLOI :

**NAME OF REPRESENTATIVE/
NOM DU REPRÉSENTANT :**

**(Please attach a summary of evidence for each witness (form attached))
(Veuillez joindre un sommaire de la preuve pour chaque témoin (formulaire ci-joint))**

NOTE/REMARQUE

The information contained in this document is confidential and for the use of the Canada Industrial Relations Board only./Les renseignements contenus dans ce formulaire sont confidentiels et réservés à l'usage du Conseil canadien des relations industrielles seulement.





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**BOARD FILE(S)/
DOSSIER(S) DU CONSEIL :** _____

NAME OF WITNESS/NOM DU TÉMOIN : _____

**SUMMARY OF EVIDENCE/
RÉSUMÉ DU TÉMOIGNAGE**
