

# CaleyWray

## LABOUR/EMPLOYMENT LAWYERS

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File No. 30730

March 15, 2013

### **DELIVERED**

Mr. Jean-Daniel Tardif  
Acting Regional Director & Registrar  
CANADA INDUSTRIAL RELATIONS BOARD  
5300 - 1 Front Street West  
Toronto, ON M5J 2X7

Dear Mr. Tardif:

**RE: 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 THE TEAMSTERS CANADA RAIL CONFERENCE, COMPLAINANT ALLEGING VIOLATION OF SECTIONS 50(A), 50(B), 94(1)(A), 94(3)(A), 94(3)(B) AND 96 OF THE CODE BY THE CANADIAN PACIFIC RAILWAY, RESPONDENT.**

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We represent the Complainant, teamsters Canada Rail Conference in the above noted matter.

On behalf of our client, please find enclosed 3 copies of the Complaint filed under Section 97(1).

We trust the foregoing is satisfactory. If you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours truly,  
**CaleyWray**



Michael A. Church  
MAC/jmm  
Enclosure

c. D. Able, D. Olson, B. Hiller, B. Brunet (all by email w/e)  
G. Deciccio (by fax w/e)

Board File No. \_\_\_\_\_

**B E F O R E:**

**CANADA INDUSTRIAL RELATIONS BOARD**

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 the Teamsters Canada Rail Conference, Complainant, alleging violation of Sections 50(a), 50(b), 94(1)(a), 94(3)(a), 94(3)(b) and 96 of the *Code* by Canadian Pacific Railway, Respondent.

**BETWEEN:**

**TEAMSTERS CANADA RAIL CONFERENCE**

**Complainant**

**– and –**

**CANADIAN PACIFIC RAILWAY**

**Respondent**

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**COMPLAINT FILED UNDER SECTION 97(1)**

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Solicitors for the Teamsters  
Canada Rail Conference



**D. DATE WHICH THE COMPLAINANT KNEW OF THE CIRCUMSTANCES GIVING RISE TO THE COMPLAINT:**

December 21, 2012 and continuing.

**E. PARTICULARS OF THE MEASURES TAKEN, IF ANY, TO HAVE THE COMPLAINT SUBMITTED TO ARBITRATION UNDER A COLLECTIVE AGREEMENT OR REASONS WHY AN ARBITRATION DID NOT TAKE PLACE:**

Please see below.

**F. STATEMENT OF FACTS, RELEVANT DATES AND GROUNDS FOR THE COMPLAINANT'S OVERVIEW OF THE COMPLAINT:**

**PRELIMINARY COMMENTS**

The Board is well aware of the background facts to this situation. The Complainant has filed voluminous pleadings (including declarations, documents, witness statements, caselaw, etc.) with the Board in respect to earlier related applications and complaints. The Complainant also attended before the Board on October 19, 2012 and presented oral arguments, additional evidence (including undisputed documents) and caselaw. The Complainant refers to and relies upon all of its filings, submissions and evidence in connection with Board File Nos. 29635-C and 29637-C. The Complainant also refers to and relies upon the Board's decisions and orders in connection with each of these files.

The Applicant also refers to and relies upon its filings (pleadings, documents, witness statements, etc.) in connection with Board File No. 29785-C. The Board is scheduled to hear evidence and arguments in connection with this file on March 18 and 19, 2013 at its offices in Ottawa.

The above-noted Board files involve many of the same facts, documents, issues, arguments etc. that apply to this new complaint. In fact this new complaint involves a continuation of the Respondent employer's continuing violations of the *Code*. These violations continue in spite of the process referred to above and below. The Respondent employer has largely ignored the Board's decision and order (29637-C), the Arbitrator's award, new collective agreements and the Complainant's pleas for restraint.

**INTRODUCTION**

1. The Teamsters Canada Rail Conference (hereinafter "the Union" or "TCRC") is a trade union within the meaning of the Canada Labour *Code*. The TCRC represents, inter alia, the running trades employees (Locomotive Engineers, Conductors, Yardmen and Trainmen) of railways across Canada.

2. The instant Complaint relates to actions of the Canadian Pacific Railway (hereinafter "CP Rail" or "the Company") in cancelling local agreements affecting employees throughout the entire CP system in the face of Board orders to the contrary, an interest arbitration award and provisions of new collective agreements.
3. The Company's actions are interfering with the Union's administration of the relevant Collective Agreements and representation of its members; are threatening and intimidating; constitute a violation of the *Code*; and are in violation of the Company's obligation to bargain in good faith.
4. The Company's actions are provocative and are increasing; they are causing great unrest and tension on the property and must cease forthwith.

## **BACKGROUND**

5. For the purposes of collective bargaining and collective agreement administration, the Union is divided into various General Committees of Adjustment on the basis, primarily, of employer, region and craft.
6. The TCRC members employed by CP Rail as Locomotive Engineers in Western Canada are represented by the TCRC LE-West. The General Chairman of this Committee is Mr. Dave Able. General Chairman Able's office is responsible for administering, enforcing and negotiating the TCRC – Locomotive Engineers West and CP Rail Collective Agreement.
7. The TCRC members employed by CP Rail as Conductors, Trainmen and Yardmen ("CTY") in Western Canada are represented by the TCRC CTY-West. The General Chairman of this Committee is Mr. Dave Olson. General Chairman Olson's office is responsible for administering, enforcing and negotiating the TCRC – Conductors, Trainmen and Yardmen West and CP Rail Collective Agreement.
8. The TCRC members employed by CP Rail as Locomotive Engineers in Eastern Canada are represented by the TCRC LE-East. The General Chairman of this Committee is Mr. Benoit Brunet. General Chairman Brunet's office is responsible for administering, enforcing and negotiating the TCRC – Locomotive Engineers East and CP Rail Collective Agreement.
9. The TCRC members employed by CP Rail as Conductors, Trainmen and Yardmen ("CTY") in Eastern Canada are represented by the TCRC CTY-East. The General Chairman of this Committee is Mr. Bruce Hiller. General Chairman Hiller's office is responsible for administering, enforcing and negotiating the TCRC – Conductors, Trainmen and Yardmen East and CP Rail Collective Agreement.

10. There are separate Collective Agreements applicable for each of the foregoing General Committees. The Collective Agreements in effect have a nominal expiry date of December 31, 2014.

#### **LOCAL AGREEMENTS**

11. As the Board is aware, the Company conducts its operations through numerous terminals situated at key locations throughout the country.
12. The Collective Agreements contemplate and provide for agreements known as "Local Agreements" to be entered into dealing with a variety of issues peculiar to a particular terminal. Locally and nationally the parties have entered into Local Agreements on dozens of occasions beneficial to the Company, the Union and the Union's members.
13. The Local Agreements have, in many cases, been in place for 20 years or longer.
14. The Collective Agreements typically permit the cancellation of the Local Agreements by either the Union or the Company on 30 or 60 days' notice.

#### **BARGAINING AND BILL C-39**

15. In 2011 and 2012, the Union and the Company engaged in the process of collective bargaining for the purposes of seeking renewal Collective Agreements. This was joint bargaining of each of the above General Committees and bargaining units and CP Rail.
16. During the course of bargaining, the Company did not propose to cancel all Local Agreements.
17. On May 23, 2012, the Union commenced legal strike action after receiving an overwhelming strike mandate from its membership.
18. On June 1, 2012, the Federal Government passed Bill C-39 ending the strike and referring the remaining issues in dispute between the parties to an arbitrator for final and binding arbitration. The legislation further extended the term of each Collective Agreement until a new collective agreement comes into effect. (Copy attached)
19. Subsequent to the passing of Bill C-39, Arbitrator William Kaplan was appointed to decide the terms and conditions of new Collective Agreements. On September 1 and 2, 2012, the parties met with Arbitrator Kaplan in an effort to mediate their differences. They were not successful.

20. In addition to meeting with Arbitrator Kaplan in mediation, the parties have met several times since the back to work legislation for the purposes of attempting to reach agreement on new collective agreements.
21. The arbitration process before Arbitrator Kaplan continued on December 8 to 10, 2012 and he issued a decision dated December 19. The Company once again cancelled all local agreements, gentlemen's agreements, etc. commencing the next day.

### **CANCELLATION OF LOCAL AGREEMENTS**

22. Commencing on or about September 10, 17, 20 or 26 2012 (depending on the General Committee), the Company issued Notices system wide purporting to cancel Local and other Agreements on 30 or 60 days' notice and cancelling any verbal agreements effective immediately. In total, in the past two weeks the Company has issued notices purporting to cancel dozens and dozens of Local Agreements at twenty seven (27) terminals or locations.
23. The Local Agreements cover a variety of items and working conditions including:
  - Familiarization trips
  - Doctors appointments
  - Work train agreements
  - Pool agreements
  - Subdivision agreements
  - Attendance at Rule classes
  - Optional rest after annual vacation or miles
  - Short calls
  - Switcher agreements
  - Union Officers engaged in Union business
  - Payment for delays
  - Payment for lifting trains
  - Temporary vacancies
  - Compensation and rates
  - Work allocation and entitlement

- Order of call
24. The foregoing are critical agreements dealing with how the Collective Agreements are interpreted and applied on a daily basis at each Terminal.
  25. In addition, by virtue of notices issued on September 26, 2012 the Company purported to abolish RTC operations in Rugby (Winnipeg) resulting in the abolishment of five (5) bargaining unit positions and to abolish four (4) positions in Calgary.
  26. At no time during the collective bargaining process or in the process before Arbitrator Kaplan did the Company ever indicate it intended to cancel all of these Local Agreements or the agreements relating to the RTC positions.
  27. If the Company's notice of cancellation of Local Agreements is valid and permissible, the foregoing Local Agreements would be terminated commencing on or about October 20, 2012. The Board issued a decision and order on October 19, 2012 revising the Company's plans.

#### **THE UNION'S POSITION**

28. It is the position of the Union that the Company's latest conduct in purporting to give 30 days' notice cancelling virtually every Local Agreement and cancelling any verbal or "gentlemen's agreements" effective immediately constitutes a violation of the *Code*, including Sections 50(a) and (b), 94(3)(a) and (b) and 96 and that the relief requested herein is necessary and appropriate.
29. The Company's conduct also constitutes a reprisal against employees for engaging in a lawful strike.
30. Furthermore, in light of the fact that the parties engaged in the collective bargaining process and in the arbitration/mediation process before Arbitrator Kaplan, the Company's conduct constitutes bad faith bargaining; constitutes significant interference with the administration of the Union and its representation of employees; and constitutes threatening and intimidating conduct all contrary to the *Code*.
31. The grievance procedure is not well suited to deal with this matter on such an expedited basis. In each of the Collective Agreements the Company has sixty (60) days to respond to a grievance. As the Company commenced cancelling all of the Local Agreements by this date, the grievance procedure is not setup to dispose of these matters in a fair and expeditious fashion consistent with the purposes of the *Code*.



## REMEDIES SOUGHT

32. The Applicant requests the following relief from the Board:
- a. A hearing on an expedited basis;
  - b. A declaration that the Respondent is in violation of the *Code*, including Sections 50(a), 50(b), 94(1)(a), 94(3)(a), 94(3)(b) and 96;
  - c. An Order directing the Respondent to:
    - i. cease and desist from unilaterally or otherwise cancelling Local Agreements for the duration of the Collective Agreements;
    - ii. cease and desist from unilaterally cancelling any and all verbal or gentlemen's agreements;
    - iii. cease and desist from any further violations of the *Code*;
    - iv. pay damages for the Respondent's conduct including full compensation to any aggrieved individual;
    - v. pay the Applicant's legal costs;
    - vi. post the Board's order and reasons for decision in conspicuous locations throughout each and every workplace; and
    - vii. such other relief as may be appropriate.
33. Attached to this Complaint are the Written Statements of each of the affected General Chairpersons confirmed by solemn declaration.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

DATED at Toronto this 15<sup>th</sup> day of March, 2013.

On behalf of the Respondent by its  
Solicitors CaleyWray per:

A handwritten signature in cursive script, appearing to read "Michael A. Church", written over a horizontal line.

Michael A. Church