



C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8  
Édifice C.D. Howe, 240, rue Sparks, 4<sup>e</sup> étage Ouest, Ottawa (Ont.) K1A 0X8

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**Our File: 037545-C**

Document No.: 0668898-D

July 29, 2024

2024 CIRB LD **5405**

**BY WEB PORTAL**

Mr. Ken Stuebing  
Partner  
CaleyWray  
Labour/Employment Lawyers  
Suite 1600  
65 Queen Street West  
Toronto, Ontario  
M5H 2M5

Mr. Ian Campbell  
Partner  
Fasken Martineau DuMoulin LLP  
Bay Adelaide Centre  
Suite 2400  
333 Bay Street  
Toronto, Ontario  
M5H 2T6

Dear Sirs:

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and an application filed pursuant to section 19.1 thereof by the Teamsters Canada Rail Conference, applicant; Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway), respondent. (037545-C)

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A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Allison Smith, Vice-Chairperson, and Mesdames Elizabeth Cameron and Angela Talic, Members, considered the above-noted Application.

A hearing was held from July 10 to 12, 2024, in Montréal, Quebec.

## **I. Nature of the Application**

The present Application for interim relief was filed pursuant to section 19.1 of the *Canada Labour Code* (the *Code*) by the Teamsters Canada Rail Conference (TCRC or the Union) in the context of collective bargaining for a renewal collective agreement for the Locomotive Engineers, Conductors, Trainmen and Yardmen bargaining unit at the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway) (CPKC or the Employer). In the Application, the TCRC alleged that CPKC had made the following unilateral changes to the terms and conditions of employment for the bargaining unit:

1. Unilateral imposition of Extended Service Runs;
2. Imposition of duty and rest period rules at away-from-home terminals;
3. Denial of held away pay when employees are on a reset break at the away-from-home terminal; and
4. Denial of the use of the Medical Hold provision for massage and chiropractic appointments.

The Union also filed a related unfair labour practice complaint in Board file no. 037538-C.

During a Case Management Conference (CMC) held on May 3, 2024, the Board advised the parties that it would be scheduling a hearing with them to hear further information concerning Issues #1 and #2. As for Issues #3 and #4, the Board determined that it did not need additional information beyond the written pleadings and therefore did not need to hear further information regarding those issues.

Following discussion with the parties, a hearing was scheduled for the above-noted issues raised in the section 19.1 Application and was set to take place from June 4 to 6, 2024, in the Board's Toronto, Ontario, office.

A pre-hearing CMC was also scheduled for May 27, 2024, to discuss any updates that the parties had for the Board, hearing procedures and any preliminary issues.

Given the fluid and dynamic nature of the processes in which the parties were engaged at the time of the May 3, 2024 CMC, the Board also scheduled back-up hearing dates from July 10 to 12, 2024.

Pursuant to section 87.4(5) of the *Code*, on May 9, 2024, the Minister of Labour referred a question to the Board, asking it to determine the application of section 87.4(1) of the *Code* to the parties and the action, if any, that is required in order for the Employer, the TCRC and the employees in the bargaining unit to comply with section 87.4(1) of the *Code* in the event of a work stoppage. That matter is being considered by a panel of the Board that is constituted differently than the panel considering the present Application.

## **II. The May 27, 2024 CMC**

### **A. Resolution of Certain Issues**

The parties advised the Board that they had been able to resolve Issues #1 and #4, which are resolved for both the section 19.1 Application and the related unfair labour practice complaint in Board file no. 037538-C. Issues #2 and #3 remain live issues between the parties and remain under discussion during their negotiation process.

### **B. Adjournment of Hearing Scheduled From June 4 to 6, 2024**

After hearing from the parties, considering their positions and recognizing the additional process and time commitments that resulted from the ministerial referral, the Board decided to grant the Employer's requested adjournment but to confirm the hearing dates previously scheduled from July 10 to 12, 2024 for the section 19.1 Application. In doing so and having been assured that the parties were continuing to discuss the outstanding issues raised in the section 19.1 Application and in the related unfair labour practice complaint, the Board was of the view that, on balance, the objectives of the *Code* were continuing to be served and that the adjournment of the hearing from June to July 2024 was the most prudent approach.

### **III. Hearing Held From July 10 to 12, 2024**

The Board heard evidence with respect to Issue #2 from two witnesses in Montréal in an oral hearing held from July 10 to 12, 2024. The sworn affidavit of a third witness was filed; however, the parties agreed that the person did not need to be called, subject to the Employer indicating that it did not agree with a particular sentence in the applicable sworn affidavit, which the Board has noted.

### **IV. The Board's Discretion to Issue an Interim Order Under Section 19.1**

While the Board has significant discretion to issue an order under section 19.1 of the *Code*, it will not do so lightly or without very careful consideration.

### **V. Bottom-Line Decision**

Following discussion with the parties at the end of the hearing and given the unique factors present in their current efforts to bargain collectively, it was agreed that the Board would issue a bottom-line decision and provide full reasons for that decision at a later date.

Having carefully reviewed the submissions of the Union and the Employer and having considered the testimony and arguments presented during the hearing, the Board has decided not to exercise its discretion to issue the requested interim order under section 19.1 of the *Code*. The Board is not convinced that such an order would further the objectives of the *Code*.

The Board has been reluctant to establish a specific test in determining applications for interim orders. In doing so, the Board has recognized that each application is unique and must be

assessed based on the particular facts, circumstances and context presented within the application. The three-part test for injunctive relief established by courts—(1) whether there is a serious issue to be determined; (2) whether there is a likelihood or possibility of irreparable harm; and (3) what the balance of convenience is—can provide an analytical guideline for the Board's analysis. However, the primary question is whether the order being sought is appropriate to fulfill the objectives of the *Code* (see *Trentway-Wagar Inc.*, 2000 CIRB 57, at paragraph 29).

The objectives of the *Code* are set out in its Preamble and include: the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes; the recognition of freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations; and extending support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices.

While the Board has broad discretion to grant interim relief in the context of a section 19.1 application, the *Code's* objectives are paramount when considering such an application. The Board has held that the purpose of granting any remedy under section 19.1 is to stabilize the labour relations environment or to neutralize any potential harm of an alleged unfair labour practice pending the final determination of the related complaint. (see *Bell Canada*, 2001 CIRB 116, at paragraph 36).

For Issue #2 (duty and rest period rules being imposed at away-from-home terminals), based on the pleadings on file and the evidence heard during the hearing, the Board has determined that this issue does not warrant its intervention and declines to issue an interim order under section 19.1 of the *Code*.

In coming to this decision, and while being mindful of the effects on the employees who were held away from their home terminals, particularly those who were held away for considerable lengths of time during regulatory reset breaks, the Board considered the issues before it in the context of the labour relations realities presented by the parties. Furthermore, it is mindful of the purposes of Part I (Industrial Relations) of the *Code*, including the encouragement of free collective bargaining and the constructive settlement of disputes.

The Board is not convinced that the nature and level of the alleged harm are such that it needs to intervene to rebalance the bargaining environment on an interim basis. The Board has not heard any evidence of the presence of labour relations harm to the Union regarding its administration or its relationship with its members. Further, it appears that the affected employees could be compensated with a monetary payment in the event that a breach of the *Code* is found.

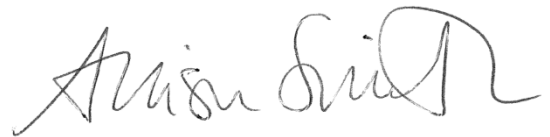
For Issue #3 (the denial of held away pay when employees are on a reset break at the away-from-home terminal), the Board was able to consider and determine this issue based on the written record. Based on its careful review of the record, the Board finds that its intervention in the form of an interim order is not required, as there is no evidence of the existence of labour relations harm to the Union regarding its administration or its relationship with its members. Nor is any rebalancing of the bargaining environment necessary. The pleadings disclosed that the concerns raised for that issue, including the concerns regarding time away from family or attending to personal

matters, could be compensated with money and could be determined by an arbitrator under the parties' process before the Canadian Railway Office of Arbitration and Dispute Resolution.

Full written reasons for this decision will be provided as quickly as possible.

The Board is already working with the parties to schedule mutually available dates for a hearing on the merits of Issues #2 and #3.

This is a unanimous decision of the Board, and it is signed on its behalf by

A handwritten signature in black ink, appearing to read "Allison Smith", with a stylized flourish at the end.

Allison Smith  
Vice-Chairperson

c.c.: Ms. Lindsay Foley