

CaleyWray

LABOUR/EMPLOYMENT LAWYERS

1600-65 Queen Street West
Toronto ON M5H 2M5

Denis W. Ellickson
Direct Line: 416-775-4678
Toll Free: 1-866-691-3763
Fax: 416-366-3293
Email: ellicksond@caleywray.com

File No. 32893

January 28, 2014

E-MAILED

Mr. Dave Guerin
Director, Labour Relations
Canadian Pacific Railway
Building One
7550 Ogden Dale Road, SE
Calgary AB T2C 4X9

Dear Mr. Guerin:

RE: CROA 4078 SUPPLEMENTAL HEARING

As you are aware, I am counsel to the Union in the above matter now docketed for February, 2014. I am responding to your correspondence of December 10, 2013 to Messrs. Able and Olson seeking particulars of the Union's case. While the Union is of the view that the Company is fully aware of the details of the hundreds of violations of the hours of service provisions of the Collective Agreements right across the country, we can advise you as follows.

The Arbitrator issued his Award on January 16, 2012. In his Award, the Arbitrator found that the Company had failed to fully honour the requirements of the hours of service provisions of the Collective Agreements. Rather than immediately issue a cease and desist order, the Arbitrator directed the parties to meet and attempt to resolve the issue.

The parties did meet in February, 2012 and the Company committed to a permanent and sustainable solution. The Company also committed to a further meeting in April, 2012. The Company failed to meet. The Union wrote to the Company inquiring as to why there was no meeting. The Company's response was that there was a meeting with the Local Chairs at two Terminals. Given that the issues are system wide, this made no sense to the Union. The violations continued and more grievances were filed. Since this time there has been not only a lack of progress but a considerable amount of backsliding.

As a result of the Company failure to cooperate or even respond to the Union's communications – and with the violations piling up - in March, 2013 the Union concluded it had no other alternative but to return to the Arbitrator. A proposed Joint Statement of Issue was prepared and sent to the Company. The Company refused to sign the JSI and the Union proceeded to submit an Ex Parte Statement to CROA. The case was then docketed for June, 2013.

Only once this was done did the Company propose to strike a committee involving all 4 General Committees to finally address the over hours issues. In good faith the Union agreed to adjourn the June hearing. A meeting was then held on April 23, 2013 with all 4 General Chairmen present. At this meeting the Company committed to taking steps to eliminate all over hours violations across the system. The Company advised that the steps it planned to take to accomplish this goal would include:

1. Once a crew member gives notice of rest, the Operations Centre would formulate a plan to ensure the crew member is off duty after 10 hours (or 11 or 12 hours as the case may be);
2. Every case of over hours would be fully investigated by the Operations Team; a list would be prepared indicating the violation and the corrective action taken; and
3. Conference calls would be held weekly with the General Chairmen – with an agenda circulated in advance - to discuss any violations and come up with solutions.

None of these measures have been sustained or have been effective in reducing, let alone eliminating, over hours issues. In fact, the weekly conference calls in the West have been cancelled since the end of November, 2013. The Union also understands that – except for a brief period – no “plan” has ever been formulated by the Operations Centre. Crews continue to be compelled to work over their hours despite booking rest in accordance with the Collective Agreements. In fact, since the Arbitrator's Award was released there have been well over 1000 breaches of the hours of service provisions of the Collective Agreements.

Some of the numbers for individual Terminals are as follows:

In Moose Jaw for the month of October there were 244 violations; in November there were 53; and in December there were 46 violations. In Winnipeg there were 22 violations in November, 2013. This number increased to 36 violations for December. For the month of December, 2013 in Medicine Hat alone there were 178 violations. In the same month in Edmonton there were 94 crews that experienced an over hours violation. For the first 19 days of the New Year, there were a further 76 violations in Edmonton. On Thursday of last week there were 12 over hour violations just in Alberta.

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In the last 28 days there have been 151 over hours violations just in the Terminal of Calgary.

For the first 27 days of January there were 57 violations in Medicine Hat.

In Lethbridge for the months of November and December, 2013 there were 233 violations.

The violations are not confined to the West of course. In Northern Ontario for the month of December there were 59 violations. There were an additional 88 violations in the rest of Eastern Canada. In January the numbers were 49 and 64 respectively.

Neither grievances nor personal pleas have resulted in a reduction in these violations; rather the violations are on the increase.

Certain particularly egregious examples are as follows:

On November 25, 2013 Moose Jaw crew Elder and Rennie gave notice of rest in the first 5 hours of their tour of duty. Prior to the expiry of their 10 hours, the crew contacted RTC to ensure there was a plan in place for relieving them. They were then advised that there was no relief for them and they were to continue working "whether they like it or not". Ultimately the crew was forced to work nearly 11 hours and 15 minutes. A grievance was filed and the Local Chair has requested the audio tapes to confirm the foregoing instructions. He has been denied. A similar request by General Chairman Able to Mr. Deciccio has been ignored.

On December 4, 2013 Medicine Hat crew Hexter and Brudevold gave notice of rest in the first 5 hours of their tour of duty. Prior to the expiry of their 10 hours, the crew was asked if they were aware that they would be required to work over their hours. The crew stated they were not aware of this and expected to be relieved of duty after 10 hours. The crew was then advised that instructions had been given to all crews that they would be expected to work maximum hours daily (12 hours). The crew ultimately did all of the tasks assigned to them but, of course, were required to work in excess of their 10 hours. In fact, they were forced to work 11 hours and 40 minutes.

A grievance was filed which has, once again, been ignored. Also ignored were the Union's repeated requests for the relevant voice recordings.

On December 28, 2013 a very senior Calgary Locomotive Engineer was forced to work as a Conductor. He gave notice of rest in the first 5 hours of his tour of duty. Despite this, he was forced to work nearly 3 hours over his required duty day; nearly 13 hours in total.

What the foregoing reveals is that the Company has absolutely no intention of complying with the hours of service provisions of the Collective Agreements; the Over Hours letter of November 13, 2004; Appendix 9; or with the Arbitrator's Award. The Company's statements to the contrary are not credible.

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As stated earlier, the Union is of the view that the Company is fully aware of the particulars (dates, names of crew members, locations and train information) of the hundreds of violations since the Arbitrator's Award. Further and in fact, this was information that the Company had committed to providing the Union in April of last year. Indeed the Union intends to rely upon some of the Company's own statistics previously produced in the form of Score Cards in addition to the information provided on the now cancelled weekly conference calls.

Despite this knowledge and despite the filing of dozens and dozens of grievances, the Company continues to commit significant numbers of violations on a daily basis system wide.

Further, each of the grievances properly identifies the date, time, crew names, locations and train information. Therefore, the Company already has the information you purport to seek.

Notwithstanding this, later today we will be sending you a Book of Documents which will include various grievances and supporting documents that the Union may refer to and/or rely upon at the hearing. The Union reserves the right to rely on further documents and information as it becomes available to the undersigned. We don't intend to provide all copies of the various Score Cards or information disclosed to the Union during the conference calls as you will already have this information. Neither do we intend to include the supporting crew information documents as there are hundreds of pages. We are, of course, prepared to email you these documents should you wish.

We would appreciate receiving any document the Company intends to rely upon by no later than one week prior to the hearing.

Finally, in addition to requesting a cease and desist order, the Union is considering alternative remedies, including but not limited to an order of damages for every instance of a violation and/or an order that any crew member is entitled to stop working after 10 hours (or 11 or 12 hours as the case may be) whether or not there is any relief in place. For reasons that should now be obvious, the grievance procedure has not proved to be effective in resolving the issues and exceptional remedies are therefore in order.

Yours truly,
CaleyWray



Denis W. Ellickson
DWE/km

c. D. Able, D. Olson, G. Edwards, D. Fulton, B. Brunet, B. Hiller, W. Aspey, J. Campbell, D. Finson