

# CaleyWray

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File No. 32262

February 6, 2015

**FAXED**

Ms. Sylvie Guilbert  
Executive Director and Senior Registrar  
CANADA INDUSTRIAL RELATIONS BOARD  
C.D. Howe Building  
240 Sparks Street, 4th Floor West  
Ottawa, ON K1A 0X8

Dear Ms. Guilbert:

**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 94(1)(a) AND 94(3) OF THE *CODE* BY THE CANADIAN PACIFIC RAILWAY COMPANY, RESPONDENT. (30114-C)**

**IN THE MATTER OF THE *CANADA LABOUR CODE (PART I – INDUSTRIAL RELATIONS)* AND AN APPLICATION FOR INTERIM RELIEF FILE PURSUANT TO SECTION 19.1 THEREOF BY THE TEAMSTERS CANADA RAIL CONFERENCE, COMPLAINANT, THE CANADIAN PACIFIC RAILWAY COMPANY, RESPONDENT. (30136-C)**

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We are counsel to the Complainant in the above matters. We are writing on an urgent basis to request, pursuant to Section 23 of the *Canada Labour Code*, to request that the Board file in the Federal Court a copy of the Board's January 9, 2015 decision in the above matters, 2015 CIRB 755.

Our reasons for this request include the following.

In 2015 CIRB 755, the Board found as follows at pages 11-12:

- b. Cases in which bargaining unit personnel were scheduled to work and were replaced by management personnel in training.

While the Board recognizes that the employer's interest in having managers qualified to operate trains, this interest must be balanced against the union's

interest in the integrity of its bargaining unit. In the Board's view, the employer's practice of relieving unionized crews of their assignments in order to train managers contravenes the recognition of bargaining unit work embodied in the union's certification order and violates sections 36(1)(a) and 94(1)(a) of the *Code*. The employer is hereby directed to cease this practice.

This does not mean that the employer cannot train its managers; the Board is confident that CP Rail is capable of finding efficient ways to provide managers with the road experience they require to qualify as conductors and engineers without displacing union members from bargaining unit work.

- c. Cases in which bargaining unit personnel have been asked to train management personnel.

As both parties pointed out, the collective agreement is silent as to the training of managers. The Board appreciates the employer's desire to ensure that managers are fully familiar with railway operations but **it also understands the union's very real concern that the training of managers will result in the creation of a pool of trained strike-breakers in the event of a lawful work stoppage**. While an employer is entitled to continue to operate its business during a labour dispute, **the union and its members are under no obligation to assist the employer in this endeavour**. The Board therefore order that the employer cannot compel union members to participate in the training of managers. (Emphasis added)

Accordingly the Board issued Order No. 748-NB that included the following orders that the Company:

- (b) cease and desist from replacing members of the union's bargaining unit who have been scheduled to work with management personnel in training; and
- (c) cease compelling members of the union's bargaining unit to participate in training managers to operate trains.

Last week, the Union became aware that in locations across Western Canada CP's Managers are relieving employees of their obligation to operate and control their trains. This is being done for the purposes of allowing Managers to train management trainees. Crews are then relegated to the role of observers. The Union contends that in so doing, the Company is violating the Board's Directions.

This insidious practice is taking place with escalating frequency. The Union encloses a chart setting out recent instances that have been brought to its attention. Except where noted otherwise, each example involved Managers relieving employees of their obligation to operate and control their trains.

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In addition, examples 6 and 7 on the enclosed chart constitute overt, clear examples of managers replacing unionized members and taking away work opportunities from Unionized members, contrary to the Board's Order.

With increasing frequency, the Company is replacing members of the union's bargaining unit who have been scheduled to work with management trainees. Specifically, the Union's members are asked to step aside, relinquish the controls of the console yet are directed remain in the cab as observers while Manager trainees assume control of a movement and perform bargaining unit work.

The Union submits that its members are being both displaced and required to participate in the training of potential strike-breaking managers. It is unacceptable that the Company is involving the Union's members in its management training initiative. In advance of the pending lawful/strike deadline on February 14, 2015, the Company's conduct constitutes a direct and egregious affront to the Union's membership and the Board's findings.

The Union wrote the Company's counsel on January 30, 2015. The Company's enclosed email response is insufficient and disingenuous in the circumstances.

The Respondent's conduct is in direct violation of the Board's decision. The failure to comply with the Board's decision constitutes sufficient grounds for the Board to file a copy of its Decision and Order No. 748-NB in the Federal Court and we respectfully request the Board do so forthwith.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Yours truly,  
**CaleyWray**



Ken Stuebing  
KS/jmm

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|----|------------|------------|---------------|
| c. | G. Edwards | B. Hiller  | N. Hasham     |
|    | D. Finnon  | D. Fulton  | B. Brunet     |
|    | D. Edward  | H. Makoski | N. Zawadowsky |