

Board File No.

CANADA INDUSTRIAL RELATIONS BOARD

Concerning the *Canada Labour Code* (Part I – Industrial Relations) and complaints pursuant to Section 97(1)(a) thereof, regarding an unfair labour practice contrary to Section 94(1).

BETWEEN:

TEAMSTERS CANADA RAIL CONFERENCE

Complainant

-and-

CANADIAN NATIONAL RAILWAY COMPANY

Respondent

**COMPLAINT PURSUANT TO SECTION
97(1)(a) OF THE CANADA LABOUR CODE**

1. The full name and address of the Complainant is:

Teamsters Canada Rail Conference
National Headquarters
1401 - 150 Metcalfe Street
Ottawa, Ontario K2P 1P1

Attention: Mr. Gilles Hallé

Telephone: (613) 235-1828
Facsimile: (613) 235-1069

and:

Shields & Hunt
Barristers & Solicitors
68 Chamberlain Avenue
Ottawa, Ontario K1S 1V9

Attention: James Shields

Telephone: (613) 230-3232

Facsimile: (613) 230-1664

Solicitors for the Complainant

2. The full name and address of the Respondent is:

Canadian National Railway Company
935 de La Gauchetière St. West
Montreal, Quebec
H3B 2M9

Telephone: (514) 399-8366

Facsimile: (514) 399-4652

The Facts

3. Teamsters Canada Rail Conference (“TCRC”) is the certified bargaining agent for all locomotive engineers employed by the Canadian National Railway Company (“CN Rail”).
4. The TCRC and CN Rail have entered into collective agreements, referred to as Agreement 1.1 for Eastern Lines and Agreement 1.2 for Western Lines, of CN Rail. These collective agreements are in full force and effect.
5. On February 9th, 2007, CN Rail has advised all Local Chairmen of the TCRC across the country, that it will be unilaterally increasing the spare board and assignments in every terminal.

6. This unilateral action by CN Rail is contrary to the provisions of Articles 47, 48, 49 and 65 of Agreement 1.1 and Articles 31, 33, 44, 45, 51 and 64 of Agreement 1.2 entered into between CN Rail and the TCRC.
7. CN Rail has unilaterally decided to change the work assignments of the locomotive engineers, without regard to its obligations under the aforementioned Articles and without the consent of the bargaining agent, TCRC.

The Relevant Provision of the Code

8. Section 94(1) of the *Code* provides:

(1) No employer or person acting on behalf of an employer shall (a) participate in or interfere with the formation or administration of a trade union or the representation of employees by a trade union.

Board Jurisprudence

9. Section 94(1) of the *Code* is aimed, among other things, at protecting the viability of the union and its role of operating, independent of the employer.

- *White v. Pacific Maritime Agencies Ltd.* [1977] 2 Can. L.R.B.R. 168 at para. 9.

10. Specifically, this provision is concerned with management interference in union affairs:

It is not necessary for a complainant to succeed under section 94(1)(a) to establish an anti-union animus or an intention to discriminate on the part of the employer. Indeed, that provision calls for an objective test first

concerned with the effect of the employer's actions on the legitimate rights of employees or their unions.

- o *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)* (1990), 91 C.L.L.C. 16,007 at para. 52.

11. While a collective agreement is in force, the following will constitute an interference with the union's right to represent employees under section 94(1)(a):
 - a. Unilaterally amending the provisions of a collective agreement or failing to abide by the terms of the agreement unless the employer has negotiated those changes with the bargaining agent (*I.U.O.E., Local 987 v. L & R Transport Ltd.*, [2000] C.I.R.B. No. 56)
 - b. An employer's failure to provide to its unions an opportunity to address in a meaningful manner the consequences of a planned business decision affecting significant employment rights (*S.M.W.I.A. v. Canadian National Railway* (1994), 95 di 78)
 - c. An employer may not make changes to the terms and conditions of employment (*Council of Atlantic Telecommunications Unions v. Aliant Telecom Inc.*, [2005] C.I.R.B. No. 310 at para. 29.

CN Rail's Violation of the Code

12. The TCRC submits that CN Rail is attempting to unilaterally change the working conditions of the locomotive engineers contrary to the provisions of the collective agreement.
13. These changes in working condition are being imposed without the consultation, or consent, of the TCRC.
14. CN Rail undermined and interfered with the union leadership when it informed bargaining unit members that it would be imposing these unilateral changes and breaching the terms of the collective agreement.

15. The statutory rights of the union and the collective agreement are rendered illusory at best if an employer can implement changes at will. The Union is unable to act independently when its contractual rights are ignored.
16. TCRC submits that CN Rail is attempting to change the work functions of the locomotive engineers to compensate for an impending strike. The TCRC objects to having its members manipulated in such a manner and reiterates that CN Rail is acting contrary to the collective agreement.
17. TCRC submits that CN Rail is engaging in an unfair labour practice as set out above and has breached its statutory duties.
18. TCRC states that, by its actions, CN Rail has sought to interfere with the representation and administration of employees by the Union.

Orders Sought

19. Based on the foregoing, the BLE/RCTC seeks the following orders:
 - (i) a declaration that CN Rail has breached the aforesaid section of the *Code*;
 - (ii) an order directing CN Rail to cease and desist from any continued or further breaches of the *Code*;
 - (iii) an order directing CN Rail to deliver an appropriate notice to all employees of the Company acknowledging that it has violated the aforesaid provision of the *Code*, acknowledging that the Board has ordered that the notice to employees be delivered, and confirming that the Company will, in the future, refrain from changes in working conditions without consultation and consent of the Union;

- (iv) an order directing CN Rail to pay to the Union the costs associated with efforts it has had to incur as a result of the aforesaid breaches of the *Code*;
- (v) an order for such further and other relief as is deemed just.

20. TCRC requests that a full hearing of the within complaint proceed before the Board.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 9th DAY OF FEBRUARY 2007.

Shields & Hunt
Barristers & Solicitors
68 Chamberlain Avenue
Ottawa, Ontario
K1S 1V9

Telephone (613) 230-3232
Facsimile (613) 230-1664

Jim Shields
Solicitors for the TCRC