

James L. Shields

(613) 230-3232 ext. 310
jshields@shields-hunt.com

FILE/DOSSIER NO.: 39845125

BY COURIER

January 20, 2009

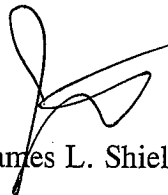
Mr. Pierre Sioui Thivierge
Regional Director, Registrar
Canada Industrial Relations Board
4th Floor, West Tower
240 Sparks Street
Ottawa, Ontario
K1A 0X8

Dear Mr. Sioui Thivierge:

**Re: Complaint pursuant to section 97(1)(A) of the Canada Labour Code
Teamsters Canada Rail Conference, Complainant
Canadian National Railway Company, Respondent**

Enclosed please find a Complaint pursuant to Section 97(1)(A) of the Canada Labour Code, filed on behalf of Teamsters Canada Rail Conference.

Yours very truly,



James L. Shields

JLS:ab

Encl.

cc: D. Shewchuk (via email)
K. Madigan – CN (via courier)

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 a failure to bargain in good faith contrary to Sections 94(1), 36(2) and 50.

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
1710-130 Albert Street
Ottawa, Ontario
K1P 5G4

Attention: Dan Shewchuk

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

Complainant's Representative:

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 Gauchetiere Street West
Montreal, Quebec
H3B 2M9

Attention: Kimberly Madigan

Telephone: (514) 399-8366
Facsimile: (514) 399-4652

The Facts

3. On the 2nd day of September, 2008, the Canada Industrial Relations Board (the "CIRB" or the "Board") certified the Teamsters Canada Rail Conference ("TCRC") as the bargaining agent at Canadian National Railway Company ("CN Rail") for a unit consisting of:

"all conductors, baggagepersons, brakepersons, car retarder operators, yardpersons, yard operations employees, switchtenders, yardmasters and assistant yardmasters working for the Canadian National Railway Company lines in Canada".

4. Prior to that date, the employees in the above-described bargaining unit were represented by the United Transportation Union (“UTU”).
5. At the time of the certification order on September 2, 2008, there was a collective agreement between CN Rail and the UTU.
6. Prior to the end of the term of the previous collective agreement, the UTU had served a Notice to Bargain upon CN to negotiate a new collective agreement. The parties were unable to arrive at a negotiated settlement. The UTU then exercised its right to strike under the *Canada Labour Code*. As a result, the Parliament of Canada enacted Bill C-46, known as the *Railway Continuation Act 2007*, ordering the employees back to work and that all outstanding collective agreement issues be settled by binding arbitration.
7. As a result of the arbitration process set out in the *Railway Continuation Act 2007*, an arbitrator’s decision was issued pursuant to section 14 of the *Act*, establishing the new collective agreement between the parties. This collective agreement expires on July 23, 2010.
8. In accordance with subsection 36(2) of the *Code*, on November 14, 2008 the TCRC served CN Rail with a Notice to Bargain with a view to revising the current collective agreement between the UTU and CN Rail. The TCRC also requested that a collective bargaining schedule be established. In accordance with section 50, the TCRC sought to meet with CN Rail within 20 days after November 14, 2008, or agree to a collective bargaining schedule within a reasonable time after that date.
9. Contrary to subsection 50(a) of the *Code*, CN Rail advised the TCRC that it would not meet. On November 28, 2008, CN confirmed its position to the TCRC that it did not recognize the Notice to Bargain that had been served on November 14, 2008. In its letter, CN Rail stated:

“As we understand the Railway Continuation Act of 2007, the arbitration award mandated by the Act and relevant CIRB decisions, we believe both parties are bound by the July 2010 term of the CTY collective agreements. Our review of the law does not allow us to agree to your request to re-open the agreements pursuant to the “notice to bargain” you sent on November 14.”

10. Subsequent to the receipt of CN’s letter of November 28, 2008, the TCRC met with representatives of CN Rail in order to arrive at a mutually satisfactory procedure to settle this issue and set a collective bargaining schedule.
11. On the 18th. day of December, 2008, CN Rail advised the TCRC that it would not recognize the Notice to Bargain served on November 14, 2008 and would not meet in accordance with subsection 50(a) of the Code.

The Relevant Provisions of the Code

12. 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.

13. Section 36(2) of the Code provides:

1. *Where, pursuant to paragraph (1)(c), a trade union is substituted as a party to a collective agreement, the trade union may, within three months after the date on which it is certified as the bargaining agent for a bargaining unit affected by the collective agreement, require the employer who is a party to the collective agreement to commence collective bargaining for the purpose of renewing or revising the collective agreement or entering into a new collective agreement.*

14. Section 50(a) of the *Code* provides:

(a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall

The Law

15. Both sections 94(1) and 50 of the *Code* are aimed, among other things, at protecting the viability of the union and its role of exclusive bargaining agent entrenched in section 36(1)(a) of the *Code*.

- *Canadian Broadcasting Corporation (1994), 96 di 122 ("CBC")*

16. The Board has acknowledged that it will investigate all of the facts surrounding the actions of both parties. It is also recognized that in certain circumstances, an employer's breach of its duty to bargain may also amount to an unfair labour practice.

- *Royal Bank of Canada (Kamloops and Gibson) (1978) 27 di 701*

17. An employer's refusal to respond to a Notice to Bargain from the bargaining agent to negotiate a new collective agreement is a violation of its duty to bargain in good faith and also constitutes unlawful interference with the union's exclusive right to represent employees of the bargaining unit.

- *Monarch Transport Inc. and Dempsey Fridge Services Ltd. 203 CIRB No. 248*

CN Rail's Violation of the Code

18. The TCRC submits that CN Rail's refusal to meet in accordance with subsection 50(a) of the *Code* is contrary to the provisions of the *Code*. The Notice to Bargain was served by the TCRC pursuant to section 36(2) of the *Code*, and constitutes a Notice to Bargain under section 50(a) of the *Code*. As a result, the parties are required to bargain collectively to arrive at a new collective agreement.

19. It is submitted that the *Railway Continuation Act 2007* does not in any way interfere with the rights of the TCRC to serve a Notice to Bargain pursuant to subsections 36(1) and 50(a) of the *Code*. CN's refusal to meet and its reliance upon the *Railway Continuation Act 2007* is merely a charade meant to embarrass the TCRC in the eyes of its members.
20. The Board has recognized that collective bargaining can cause great strain to the relationship between a union and its membership. It has been recognized as a period "when the employees hold the bargaining agent's actions under close scrutiny." As such, the union is in a vulnerable position with respect to its ability to represent its members, and with respect to its members' faith in that ability.
- *P.S.A.C. v. Aéroports de Montréal* (1995), 97 di 116 (Can. L.R.B.) at paragraph 35
21. The TCRC submits that the failure of CN Rail to recognize the Notice to Bargain that was served upon it and its concomitant refusal to meet is contrary to the provisions of the *Code* referred to previously.
22. The TCRC submits that by its actions, CN Rail has breached the statutory duty to bargain in good faith.
23. The TCRC submits that by its actions, CN Rail has sought to interfere with the representation of its members in this bargaining unit.


Order Sought

24. Based on the foregoing, the TCRC seeks the following orders:

- (i) a declaration that CN Rail has breached the aforesaid sections 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 enter into collective bargaining and meet with the TCRC in accordance with subsection 50(a) of the *Code*;
- (iv) an order directing CN Rail to deliver an appropriate notice to all employees of the Company acknowledging its violation of the aforesaid provisions of the *Code*, and acknowledging further the Board's order to enter into collective bargaining with the TCRC with respect to this bargaining unit.
- (v) an order that CN Rail commence collective bargaining immediately and in good faith.
- (vi) an order for such further and other relief as is deemed just.

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

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 19th DAY OF JANUARY, 2009.



Shields & Hunt
Barristers & Solicitors

68 Chamberlain Avenue
Ottawa, Ontario
K1S 1V9

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

James L. Shields
Solicitors for the TCRC