



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

Our File: 037944-C

Document No.: 0671628-D

August 24, 2024

BY WEB PORTAL

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

Michael A. Church
Partner
CaleyWray
Labour/Employment Lawyers
Suite 1600
65 Queen Street West
Toronto, Ontario
M5H 2M5

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and a referral by the Minister of Labour to the Canada Industrial Relations Board pursuant to section 107 thereof involving the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway), employer; Teamsters Canada Rail Conference, certified bargaining agent. (037944-C)

Further to the hearing held in the above-noted matter on August 23, 2024, before a panel of the Canada Industrial Relations Board (the Board) composed of Ginette Brazeau, Chairperson, and Elizabeth Cameron and Angela Talic, Members, the Board has issued its bottom-line decision.

The parties will find enclosed the Board's letter decision and the Board's order made in accordance with the Ministerial direction.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ginette Brazeau', written in a cursive style.

Ginette Brazeau
Chairperson

Encl.
c.c.: The Honourable Steven MacKinnon (by Web Portal)
Jean-Daniel Tardif



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

Our Files: 037943-C; 037944-C

Document No.: 0671624-D

August 24, 2024

2024 CIRB LD **5437**

BY WEB PORTAL

Mr. Richard Charney
Senior Partner
Norton Rose Fulbright Canada LLP
Suite 3000
222 Bay Street
Toronto, Ontario
M5K 1E7

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

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

Dear Sirs:

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and a referral by the Minister of Labour to the Canada Industrial Relations Board pursuant to section 107 thereof involving the Canadian National Railway Company, employer; Teamsters Canada Rail Conference, certified bargaining agent. (037943-C)

In the matter of the *Canada Labour Code (Part I—Industrial Relations)* and a referral by the Minister of Labour to the Canada Industrial Relations Board pursuant to section 107 thereof involving the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway), employer; Teamsters Canada Rail Conference, certified bargaining agent. (037944-C)

On August 22, 2024, the Canada Industrial Relations Board (the Board) received two directions by the Minister of Labour (the Minister) pursuant to section 107 of the *Canada Labour Code* (the *Code*), one involving the Canadian National Railway Company (CN) and the Teamsters Canada Rail Conference (TCRC) and a second involving the Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway Company) (CPKC) and the TCRC.

The two ministerial directions are essentially identical and direct the Board to order the two employers to resume operations and the employees to resume their duties, impose final binding interest arbitration to resolve the outstanding terms of the collective agreements and extend the term of the existing collective agreements until the new collective agreements are determined by the arbitrator. The Minister also directs the Board to deal with the directions in an expedited manner as per sections 14 to 16 of the *Canada Industrial Relations Board Regulations, 2012* (the *Regulations*).

Upon receipt of the ministerial directions, the Board held a case management meeting (CMM) with the parties. During the CMM, the TCRC raised questions with respect to the constitutionality of the directions and urged the Board to exercise its discretion and not proceed with its implementation. CN and CPKC took the position that the Board had no authority to review the ministerial directions and was under an obligation to proceed to implement them.

From the discussion with the parties at the CMM, the Board identified two questions:

1. Does the Board have the authority to review the Minister's exercise of discretion under section 107 of the *Code*?
2. Does the Board have any discretion in the implementation of the direction?

A hearing was convened forthwith as permitted by section 15(2) of the *Regulations*. A panel of the Board composed of Ms. Ginette Brazeau, Chairperson, and Mesdames Elizabeth Cameron and Angela Talic, Members, held the hearing on August 23, 2024, and heard the parties on these questions. For the purpose of addressing these questions, the Board heard the two matters together as the same issues were raised with respect to both ministerial directions.

After hearing from the parties and considering their fulsome and helpful submissions, the Board has determined that it does not have authority to review the Minister's directions or to assess their validity. In the Board's view, the Federal Court has the exclusive jurisdiction to review the Minister's directions pursuant to section 18(1) of the *Federal Court Act*.

Further, and considering the clear statutory language contained in section 107 of the *Code*, the Board has concluded that, in this case, it has no discretion or ability to refuse to implement, in whole or in part, the minister's directions or to modify their terms.

The Board understands the importance and consequences of this decision on the parties' respective rights and obligations under the *Code*. However, given the current circumstances and impact of work stoppages involving Canada's two main rail companies, it has decided to issue its conclusions in the form of a bottom-line decision. The Board will provide the parties with the detailed reasons for this decision as soon as possible.

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 'Ginette Brazeau', written in a cursive style.

Ginette Brazeau
Chairperson

c.c.: The Honourable Mr. Steven MacKinnon (by Web Portal)
Mr. Jean-Daniel Tardif



Order No. 1567-NB

IN THE MATTER OF THE

Canada Labour Code

- and -

Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway),
Calgary, Alberta

employer,

- and -

Teamsters Canada Rail Conference,

certified bargaining agent.

WHEREAS the Canada Industrial Relations Board (the Board) has received a direction by the Minister of Labour (the Minister) pursuant to section 107 of the *Canada Labour Code* (the *Code*) involving Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway (CPKC) and Teamsters Canada Rail Conference (TCRC);

AND WHEREAS the Minister has directed the Board to i) order CPKC to resume operations and Groups 1 and 2 employees to resume their duties; ii) assist the parties in reaching a settlement of the outstanding terms of their collective agreements by imposing final binding interest arbitration to resolve the outstanding terms of the collective agreements; and iii) extend the term of the existing collective agreements until the new collective agreements are determined by the arbitrator;

AND WHEREAS the Minister has also directed the Board to deal with the matter in an expedited manner as per sections 14 to 16 of the *Canada Industrial Relations Board Regulations, 2012*;

AND WHEREAS the Board held a hearing with the parties on August 23, 2024, to hear the parties on certain questions raised with respect to the ministerial direction;

Order No. 1567-NB

AND WHEREAS the Board heard arguments from the parties on the Board's authority to review the Minister's exercise of discretion under section 107 of the *Code* and on whether the Board has any discretion in implementing the ministerial direction in whole or in part;

AND WHEREAS, the Board has concluded that it has no authority to review the ministerial direction or the exercise of ministerial discretion under section 107 of the *Code* and that it does not have discretion to vary or to not implement the direction (*Canadian National Railway Company and Canadian Pacific Railway Company (now known as Canadian Pacific Kansas City Railway)*, 2024 CIRB LD 5437);

NOW THEREFORE, in accordance with the ministerial direction, the Board makes the following orders:

- CPKC is directed to resume rail service operations and employees in Groups 1 and 2 represented by the TCRC are directed to resume their duties by 00:01 EDT on August 26, 2024, and to continue such operations and duties until the final binding interest arbitration process is completed;
- The term of the collective agreements between CPKC and the TCRC that expired on December 31, 2023, are extended to include the period beginning on January 1, 2024, and ending on the day on which new collective agreements between the parties come into effect;
- Final binding interest arbitration is imposed to resolve the outstanding terms of the collective agreements, and the parties are directed to attend a case management meeting with the Board on August 29, 2024, at 1:00 p.m. EDT, to discuss the implementation of the arbitration process.

AND FURTHERMORE, the Board shall remain seized of this matter to resolve any dispute with respect to the implementation of this order.

ISSUED at Ottawa, this 24th day of August, 2024, by the Canada Industrial Relations Board.



Ginette Brazeau
Chairperson

Reference No.: File No. 037944-C