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	17 août 2023		
Frank Fedorak			
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**Form 301 – Rule 301  
APPLICATION**

**Court File No.:** \_\_\_\_\_

**FEDERAL COURT OF APPEAL**

**BETWEEN:**

**CANADIAN PACIFIC RAILWAY COMPANY**

**Applicant**

- and -

**BRENDA BAXTER, IN HER CAPACITY AS HEAD OF COMPLIANCE AND  
ENFORCEMENT (AS DESIGNATED BY THE MINISTER OF LABOUR),  
TEAMSTERS CANADA RAIL CONFERENCE, and UNIFOR**

**Respondents**

**APPLICATION UNDER SECTIONS 18.1, 28(1)(b) and 28(2) OF THE  
*FEDERAL COURTS ACT***

**NOTICE OF APPLICATION**

TO THE RESPONDENTS:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Calgary, Alberta.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

August \_\_\_\_, 2023

Issued by: \_\_\_\_\_

Address of local office:

Federal Court of Appeal  
Canadian Occidental Tower  
635 Eighth Avenue S.W.  
3<sup>rd</sup> Floor  
Calgary, Alberta  
T2P 3M3

**TO:** **Attorney General of Canada**  
Prairie Regional Office - Edmonton  
Department of Justice Canada  
10423 101 Street  
3<sup>rd</sup> Floor, Epcor Tower  
Edmonton, AB T5H 0E7  
Telephone: 780-495-2983  
Fax: 780-495-2964  
Email: [agc\\_pgc\\_alberta@justice.gc.ca](mailto:agc_pgc_alberta@justice.gc.ca)

**Canada Industrial Relations Board**  
C.D. Howe Building  
240 Sparks Street,  
4<sup>th</sup> Floor West  
Ottawa, ON K1A 0X8

**Brenda Baxter, in her capacity as Head of Compliance and Enforcement**

Attention: Samar Musallam, Legal Counsel  
Head of Compliance and Enforcement  
Civil Litigation Section  
50 O'Connor Street, 5<sup>th</sup> Floor  
Ottawa, ON K1A 0H8

**Teamsters Canada Rail Conference**

Attention: Denis Ellickson & Erin Carr  
CaleyWray Labour/Employment Lawyers  
Suite 1600, 65 Queen Street West  
Toronto, Ontario M5H 2M5  
Telephone: 416-775-4678 & 416-775-4687  
Fax: 416-366-3293  
Email: [ellicksond@caleywright.com](mailto:ellicksond@caleywright.com) & [carre@caleywright.com](mailto:carre@caleywright.com)

**Unifor**

Attention: Blake Scott  
Lawyer, Unifor Legal Department  
Unifor National Office  
115 Gordon Baker Road  
Toronto, Ontario M2H 0A8  
Telephone: 604-353-8769  
Fax: 604-522-8975  
Email: [communications@unifor.org](mailto:communications@unifor.org)

## APPLICATION

1. This is an application for judicial review in respect of *Canadian Pacific Railway Company v. Head of Compliance and Enforcement et al.*, 2023 CIRB 1082 (Board File: 033660-C) (the “**Decision**”). The Canada Industrial Relations Board (the “**Board**”) rendered the Decision on July 18, 2023 and communicated it to Canadian Pacific Railway Company (the “**Applicant**”) on July 18, 2023.

2. The Applicant makes this application for:

- a) an order pursuant to section 18.1(3) of the *Federal Courts Act*, RSC 1985, c F-7 quashing and/or setting aside the Decision and rescinding and/or quashing the Direction;
- b) an order pursuant to rule 400 of the *Federal Courts Rules*, SOR/98-106 granting the Applicant its costs of this application; and
- c) any other remedy that this Honourable Court deems just and reasonable.

3. The grounds for the application are as follows.

### **Background**

4. On March 10, 2020, the Applicant held a meeting of its Policy Committee (“**Policy Committee**”) which consists of both employer and employee members. The Policy Committee is established pursuant to section 134.1(1) of the *Canada Labour Code*, RSC 1985, c L-2 (the “**Code**”).

5. In communications prior to the meeting, an official delegated by the Minister of Labour (“**ODM**”) advised the Applicant that employees of Transport Canada and Employment Social Development Canada (ESDC) – Labour Program (collectively, the “**Regulators**”) wished to attend the meeting to provide a presentation on the

“Hazard Prevention Program” regulations and the Policy Committee’s role in developing, applying and implementing the same.

6. In the week prior to the March 10, 2020 meeting, the Regulators advised the Applicant that they wished to attend the entire Policy Committee meeting but did not clearly identify the statutory purpose or authority for attending the meeting, other than it being for some purpose in addition to making a presentation on the Hazard Prevention Program regulations. While the Regulators referred to section 141(1) of the Code as the source of their authority, they did not clearly invoke it.

7. The Applicant offered to invite the Regulators to attend a portion of the March 10, 2020 meeting to discuss the Hazard Prevention Program. Due to the COVID-19 pandemic, the meeting was held via teleconference and the Applicant provided the Regulators with electronic access to the meeting for a 30-minute period. The Regulators were not provided access for the balance of the meeting.

8. During the course of the March 10, 2020 meeting, an ODM issued a Direction to the Applicant under section 145(1)(a) of the Code. At the time the Direction was issued, section 145(1)(a) of the Code provided that, if the Minister of Labour (“**Minister**”) is of the opinion that a provision of the Code is being contravened, the Minister may direct the employer to terminate the contravention. Part II of the Code was amended on January 21, 2021 to substitute the Head of Compliance and Enforcement (“**Head**”) for the Minister with respect to the administration of Parts II and III of the Code.

9. The Direction states that the Applicant contravened section 143(a) of the Code as follows:

On March 9, 2020, Mr. Keith Shearer, Assistant Vice President Safety & Sustainability, did knowingly obstruct officials delegated by the Minister of Labour, to attend a full day scheduled Canadian Pacific Railway (CP) Cross-Functional Policy Committee meeting on March 10, 2020 from 08:00 hrs. to 16:00 hrs. MDT, located at 7550 Ogden Dale Road S.E. Calgary, Alberta

T2C 4X9, either in person or by virtual attendance (i.e. video conference). The purpose of attendance was to monitor the functionality of the CP Cross-Functional Policy Committee and in relation to their duties and responsibilities under Part XIX – Hazard Prevention Program (COHS Regulations). Mr. Keith Shearer advised the officials delegated by the Minister, by e-mail on March 9, 2020, that he would only provide access to the meeting starting at 15:15 hrs. MDT.

10. The Direction ordered the Applicant to terminate the contravention immediately and take steps to ensure that the contravention does not continue or reoccur.

11. On April 8, 2020, the Applicant filed an appeal of the Direction to the Board pursuant to section 146(1) of the Code.

12. On July 18, 2023, the Board rendered the Decision dismissing the appeal and confirming the Direction, with a variance to correct a typographical error.

**Grounds for Relief**

13. The grounds for the application are:

- a) The Board erred in law and was unreasonable when it failed to consider whether the Regulators’ authority under section 141(1) of the Code includes the authority to attend and/or monitor a Policy Committee meeting;
- b) Further, or in the alternative, the Board incorrectly interpreted section 141(1) of the Code when it concluded that section 141(1) of the Code authorizes the Regulators to attend and/or monitor a Policy Committee meeting;
- c) Further, or in the alternative, the Board erred in law and its decision was unreasonable when it concluded the Regulators were not required to advise the Applicant of the specific

statutory authority they were invoking as their legal basis to attend the March 10, 2020 meeting;

- d) The Board erred in law and was unreasonable when it concluded that the Applicant's representative knowingly contravened section 143(a) of the Code by not permitting the Regulators to attend the March 10, 2020 meeting. Section 141(1) of the Code does not entitle the Regulators to attend and/or monitor a Policy Committee meeting. Accordingly, the Board had no lawful basis to confirm the Direction that the Applicant had contravened the Code;
- e) The Board unreasonably failed to consider that the Direction was not issued in a procedurally fair manner. Specifically, the Direction was issued mid-way through the March 10, 2020 meeting and therefore the Applicant could not comply with the Direction by permitting the Regulators to attend the entire meeting;
- f) As a result of these errors, the Board ultimately erred in dismissing the Applicant's appeal; and
- g) Such further and other grounds as may be submitted by the Applicant and permitted by this Honourable Court.

14. This application will be supported by the following materials:

- a) The Affidavit(s) of a representative of the Applicant, to be affirmed and filed;
- b) Certified Tribunal Record of the Board; and
- c) Such further and other materials as counsel may advise and this Honourable Court may permit.

15. The Applicant requests, pursuant to Rule 317 of the *Federal Courts Rules*, that the Board send a certified copy of the following material that is not in the possession of the Applicant but is in the possession of the Board to the Applicant and to the Registry: all documents created, considered, submitted to or relied on by the Board in rendering the Decision, including any transcripts of the hearing before the Board.

Dated at the City of Saskatoon, in the Province of Saskatchewan, this 17<sup>th</sup> day of August, 2023.

**MLT Aikins LLP**

Per:   
\_\_\_\_\_  
Douglas C. Hodson, K.C.  
Counsel for the Applicant,  
Canadian Pacific Railway Company

**CONTACT INFORMATION AND ADDRESS FOR SERVICE**

Name of firm:	MLT Aikins LLP
Name of lawyer in charge of file:	Douglas C. Hodson, K.C. Suite 1201, 409 3rd Avenue S Saskatoon, Saskatchewan S7K 5R5
Address of legal firm:	
Telephone number:	(306) 975-7100
Fax number:	(306) 975-7145
E-mail address:	<a href="mailto:dhodson@mltaikins.com">dhodson@mltaikins.com</a>
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