

Canada Labour Code
Part II
Occupational Health and Safety

Canadian National Railway Company
applicant

and

Canadian Auto Workers (CAW)
Local 5.1
respondent

Decision No. 05-050 (S)
December 9, 2005

This request for a stay was decided by Pierre Guénette, appeals officer, based on submissions presented by the parties at the teleconference held on December 8, 2005.

For the applicant

Brian Hachey (Risk Manager - Canadian National Railway)
Joaquin Flores (Manager - Canadian National Railway)
David Gilmar (Associate Manager - Canadian National Railway)

For the respondent

Lofty McDowell (President – CAW Local 5.1)

Health and safety officer

Karen Malcolm

[1] This decision concerns the request for a stay of a direction issued to Canadian National Railway (CNR) under paragraph 145 (1)(a) of the *Canada Labour Code*, Part II (*Code*) by health and safety officer (HSO) Karen Malcolm, on October 21, 2005.

[2] The direction states:
The said health and safety officer is of the opinion that the following provision of the *Canada Labour Code*, Part II, has been contravened:

1. The *Canada Labour Code*, Part II Section 124

Skilled Trades people are being required to make locomotive moves without the same degree of practical training provided to Hostlers.

[3] Having heard the arguments from both parties and taking into consideration the written proposal of Brian Hachey and Joaquin Flores to ensure that the health and safety of employees is protected during the stay.

[4] I am of the opinion:
regarding the merits of the case, both parties agreed that this is a serious question to be tried and I have no reason to disagree with them;

- regarding irreparable harm, I am convinced that, as indicated by Brian Hachey, CNR needs to continue operating with Electricians and Heavy Duty Mechanics and without them, operations will be seriously curtailed and the employer will suffer irreparable harm if a stay is not granted;
- regarding the balance of inconvenience and taking into consideration the employer's proposal to protect the employees, I consider that the employer would suffer greater harm if a stay is not granted.
- regarding the protection of employees, in the interim CNR agrees to take the following measures:

The proposal is that the employer will select a group of Electricians and Heavy Duty Mechanics (CAW 12) who have a large number of hours logged working as Hostlers moving locomotives all around the facility, as this is what is in place now and has been for the last ten years.

This group would consist of approximately six (6) employees per shift and totaling about 18 out of about 92 Shoptrack Locomotive Operation (S.L.O.) qualified Trades people.

It must be noted that the original "Hostlers" (CAW 5.1) who hold permanent positions moving locomotives all day, will also be used to their full capacity.

[5] The stay is granted conditional to:

- the employer's proposal, with the clarifications that only the most experienced Electricians and Heavy Duty Mechanics (CAW 12), based on their larger number of hours logged as "Hostlers" will be used by CNR to move locomotives all around the facility, and;
- that HSO Malcolm reviews and satisfies herself that the Electricians and Heavy Duty Mechanics selected are, in fact sufficiently trained and experienced to safely move locomotives all around the facility.

Pierre Guénette
Appeals Officer