

September 13, 2016

Sent By Facsimile

Ken W. Chiang
Canada Industrial Relations Board
A/Regional Director - Western Region
300 West Georgia Street, Suite 501
Vancouver, BC V6B 6B4

Fax: 604-666-6071

Dear Sir:

In the Matter of an Application by CNTL against Unifor for a Declaration of Illegal Strike and an Order to Cease and Desist Pursuant to Sections 89 and 91 of the *Canada Labour Code*, RSC 1985, c L-2 (the "*Code*")

1. Canadian National Transportation Limited ("CNTL" or the "Company") hereby makes an application for a declaration of illegal strike which commenced on September 11, 2016 and has continued thereafter, by members of Unifor, Council 4000 ("Unifor" or the "Union") and for all necessary remedial orders on an urgent and expedited basis.
2. The Coordinates for CNTL in this matter are:
 - (i) CNTL
Malport Yard Office
7576 Torbram Road
Mississauga, ON L4T 3L8

Attention: Martyn Peterson, Truck Operations Manager

Telephone: (905) 760-5184

Facsimile: 1 (866) 803-2702

- (ii) Norton Rose Fulbright Canada LLP
400 3rd Avenue S.W., Suite 3700
Calgary, Alberta T2P 4H2

Attention: Correna L. Jones, Partner

Telephone: (403) 267-8378

Facsimile: (403) 264-5973

Counsel for CNTL

3. The Coordinates for the Responding Party Union are :

Unifor National Council 4000
203- 15 Carleton Drive
St. Albert, Alberta
T8N 7K9

Attention: Barry Kennedy, President, Council 4000

Telephone: (780) 232-5766

Facsimile: (450) 671-7135

BACKGROUND

4. CNTL is a transportation company that provides for pick-up and delivery of Intermodal Containers on chassis trailers, to/from Intermodal terminals. CNTL operates from 9 intermodal terminals across Canada.
5. CNTL has an office in Calgary, Alberta. The transportation services for this office are performed by approximately 150 truck Owner-Operators who are dependent contractors. Out of that total, approximately 60 Owner-Operators regularly perform highway movements.
6. The CNTL Owner-Operators are represented by Unifor. CNTL and Unifor are parties to a collective agreement (the "**Collective Agreement**") covering the

Owner-Operators, with a term of March 31, 2019. A copy of the Collective Agreement is attached hereto for your reference.

7. Any strike by any CNTL Owner-Operators represented by the Union is therefore prohibited by the *Code* at this time.

CNTL OWNER-OPERATORS ENGAGING IN AN ILLEGAL STRIKE

8. Since September 11, 2016, several Owner-Operators from the group of approximately 60 Owner-Operators performing highway movements from CNTL's Calgary facility have been refusing service calls from CNTL.
9. Beginning at approximately 6:30am on September 11, 2016, it became apparent to CNTL management that Owner-Operators scheduled to perform runs in Calgary were declining them in numbers far exceeding usual absences.
10. Reasons provided by the Owner-Operators for declining to work focused on alleged sickness and mechanical difficulties. No supporting documentation was provided to the Company in support of these absences.
11. Whereas, Owner-Operators from Calgary rarely decline work due to health or mechanical reasons, there were approximately 14 declines for these alleged reasons by 7:30 am on September 11, 2016.
12. CNTL contacted the Owner-Operators in question to instruct them to present themselves to work forthwith, to no avail.
13. The Union has confirmed to CNTL that some highway Owner-Operators are dissatisfied with the Company's dispatching of its assignments, which ostensibly is the real cause of the absences. The Union has also advised CNTL that a similar work action could take place in the Company's Vancouver, British Columbia location, in a show of support to Calgary Owner-Operators, undermining the Owner-Operators' claims of illness and mechanical problems.
14. While the Union has stated it has asked the Calgary Owner-Operators to return to work, the situation remains causing delays and increased costs.

15. On September 12, 2016, CNTL confirmed to the Union in writing that it considered this situation to constitute an illegal strike, contrary to the parties' collective agreement and the provisions of the *Code*; in particular, those found in Section 88.1 and 89 relating to the prohibition on strikes until certain conditions are met.
16. Notwithstanding the measures by CNTL to reach out to both the striking Owner-Operators themselves and to the Union, as of the writing of this letter a total of approximately 31 Owner-Operators, out of a total of approximately 60 Owner-Operators performing highway moves for CNTL at the Calgary facility, have withheld their services since September 11, 2016. Approximately 12 of them are presently refusing to work.
17. By illegally refusing to perform their duties, the CNTL Owner-Operators members of the Union are not only in direct violation of the *Code*, they are causing serious and irreparable harm to CNTL and its operations.
18. It is urgent that the Board decide this matter and it is submitted that this Application should be decided without the necessity of holding a public hearing.
19. However, should the Board decide to hold such a hearing, it is respectfully submitted that it should be held in the most expeditious manner possible, including by way of videoconference or conference call.

ORDERS AND DECLARATION SOUGHT

20. In view of the foregoing, CN requests that the Board make the following declarations and issue the following orders:
 - (a) that the Board abridge all relevant time limits and procedures and fix a hearing, if necessary, at the earliest opportunity, in person or by way of video conference or telephone conference, to allow any necessary evidence and argument in support of the present Application;
 - (b) a declaration that CNTL Owner-Operators represented by the Union have engaged in and are continuing to be engaged in an illegal strike;

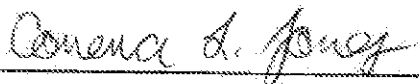
- (c) an order directing the said Owner-Operators to cease and desist from violating the *Code* by participating in an illegal strike and enjoining them from participating in the strike in accordance with Section 91(2)(b) of the *Code*;
- (d) an order directing the CNTL Owner-Operators represented by the Union to return to work immediately and perform their regular duties in accordance with Section 91(2)(c) of the *Code*;
- (e) an order authorizing CNTL to communicate the Board's decision and order(s) to all of its Owner-Operators;
- (f) an order that the Union notify their respective members of the Board's decision and direct their members to comply with the order(s) of the Board;
- (g) an order that the Union report to the Board within three (3) hours of the issuing of the requested order(s) that they have complied with said order(s);
- (h) an order that a copy of the issued order(s) and the Board's decision, exclusive of the reasons thereof, be filed directly in Federal Court pursuant to section 23 of the *Code*;
- (i) an order for any and all damages incurred as a result of this illegal strike; and
- (j) an order containing any other remedies or relief that the Board may deem necessary to meet the circumstances.

All of which is respectfully submitted.

Yours truly,

Norton Rose Fulbright Canada LLP,

counsel to the Applicant Canadian National Transportation Limited



Correna L. Jones, Partner

NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
400 3rd Avenue SW, Suite 3700
Calgary, Alberta T2P 4H2 CANADA

F: +1 403.264.5973
nortonrosefulbright.com

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| From: | Bergeron, Gini | Date | 09/13/2016 |
| Direct line | +1 403.267.8123 | Our ref | - |
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To 1-604-666-6071 **Tel**

Fax

Attn: Ken W. Chiang

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