

## **OH&S Tribunal reinforces earlier decision to protect Local 101R members**

On July 12, 2016, the Occupational Health and Safety Tribunal of Canada released their decision of an appeal by CP Rail of a Safety Officer decision, prohibiting the use of material handling equipment to move railcars.

In April of 2013 the company parked their track mobiles, equipment which is designed to safely move rail cars in and around our maintenance tracks and shops and instructed our members to use forklifts and other equipment, which we contended is not designed for the task.

As a result of two work refusals by members of Local 101R, one in Lethbridge and the other in Vaughan, the company was directed to cease the use of materials handling equipment to move rail cars at those locations.

Unifor urged the company to restore the use of track mobiles system wide and pointed to two recent fatalities at other companies involving the use of similar equipment used to move rail cars. Subsequently in November 2013 a third investigation by a Safety Officer resulted in a third Direction encompassing all CP operations to cease using equipment not designed for the task of moving rail equipment. The company took issue and appealed the Direction, seeking to have it quashed.

The appeal hearing was held in November 2015 with Marc Ross, Local 101R National Health & Safety Coordinator representing the union. The decision released by the Tribunal, was to vary the original Direction of the Safety Officer for clarity and directed CP to cease “... *requiring employees to use motorized materials handling equipment or other heavy equipment not specifically designed for, tested or intended for the purpose of pushing or pulling railcars.*”

The company’s expert witness testified during cross examination by the union, that it was his opinion that any equipment utilized in the movement of railcars must be fitted with a rail industry approved coupling device and hi-rail or steel wheels. He also testified that mobile equipment must also have an air compressor and braking controls which would enable the use of the rail car air brakes, components the union argued would have to be present on rail car moving equipment to protect the health and safety of our members. The Tribunal noted that evidence in their report as sound requirements for any rail car moving equipment.

Nelson Gagne, Local 101R President welcomed the decision, “From a health and safety perspective, the Tribunal’s scrutiny of the evidence presented lead to a varied Direction that will continue to ensure the health and safety of our members when moving rail cars. This decision belongs to the full membership and is a solid example of when the members, the Local and National Union work together for a cause, we can achieve positive results.”

A copy of the Tribunal’s decision can be obtained through your Local 101R workplace H&S Committee.

In solidarity,

Nelson Gagne – Local 101R President

Brian Stevens – National Rail Director

Bob Orr – Assistant to the National Secretary Treasurer