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December 23, 2016

To: Mr. Greg Edwards, General Chair CP West LE
Mr. D. Fulton, General Chair CP West CTY
Mr. J. Campbell, General Chair CP East LE
Mr. W. Apsey, General Chair CP East CTY

Re: Enforcement of Arbitration Decisions Concerning Handling of Unassigned Pool
and Spareboard Employees

Dear Sirs and Brothers,

This letter is to provide each of you and the TCRC Divisions within your Committees with an update as to the measures taken to enforce the recent arbitration decisions published on August 3, 2016, and November 8, 2016, by Arbitrator J. Stout.

Consistent with our ongoing discussions and the review of the evidence advanced to your offices by the Local Chairs and from the membership, we can confirm that today we have filed the two noted arbitration decisions with the Federal Court in Toronto.

This is to also confirm that we have previously placed CP on notice of our intention to file in the courts and to pursue enforcement through the courts if necessary. Letters from my office have already been delivered to CP President and Chief Operating Officer, Mr. K. Creel; to CP Sr. Executive VP Operations, Mr. R. Johnson; and to CP Vice President, Mr. P. Edwards.

It is critically important to emphasize that the filing of an Arbitration case with the Federal Courts is not a normal practice, nor is it usually necessary. However, due to CP management's apparent blatant disregard for the specific "cease and desist" direction from the noted Arbitrator, as well as the unique and the specific facts and circumstances of this case. It is necessary.

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There are many very important points outlined with the two Stout Arbitration decisions, however several things stand out. In his August 3 decision Arbitrator Stout stated at paragraph 94,

“The company has provided absolutely no evidence, expert or otherwise, to demonstrate that mandatory rest after every run (regardless of length) will reduce fatigue and make the workplace safer.”

And at paragraph 101,

“The Company has provided absolutely no evidence to prove that the ERP actually addresses the issue of fatigue and provides a safer workplace. By their own admission, the ERP is a stop-gap measure until the parties can negotiate something else or Parliament passes legislation addressing the issue.”

The final and binding effect of the Arbitration decision is accentuated by the “cease and desist” order of the Arbitrator, where at paragraph 105 Arbitrator Stout made the following direction,

“the Company is ordered to cease and desist violating the Collective Agreements.”

For those members who may not be aware, CP management has tried to apply what is essentially a portion of their demands from the last round of national bargaining. Much of what CP seeks is the USA style and very minimum standards for working hours and regulatory rest.

In filing these cases with the Federal Court, it is not necessarily our objective to see someone put in jail. What is necessary to happen is that CP management needs to respect the TCRC members who work at CP and treat them with dignity; they need to respect the Collective Agreements; they need to respect the “final and binding” arbitration decisions, and to respect the rule of law within Canada.

Should CP management persist in the blatant disregard to their legal obligations, we will take action to enforce those decisions through the Federal Court System and we will have no alternative but to seek maximum available penalties the court provides. Hopefully, CP management will recognize the folly of their actions and will recognize and respect the final and binding decisions of the respected Arbitrator, and the laws of Canada.

The level of proof necessary to enforce the decisions in the Federal Court System is even more stringent than within the Arbitration system. So, clear and cogent evidence is essential and is needed should we have to pursue enforcement through the courts.

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The level of perseverance demonstrated by the membership and Division Officers in this matter is nothing short of courageous. The necessity to document and report any related violations is absolutely vital and so every member is encouraged to be diligent in their documenting any future violations by CP. Reporting to the Local Chairs is an essential element in enforcing these important arbitration decisions.

The attack on workers at CP has been a long and difficult time for every member, everyone understands that CP has essentially declared war on the workers in Canada. The battles started by management against their employees, our members, is unprecedented in Canadian labour history. The TCRC membership is strong, and while at times it seems there is no recourse to many of the management tactics, the TCRC membership has won many of the battles and will continue to win battles until this repressive management regime is gone.

The Union busting techniques we see may be damaging, and in this war on workers declared by CP management there are wins and losses. However, the TCRC membership, which includes every elected TCRC officer, is not going to give up. Together we will continue to fight for the rights of workers through the legislative framework in Canada, through the negotiated Collective Agreements in place, and through the courts if necessary. If we stick together they can never, ever defeat us!

The TCRC membership at CN experienced much the same from many of the same, however that is largely in the past. While there continue to be battles at CN, and while there are lots of issues in dispute and many challenges, the purposeful attack on workers is no longer present. The comparisons from the previous decade at CN to the present war on workers at CP is obvious, it's the elephant in the room in many, many situations.

To all TCRC members, stay strong and stay united. The CP management behavior is not a reflection of the workers; it is a reflection of management. Management comes, and management goes. What stays is a strong and united workforce.

If we stay together, stay strong and united, they can never, ever, defeat us.

Sincerely and in Solidarity,



Douglas Finnsen
President - TCRC

cc: TCRC National Executive Board