

Canada Industrial Relations Board



Conseil canadien des relations industrielles

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**BY FAX**

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Attention: Mr. William Hlibchuk

Dear Sirs:

In the matter of the *Canada Labour Code (Part I-Industrial Relations)* and a complaint of unfair labour practice filed pursuant to section 97(1) thereof by the Teamsters Canada Rail Conference, complainant, alleging violation of sections 50(a)(i), 50(a)(ii) and 94 of the *Code* by VIA Rail Canada Inc., respondent. (28500-C)

The Canada Industrial Relations Board (the Board) was composed of Mr. Graham J. Clarke, Vice-Chairperson, and Messrs. John Bowman and David Olsen, Members.

Section 16.1 of the *Canada Labour Code (Part I-Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to issue this bottom line decision without an oral hearing.

On December 10, 2010, the Board received from the Teamsters Canada Rail Conference (TCRC) an unfair labour practice complaint alleging that VIA Rail Canada Inc. (VIA) has failed to bargain collectively in good faith, contrary to subsections 50(a)(i) and (ii) of the *Code*:

50. Where notice to bargain collectively has been given under this Part,
- (a) the bargaining agent and the employer, without delay, but in any case within twenty days after the notice was given unless the parties otherwise agree, shall
    - (i) meet and commence, or cause authorized representatives on their behalf to meet and commence, to bargain collectively in good faith, and
    - (ii) make every reasonable effort to enter into a collective agreement;
- ...

Following the close of pleadings, the case was assigned to the current panel on January 5, 2011.

In order to respond to the parties in a timely manner, the panel has agreed to issue a bottom line decision, which will be followed in the near future by more detailed reasons.

The parties agree the open period under their collective agreement started on September 1, 2010.

On August 25, 2010, VIA sent notice to bargain under section 49 of the *Code*:

49.(1) Either party to a collective agreement may, within the period of four months immediately preceding the date of expiration of the term of the collective agreement, or within the longer period that may be provided for in the collective agreement, by notice, require the other party to the collective agreement to commence collective bargaining for the purpose of renewing or revising the collective agreement or entering into a new collective agreement.

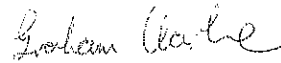
49. (1) Toute partie à une convention collective peut, au cours des quatre mois précédant sa date d'expiration, ou au cours de la période plus longue fixée par la convention, transmettre à l'autre partie un avis de négociation collective en vue du renouvellement ou de la révision de la convention ou de la conclusion d'une nouvelle convention.

The Board is of the view that the August 25, 2010 notice does not meet the requirements of the *Code*. While the English and French versions of section 49 may lead to alternative interpretations, the TCRC has satisfied the Board that the *Code's* intent was for notice to be given within the four-month period. This is the case, even though that interpretation seemingly renders it impossible for parties to use the entire four-month period established by section 49 for actual collective bargaining.

The Board has also concluded that VIA has demonstrated through the various steps it undertook that it has sought to collectively bargain with the TCRC. The parties can have legitimate differences of opinion over how to interpret section 49 of the *Code*. But this difference of opinion, when considered with the parties' other actions as set out in their pleadings, does not demonstrate that VIA has violated the obligations imposed on it under section 50.

The Board will issue more detailed reasons in the near future, but did not want its current workload to interfere unduly with the parties' collective bargaining.

This is a unanimous decision and it is signed on its behalf by



Graham J. Clarke  
Vice-Chairperson

c.c.: Mr. Andrew C. Boyle (CIRB-NCR)

GC/gs