



Teamsters Canada Rail Conference

General Committee of Adjustment
Canadian Pacific Railway
101-10820 24 Street SE
Calgary AB T2Z 4C9

403 640-4115
fax 640-4140
genchair@tcrccalgary.ca

Dave Able
General Chairman
Locomotive Engineers

Dave Olson
General Chairman
Conductors, Trainmen & Yardmen

March 26, 2010

Mr. Rick Wilson, AVP Industrial Relations
Canadian Pacific Railway
401 - 9 Avenue SW, Fifth Floor
Calgary AB T2P 4Z4

RE: Formal Requests for Release of Personal Communication Device Records

Dear Sir,

This has reference to your letter of March 22, 2010.

The first issue we will offer comment on is the lack of direct communication to our office from the Company in this matter. By not informing or trying to work with this office prior to turning the investigative process at the local level into a debate is cause of great concern.

The fair and impartial investigation process is a statement of fact and the Company has attempted through intimidation and improper means to have our members relinquish their Canadian Charter of Rights and Freedoms, Privacy Rights, Collective Agreement Rights and Human Rights.

Further it has been brought to our attention that your letter that is addressed to this office has been broadcast to local managers on the property. In kind we shall copy our response with your letter to our Local Chairs.

In your letter you advise that it is the Company's intention to request the production of communication device records further to any significant accident or incident.

The Company does not define what a "significant accident or incident" is. In this regard due to the conduct of the Company in the investigations to date in requesting for all incidents we find this "intention" of the Company to ring hollow.

You further state in your letter,

While the Union may have privacy concerns, the Company has been clear that the detailed information surrounding the phone numbers called, or the contents of the text message may be blacked out. Our legitimate interest is in knowing when and where the communication devices were used in the context of investigating a significant accident or incident.

Once again upon review of a letter requesting cellular phone records sent to our members this also appears to ring hollow. Please note the excerpt to one of our members where the Company states “release of all personal cell phone records from 0001 on March 3, 2010 to 0001 on March 4, 2010.”

It is apparent to this office that the Company is engaging in a fishing expedition in regard to the cell phone records as the crew was ordered for 1000 on March 3, 2010 and the incident occurred at approximately 1510. As such it is the Union position that the Company is not interested in “knowing when and where the communication devices were used in the context of investigating a significant accident or incident.” There is no legitimate interest in the request made for their use of their personal cell phone while off duty or while on duty for the full tour of duty prior to the accident or after the accident.

In the course of a fair and impartial investigation, the Company is free to ask any and all questions of the member in respect of possible cellular phone use during working time. This existing investigative right should suffice to satisfy the Company as to whether or not cellular phone use was a contributing factor to a given incident.

It is the Union’s position that the Company’s request for cellular phone records is an extraordinary measure that is not proper or justifiable unless the existing means of satisfying the Company’s concerns have been exhausted. Until such time as the Company can demonstrate that it’s incapable of eliciting necessary information through the usual investigation process, the Union will continue to oppose the Company’s extraordinary request.

It also appears in the letter sent to our member that the Company continues their fishing expedition in the request for “any other records for additional cell phone(s) that may have been in your possession during your tour of duty on March 3, 2010.” This office has to wonder why the Company would request cell phone records for another individuals phone for the length of time requested from our member prior to or after the accident. Once again there is no legitimate interest in the request.

You suggest that the Company will advance this request for cell phone records unless the Company concludes in advance that human error could not have been a contributing factor. This is a double negative in that it essentially requires the employee to bear the onus of “proving their innocence” in order to satisfy the Company. This is the total opposite of the agreed-upon process of fair and impartial investigations.

It further states in your letter and we also note questions out of the investigation:

When an employee is asked to produce these records, and does not, the Company can only draw negative inference

Do you understand that by not providing the Company with your cell phone records as requested it precludes the Company from fully developing all the facts and is obstructive to the investigation Process?

Do you understand that by not providing the Company with your cell phone records as requested you leave the Company no alternative but to make a decision based on the information that has been provided to them?

This Office notes that the above appears indicative of the intimidation that the Company is attempting to wage against our members under investigation. We view the questions put forward in the investigative record which include the comments about "obstructive to the investigation process" to be in clear contravention of the Company Discrimination and Harassment Policy 1300.

In part Policy 1300 states that Harassment may take many forms, including: Threats, Intimidation. It is our position that the Company is in violation of its own policy.

There are a host of potential privacy incursions and uncertainties that flow from the Company's request. The Company has not taken into account that a person may be at work and their spouse has the cell phone that is registered to our member. The member may tell an investigation that they did not have their cell phone. The spouse could be using it and the employee would now be liable for something they did not do. Further, it is our understanding that a person may have a cell phone switched off and an incoming call will still register on a bill as if the cell phone is being used at the time of the incoming call. It appears to the Union that the Company has also not taken this into account in their arbitrary decision to request cell phone records.

Should the Company wish to pay for our members cell phones they would receive the bill each month and have full access to the usage. This option is in our opinion the most beneficial to our membership and the Company.

This Office shall continue to advise our members that it is their right to decide whether or not to give up their cell phone records to the Company. No negative inference should be drawn by the Company from our members exercising their rights. We note that in every investigation to date our members have been advised to be truthful in their response as this is expected by both the Union and Company.

Please find the enclosed Joint Statement of Issue regarding this issue. We suggest that this be put before the CROA and DR arbitrator as soon as it can be docketed. In the meantime we respectfully request that the Company cease and desist from requesting cell phone records of our members until this matter has been resolved.

Thank you for your time and attention to this matter.

Yours truly,



Dave Able
General Chairman, LE West

Yours truly,



Dave Olson
General Chairman, CTY West

cc. Tim Beaver, General Chairman LE East
Daniel Genereux, General Chairman CTY East
Dan Shewchuk, President TCRC
All Local Chairmen West