



Saskatchewan Legislative Board
of the
Teamsters Canada Rail Conference
CONFÉRENCE FERROVIAIRE DE TEAMSTERS CANADA

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September 23, 2005

Professor Daphne Taras
Commissioner
Committee to Review Canada Labour Code – Part III

Via email only.

Dear Commissioner Taras,

I would like to thank you again for allowing me to make the presentation for your review of this subject matter on behalf of the Saskatchewan membership of the Teamsters Canada Rail Conference. This is a compilation of my notes concerning this hearing and is somewhat more detailed and more thorough than the brief presentation I made at the hearing. As I explained at that time, some of the subject matter herein had been mentioned and/or addressed by other presenters to the hearing so I merely skimmed over it or left it out entirely.

It needs to be pointed out that I have not gained approval from the TCRC National office as to the subject matter to be addressed, as such, this brief is presented on behalf of the Saskatchewan membership only. It further needs to be mentioned that thanks to the technical wonders of websites, etc. that the subject matter mentioned was gathered from various Saskatchewan members that submitted comments to me at our request by way of meetings, website, email, phone calls and written notes. I am not necessarily in agreement with *all* the subject matter/recommendations submitted myself, but feel I would be remiss in my elected position if I didn't convey all concerns that were presented to me. The brief presented was formulated from notes that are as follows and are not necessarily exactly as presented. We offer the following comments/amendments in red:

Proposed amendments to Part III:

Section 167. (1) Should be modified with an additional bullet stating:

(f) Persons found guilty of violations under this part, may be fined up to \$100,000.00 or sentenced up to 5 years imprisonment or both, for their part in said violation. Companies found in contravention of this part may be fined up to \$500,000.00, under this part.

We feel that the law lacks any repercussions to employers as currently worded. The addition of this section would give safety officers and others concerned something to stand behind in the event of a company that refuses to take this section to heart.

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At Section 168 (1.1) it reads as follows:

Where collective agreement applies exclusively

(1.1) Divisions II, IV, V and VIII do not apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement of disagreements relating to those matters is governed exclusively by the collective agreement.

We propose a change to the wording of this Section as follows:

Where collective agreement applied exclusively

(1.1) Divisions II, IV, V and VIII **continue to** apply to an employer and employees who are parties to a collective agreement that confers on employees rights and benefits at least as favourable as those conferred by those respective Divisions in respect of length of leave, rates of pay and qualifying periods for benefits, and, in respect of employees to whom the third party settlement provisions of such a collective agreement apply, the settlement of disagreements relating to those matters is governed **not only** by the collective agreement, **but these Divisions as well. These Divisions shall be the minimums set out in any collective agreement. Current collective agreements shall be modified to include these changes at the next negotiations.**

Firstly it is of my opinion that the enclosed exemption (for running trades employees) from the application of sections 169 and 171 of the Act should be discontinued. The following additions/changes should be made to the quoted sections in order to accommodate this discontinuation:

Section 169 (1) reads as follows:

DIVISION I HOURS OF WORK

Standard hours of work

169. (1) Except as otherwise provided by or under this Division

(a) the standard hours of work of an employee shall not exceed eight hours in a day and forty hours in a week; and

(b) no employer shall cause or permit an employee to work longer hours than eight hours in any day or forty hours in any week.

We also propose an additional bullet point (c) be added stating:

(c) In the case of federally regulated employees that are not necessarily domiciled where their workplace is located, all time away from their domiciled area will be considered as time at work. These workers will be considered to have their weekly hours away from their domiciled area maximized at 40 (forty) hours in any given week. Overtime shall be constituted for any time

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accumulated, at double time, for hours over the 40 (forty) hour limit and at the employee's discretion, time off in lieu for these hours shall be supplied for these workers.

Section (2.1) (a) of this section should be modified to include:

Duration of averaging

(2.1) The averaged hours of work calculated pursuant to subsection (2) remain in effect

(a) where the averaging of hours of work is agreed to in writing by an employer and a trade union, an exemption agreement shall be entered into by the employer and the trade union, such exemption agreement shall be signed by the parties; and approved by the Minister, said exemption shall be re-evaluated every 2 (two) years by the parties and re-approved by the Minister. Agreements not renewed at the two year interval shall be treated as void by the Regional Director.

Section 170. (1) should be modified to have a further section (c) so it states:

Modified work schedule

170. (1) An employer may, in respect of employees subject to a collective agreement, establish, modify or cancel a work schedule under which the hours exceed the standard hours of work set out in paragraph 169(1)(a) if

(a) the average hours of work for a period of two or more weeks does not exceed forty hours a week; and

(b) the schedule, or its modification or cancellation, is agreed to in writing by the employer and the trade union.

(c) the signed agreement shall be forwarded to the office of the Regional Director and kept on file in that office. Said agreement shall be re-evaluated every 2 (two) years by the parties and forwarded to the office of the Regional Director for filing in that office. Cancellation of agreements shall be forwarded to the office of the Regional Director, as soon as practicable by the parties. Agreements not renewed at the two year interval shall be treated as void by the Regional Director.

Section 171. (1) should be modified to state:

Maximum hours of work

171. (1) An employee may be employed in excess of the standard hours of work but, subject to sections 172, 176 and 177, and to any regulations made pursuant to section 175, the total hours that may be worked by any employee in any week shall not exceed 60 (sixty) hours in a week or such fewer total number of hours as may be prescribed by the regulations as maximum working hours in the industrial establishment in or in connection with the operation of which the employee is employed.



Section 172. (1) should be modified to include suggested bullets (c) and (d):

Maximum hours of work

172. (1) An employer may, in respect of employees subject to a collective agreement, establish, modify or cancel a work schedule under which the hours exceed the maximum set out in section 171 or in regulations made under section 175 if

(a) the average hours of work for a period of two or more weeks does not exceed forty-eight hours a week; and

(b) the schedule, or its modification or cancellation, is agreed to in writing by the employer and the trade union.

(c) such signed, written agreement will be forwarded to the office of the Regional Director and kept on file for reference purposes. Said agreement shall be re-evaluated every 2 (two) years by the parties and forwarded to the office of the Regional Director for filing in that office. Cancellation of agreements shall be forwarded to the office of the Regional Director, as soon as practicable by the parties. Agreements not renewed at the two year interval shall be treated as void by the Regional Director.

(d) All agreements will specify maximum hours of work, and minimum hours at the home area of employees. Hours spent away from the home area will be considered as "at work" hours for the purposes of this section. Worker fatigue and home life shall be considered as paramount by all, in the making up of these agreements.

Section 172.2 (1) should be modified with wording additions to both existing paragraphs:

Duration

172.2 (1) A work schedule that is established or modified under subsection 170(1) or 172(1) remains in effect for the duration of the written agreement between the employer and the trade union. Such signed, written agreements will be forwarded to the office of the Regional Director and kept on file for reference purposes. Said agreements shall be re-evaluated every 2 (two) years by the parties and forwarded to the office of the Regional Director for filing in that office. Cancellation of agreements shall be forwarded to the office of the Regional Director, as soon as practicable by the parties. Agreements not renewed at the two year interval shall be treated as void by the Regional Director.

Idem

(2) A work schedule that is established or modified under subsection 170(2) or 172(2) remains in effect for two years or for such shorter period as is agreed to by the parties. Such signed, written agreements will be forwarded to the office of the Regional Director and kept on file for reference purposes. Said agreements shall be re-evaluated every 2 (two) years by the parties and forwarded to the office of the Regional Director for filing in that office. Agreements not renewed at the two year interval shall be treated as void by the Regional Director. Cancellation of agreements shall be forwarded to the office of the Regional Director, as soon as practicable by the parties.

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Section 174. should be modified to read as follows:

Overtime pay

174. When an employee is required or permitted to work in excess of the standard hours of work, the employee shall, subject to any regulations made pursuant to section 175, be paid for the overtime at a rate of wages not less than **double** his regular rate of wages. **Workers required to attend work away from their domiciled area shall be maximized at 40 (forty) hours in any given week. Overtime shall be constituted for any time accumulated, at double time, for hours over the 40 (forty) hour limit and time off in lieu for these hours shall be supplied for these workers at the request of the worker. All hours accumulated away from their domiciled area will be used in the calculation of overtime. Disputes arising with regard to these overtime hours will be verified by time-slips.**

Section 175. (1) (a) should be revised with the addition of a bullet point (iii):

Regulations for the purpose of this Division

175. (1) The Governor in Council may make regulations

(a) modifying the provisions of sections 169 and 171 for the purpose of the application of this Division to classes of employees who are employed in or in connection with the operation of any industrial establishment where, in the opinion of the Governor in Council, the application of those sections without modification

(i) would be or is unduly prejudicial to the interests of the employees in those classes, or

(ii) would be or is seriously detrimental to the operation of the industrial establishment;

(iii) requests by employee groups or trade unions for action by the Regional Director, under this part, will be deemed as sufficient to warrant a regulation being imposed by the Governor in Council of unduly prejudicial assignments and/or seriously detrimental operations and will be corrected by order within 14 (fourteen) days of said advisement of the Regional Director.

Section 175. (1) (b) should be deleted or repealed in its entirety. In the event this cannot be done, a sentence modifying it should be added as follows:

(b) exempting any class of employees from the application of any one or more of sections 169, 171 and 174 where the Governor in Council is satisfied that those sections cannot reasonably be applied to that class of employees, any exemptions under this part will be subject to a bi-annual review and require the signatures of both the employer and the trade union and/or a duly elected member of the workplace. Agreements not renewed at the two year interval shall be treated as void by the Regional Director

Section 175. (2) should be added to as follows:

Inquiries

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(2) No regulations may be made pursuant to paragraph (1)(a) or (b) unless the Minister, pursuant to section 248, has caused an inquiry to be made into and concerning the employment of employees liable to be affected thereby and has received a report from the person or persons appointed to hold the inquiry. **Inquiries will be held within 14 (fourteen) days at the request of the employees involved or their representatives.**

Section 176. (2) (c) should be modified as follows:

(c) if those employees are represented by a trade union, that the employer had informed the trade union in writing of the application for the permit; **and that the trade union had signed a concurrence to the application for said permit.**

Section 176. (4) (b) should be modified as follows:

(b) the additional hours that may be worked in any day and in any week during the period of the permit; **said permits/exemptions will be reviewed every (2) two years. Permits/exemptions not renewed at the two year interval shall be treated as void by the Regional Director.**

Section 177. (2) should be modified as follows:

Reporting additional work

(2) Where the maximum hours of work in an industrial establishment have been exceeded under the authority of subsection (1), the employer shall report in writing to the regional director, and also to the trade union if the affected employees are subject to a collective agreement, within fifteen days after the end of the month in which the maximum was exceeded, stating the nature of the circumstances in which the maximum was exceeded, the number of employees who worked in excess of the maximum and the number of additional hours each of them worked. **Advisement of the trade union shall be copied to the Regional Director.**

Section 181. (a) and (d) should be modified as follows:

(a) requiring employers to pay employees who report for work at the call of the employer wages for such minimum number of hours as may be prescribed, whether or not the employee is called on to perform any work after so reporting for work; **Prescribed minimum number of hours is understood to be 4 (four) hours payment as a minimum payment if work is not on scheduled working time.**

(d) governing the charges or deductions for furnishing uniforms or other articles of wearing apparel that an employer may require an employee to wear or requiring an employer in any specified circumstances to provide, maintain or launder uniforms or other articles of wearing apparel that the employer may require an employee to wear; **employees will be provided a yearly clothing allowance when employees are required to be shod in a specific and/or minimal manner. Said clothing allowance will cover all costs concerning the specific clothing required.**

Other suggested changes to this part that aren't directly related to the exemption are:

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Section 184. should be modified as follows:

Annual vacation with pay

184. Except as otherwise provided by or under this Division, every employee is entitled to and shall be granted a vacation of at least **three** weeks with vacation pay **after one year of employment by one employer and**, after six consecutive years of employment by one employer, at least **four** weeks with vacation pay in respect of every year of employment by that employer.

Due to ongoing problems of employees that have school age children, we propose that Section 190. be modified as follows:

Regulations in relation to annual vacations

190. The Governor in Council may make regulations for carrying out the purposes and provisions of this Division and, without restricting the generality of the foregoing, may make regulations

(a) defining the circumstances and conditions under which the rights of an employee under this Division may be waived or the enjoyment thereof postponed;

(i) except in cases of emergency, no employee shall be awarded more than 3 (three) consecutive weeks annual vacation during the prime time vacation time for that workplace unless the entire workplace is shutdown for the entire period. This would in most cases include the months of July, August and December.

(b) prescribing the notices to be given to employees of the times when vacations may be taken;

(c) prescribing the time when vacation pay shall be paid;

(d) defining the absences from employment that shall be deemed not to have interrupted continuity of employment;

(e) respecting the determination by the employer of a year of employment in relation to any industrial establishment;

(f) for the calculation and determination of vacation and vacation pay in the case of seasonal or temporary employees or in other suitable cases;

(g) providing for the granting of vacation or the payment of vacation pay in the event of temporary cessation of employment; and

(h) providing for the application of this Division where, owing to illness or other unavoidable absence, an employee has been absent from his employment.

These changes would allow at least a few workers with minimal seniority to have some vacation during peak times.

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Section 193. (1) should be modified as follows:

General holiday falling on day off

193. (1) Except as otherwise provided by this Division and subject to subsection (2), when a general holiday falls on a day that is a non-working day for an employee, the employee is entitled to and shall be granted a holiday with pay at some other time, which may be by way of addition to his annual vacation or granted as a holiday with pay at a time convenient to both the employee and the employer. **This provision applies to all employees that are required to work on a General Holiday. This General Holiday may be banked at the employee's discretion and added to their annual vacation allotment or granted as a day in lieu at another time.**

Section 198. (b) should be modified as follows:

(b) shall be given a holiday and pay in accordance with section 196 at some other time, which may be by way of addition to his annual vacation or granted as a holiday with pay at a time convenient to both the employee and the employer; **Collective agreements shall not be worded so as to render this provision redundant.**

Section 202. (1) should be modified as follows:

Holiday during first 30 days of employment

202. (1) An employee is not entitled to pay for a general holiday that occurs in his first thirty days of employment with an employer if the employee does not work on that day, but if required to work on the general holiday the employee shall be paid at a rate at least equal to **double** his regular rate of wages for the time that the employee worked on that day, unless the employee is employed in a continuous operation in which case the employee is entitled to his regular rate of wages for the time that the employee worked on that day. **If employee is available for work/call for the entire day on the holiday, he will be deemed to have worked on the holiday and will be paid General holiday payment as though at work.**

Section 206.3 (2) should be modified as follows:

Entitlement to leave

(2) Subject to subsections (3) to (8), every employee is entitled to and shall be granted a leave of absence from employment of up to **12 (twelve)** weeks to provide care or support to a family member of the employee if a qualified medical practitioner issues a certificate stating that the family member has a serious medical condition with a significant risk of death within 26 weeks from

- (a) the day the certificate is issued; or
- (b) if the leave was commenced before the certificate was issued, the day the leave was commenced.



Section 207. (1) (a) should be modified as follows:

(a) give at least **two** weeks notice in writing to the employer unless there is a valid reason why that notice cannot be given, **in cases of emergency, leave shall be arranged in a soon as possible manner;** and

Section 210. (1) currently reads:

Employee entitled

210. (1) Every employee is entitled to and shall be granted, in the event of the death of a member of his immediate family, bereavement leave on any of his normal working days that occur during the three days immediately following the day of the death.

Section 210. (1) should be modified as follows:

210. (1) Every employee is entitled to and shall be granted, in the event of the death of a member of his immediate family, bereavement leave following the day of the death. **Bereavement leave shall consist of a 7 (seven) day period following the death and shall include the day of the funeral.**

Section 210. (2) should be modified as follows:

Bereavement leave with pay

(2) Every employee who **is continuously employed** by an employer and is entitled to bereavement leave under subsection (1) is entitled to such leave with pay at his regular rate of wages for his normal hours of work, and such pay shall for all purposes be deemed to be wages.

The exception to Section 239. (1) should be modified as follows:

SICK LEAVE

Prohibition

239. (1) Subject to subsection (1.1), no employer shall dismiss, suspend, lay off, demote or discipline an employee because of absence due to illness or injury if

(a) the employee has completed three consecutive months of continuous employment by the employer prior to the absence;

(b) the period of absence does not exceed twelve weeks; and

(c) the employee, if requested in writing by the employer within fifteen days after his return to work, provides the employer with a certificate of a qualified medical practitioner certifying that the employee was incapable of working due to illness or injury for a specified period of time, and that that period of time coincides with the absence of the employee from work.



Exception

(1.1) An employer may assign to a different position, with different terms and conditions of employment, any employee who, after an absence due to illness or injury, is unable to perform the work performed by the employee prior to the absence. **Employees so assigned will be assigned at their regular rate of remuneration. Such employee will continue to be remunerated at the same rate until the newly assigned position is paid remuneration equal to, or more than, the employee's original position.**

Section 239. (2) should be re-added to the regulation, it should be worded;

(2) Individual companies may author attendance management policies, these company policies will;

(i) not conflict with this part; and

(ii) not supersede the standards and requirements outlined in this part; and

(iii) at all times give due consideration to chronic conditions and/or re-occurring illnesses/injuries; and

(iv) at all times consider individual employee concerns as to their own fitness to be at work; and

(v) if employees concerned; are represented by a trade union, a signed union concurrence to any policy shall be forwarded to the Regional Director and the Minister responsible. If this signed concurrence is not provided, the policy shall not be recognized by the Department.

Section 239.1 (4) should be modified as follows:

Exception

(4) An employer may assign to a different position, with different terms and conditions of employment, any employee who, after an absence due to work-related illness or injury, is unable to perform the work performed by the employee prior to the absence. Employees will not be required to leave their original domicile in order to accept an accommodation. Employees so assigned will be assigned at their regular rate of remuneration. Such employee will continue to be remunerated at that same rate until the newly assigned position is paid remuneration equal to, or more than, the employee's original position. Employees will not be forced to accept a new assignment, but will be accommodated by training to a new position outside their original industry.

Section 239.1 (5) should be modified as follows:

Benefits continue

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(5) The pension, health and disability benefits and the seniority of an employee who is absent from work due to work-related illness or injury shall accumulate during the entire period of the absence. **Any accumulated arrears in an employee's pension plan benefits that occur under this part, shall be kept current by the employer as though the employee was or had been at work continuously. Collective agreements in force shall be modified to include these changes at the next negotiation.**

This concludes the comments as to this review from the TCRC members from Saskatchewan. We hope all of our contributions will be recognized and included in the review and changes when they take place. We are of the opinion that these additions/deletions/changes will assist in correcting any ambiguity concerning this part, and would result in a uniform understanding of the subject matter set out in this part.

Thank you for the opportunity to comment to this hearing concerning this review of Part III of the Canada Labour Code.

Sincerely,



Paul White
PLB Chairman (SK)
Teamsters Canada Rail Conference

encl.





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L A W S



[Consolidated Statutes and Regulations](#)
 Enabling statute: [Canada Labour Code](#)
 Disclaimer: These documents are not the official versions ([more](#)).
 Source: <http://laws.justice.gc.ca/en/L-2/C.R.C.-c.991/34788.html>
 Updated to December 31, 2001

Laws

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Railway Running-Trades Employees Hours of Work Regulations

C.R.C., c. 991

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CANADA LABOUR CODE

Railway Running-Trades Employees Hours of Work Regulations

REGULATIONS RESPECTING HOURS OF WORK OF EMPLOYEES ENGAGED IN THE RUNNING-TRADES IN THE RAILWAY INDUSTRY IN CANADA

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SHORT TITLE

1. These Regulations may be cited as the *Railway Running-Trades Employees Hours of Work Regulations*.

Case Law

- [Federal and Provincial Case Law](#)

Other

INTERPRETATION

2. In these Regulations, "Act" means Part III of the *Canada Labour Code*.

Annual Statutes

- [Table of Public Statutes and Responsible Ministers](#)
- [Table of Private Acts](#)
- [Index of Statutory Instruments](#)

EXEMPTION

3. The following classes of employees, that is to say, yardmasters, assistant yardmasters, locomotive engineers, locomotive firemen (helpers), hostlers, train conductors, train baggagemen, brakemen, yard foremen, yardmen, switch tenders and car retarder operators in those railroads that are within the legislative authority of Parliament are exempted from the application of sections 169 and 171 of the Act. SOR/92-594, s. 2.

SCHEDULING HOURS OF WORK

4. For the purposes of these Regulations, hours of work may be scheduled and actually worked without regard to section 173 of the Act. SOR/92-594, s. 2.