

IN THE MATTER OF AN ARBITRATION
BETWEEN
TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION
(the Union)
And
CANADIAN PACIFIC RAILWAY COMPANY
(the Company)

DISPUTE:

COVID-19 - Religious exemption claim on behalf of Mr. Joshua Bergen.
(Union File Nos. 11.2128 and 11.2167)

JOINT STATEMENT OF ISSUE

Grievance 11-2128:

On December 2, 2021, the Union filed a grievance alleging that the Company improperly denied the Grievor's request for a religious exemption from the requirements of Transport Canada's Ministerial Order 21-07 and the Company's Vaccination Mandate Policy.

Grievance 11-2167:

On February 7, 2022, the Union filed a grievance alleging the Company violated the Collective Agreement by placing the Grievor on an unpaid administrative leave effective January 25, 2022 as a result of the Grievor's non-compliance with both the Ministerial Order 21-07 and Vaccination Mandate Policy. The grievance also alleges that the Company has not applied Transport Canada's Ministerial Order and Vaccination Mandate Policy equally across the organization.

UNION POSITION:

1. The Grievor is an individual who holds a sincere and longstanding religious belief that prohibits him from taking a Covid vaccine. The details of the Grievor's faith and beliefs were set out in his sworn affidavit (and attachment) dated November 8, 2021.
2. Section 3(c) of Transport Canada Ministerial Order 21-07 provides that all employees were to receive their first Covid-19 vaccine shot by November 15, 2021 "*unless they (fell) within an exception as described in Section G.*" Section G of the Order provides for a religious exemption provided only that a sworn attestation of the worker's sincerely held belief is provided. The Grievor provided such an attestation (the November 8, 2021 affidavit).
3. No further information or documentation was requested by the Company in order to assess the Grievor's exemption request. The Company made no attempt in any way to inquire into

the Grievor's situation.

4. By summarily denying the Grievor's request the Company violated both Ministerial Order 21-07 and its duty to accommodate the Grievor's religious beliefs.
5. As a result of the Company's improper denial of the Grievor's religious exemption request, the Grievor was placed on unpaid administrative leave on January 18, 2022. This occurred not only in violation of the Ministerial Order and the duty to accommodate but also of the provisions of sections 15.1 and 17.1 of the collective agreement (as detailed in Grievance No. 11-2167).
6. In addition, the Company has discriminated against the Grievor because, as the Company itself acknowledges, other employees who did not satisfy the requirements of the Ministerial Order were permitted to continue working.

The Union requests that the Arbitrator:

1. Declare that the Company wrongfully denied the Grievor's request for a religious exemption,
2. Irrespective of the Arbitrator's decision concerning Request (1), declare that the Company wrongfully placed the Grievor on unpaid administrative leave on January 18 2022,
3. Declare that the Company's actions (and omissions) violated sections 15.1 and 17.1 of the collective agreement,
4. Declare that the Company discriminated against the Grievor in its application and implementation of Ministerial Order 21-07, and
5. Order the Company to reinstate the Grievor into active service immediately without loss of seniority and with full compensation for all wages and benefits lost back to the date the Grievor was placed on unpaid administrative leave.


COMPANY POSITION:

The Company denies the Union's contentions and declines the Union's request.

1. Transport Canada issued an order requiring CP to implement its Vaccination Mandate Policy and the terms to be provided for therein. Transport Canada also issued guidelines to review and assess requests for exemptions including those based on an individual's sincerely held religious beliefs.
2. The Grievor submitted a request for religious exemption on or about November 8, 2021. The request was denied because it failed to meet the objective criteria established by Transport Canada which CP was required to apply.
3. Despite being reminded of the applicable requirements, the Grievor failed to both attest to his vaccination status and to submit proof of vaccination by the applicable deadlines.
4. Under the terms of Transport Canada's Ministerial Order 21-07 and CP Vaccination Mandate Policy, the Grievor had to submit proof that he was fully vaccinated by no later than January 24, 2022. The Grievor did not satisfy this requirement and, as a result, was placed on an unpaid administrative leave effective as of January 25, 2022.

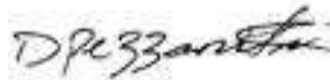
5. The Grievor has not been disciplined as alleged by the Union.
6. The Company denies that it applied its Vaccination Mandate Policy in an inequitable or unreasonable manner as alleged by the Union.
7. Given the circumstances, the Company is not in violation of the *Canadian Human Rights Act*, Sections 13, 15, 17 of the Wage Agreement or any other provisions of the Collective Agreement, Sections G(1), (3) and (4) of Ministerial Order 21-07 issued pursuant to Section 32.01 of the *Railway Safety Act*.
8. The Company submits that the Union is not entitled to any of the relief as outlined above.

FOR THE UNION:



Wade Phillips
President TCRC MWED

FOR THE COMPANY:



David Pezzaniti
Director Labour Relations, CP Rail

Signed: May 30, 2022

Hearing: June 16, 2022 – In person and by videoconference.

APPEARING FOR THE UNION:

David Brown, Counsel
Wade Phillips, President, TCRC MWED
Joshua Bergen, Grievor

APPEARING FOR THE COMPANY:

Trisha Gain, Legal Counsel, Litigation & Labour
David Pezzaniti, Director, Labour Relations
Diana Zurbuchen, Manager Labour Relations

AWARD OF THE ARBITRATOR

JURISDICTION

1. This is an Ad Hoc Expedited Railway Arbitration pursuant an agreement between the parties. The parties provided the above Joint Statement of Issue. The parties also submitted detailed briefs and books of documents which were filed with me and exchanged in advance of the hearing. At the hearing the parties reviewed their submissions, documentary evidence and made final argument. The parties agree I have all the powers of an Arbitrator pursuant to Section 60 of the *Canada Labour Code*.

BACKGROUND

2. At the hearing of June 16, 2022 the parties made opening statements and reviewed the extensive written submission. The Grievor gave evidence by video conference. On June 14, 2022 the Government had announced its intention to remove the Ministerial Order requiring vaccinations effective June 20, 2022. The need for further documentation relating to the number of unvaccinated employees who had worked without being vaccinated was in question. I reviewed the basic labour relations reasoning for making of an interim order applicable to the Grievor.

3. Neither the Company nor the Union suggested that I was constrained in issuing the orders set out below. The combined effect of secs. 16 (f.1) and 60 (1) of the *Code* is to grant an arbitrator all appropriate power to make a production order for the release of the requested documents and records, where found to be relevant in the circumstances of a particular case, which may be enforced in accordance with the procedures authorized under the *Code*. I am of the view that the interests of both parties could be addressed in this case. In order to ensure that this matter is heard and determined in an expeditious and orderly fashion, I directed the following:

- a) The Grievor will be notified of his reinstatement within 7 days of this interim award.
- b) In consultation with the Union, the Company will produce information setting out the number of employees, dates, location, times, duration and bargaining unit of non-compliant employees who continued working after January 24, 2022. The Company will also provide copies of the weekly reports submitted to Transport Canada in compliance with the Ministerial Order and setting out vaccine exemption information. Names of individual employees will not be provided.
- c) All of the above documentation will be provided within 30 days of this award. The Union will submit its reply within 7 days of receiving the documentation.

4. Following the above order the Company provided the agreed documentation. After the disclosure the parties made additional written submissions. The parties have now put in all of their evidence and arguments regarding the two grievances and are in agreement that I provide my decision in the matter.

FACTS

5. In March 2020, the World Health Organization declared COVID-19 a global pandemic. In response, the Government of Canada, and all Provincial governments implemented numerous forms of emergency public health measures.

6. On October 29, 2021, Transport Canada issued Ministerial Order 21-07, Vaccination Mandate for Employees, pursuant to sections 32.01 and 36 of the Railway Safety Act (the "Ministerial Order"). The Ministerial Order was amended on November 29, 2021 as Ministerial Order 21-07 Vaccination Mandate for Employees.

7. The Ministerial Order required vaccination against COVID-19 for federally regulated employees in the transportation sector unless an employee is exempt for religious or medical reasons. The Ministerial Order further requires that employees who fail to comply must be placed on an unpaid leave of absence unless an exemption is obtained.

8. The Ministerial Order was accompanied by Transport Canada's "Guidance Material for Railway Companies". Applicable to the facts of the Religious Exemption grievance, the Guidance Document provided:

- A railway company may develop and implement a company-wide vaccination policy for all employees, including both operating employees and all other employees employed by the railway company.
- A company-wide vaccination policy must be developed and implemented by October 30, 2022 and filed with Transport Canada by November 15, 2021.
- Include a plan for ensuring compliance with its company-wide vaccination policy.
- All persons employed by the railway company, who are not subject to an exception, must have received their first dosage of an approved COVID-19 vaccine by November 15, 2021.
- All persons employed by the railway company who are not subject to an exception, must be fully vaccinated by no later than January 24, 2022.
- Effective January 25, 2022, apply leave without pay for employees who remain unvaccinated and are not subject to an exception as described in Section G.

9. The Guidance Document further required employers to provide for a procedure to grant exceptions from the requirement to be fully vaccinated in very limited circumstances, namely as a result of a medical condition or the person's sincerely held religious beliefs. As a result, CP developed and implemented its Vaccination Mandate Exemption Procedure.

10. The Vaccination Mandate Exemption Procedure required all employees seeking either a medical or religious exemption pursuant to the Ministerial Order to submit their request by no later than November 8, 2021 in order for it to process all requests and notify employees of the decision prior to the deadline of November 15, 2021 requiring all non-exempt employees to have received their first dosage of an approved COVID-19 vaccine.

11. The Guidance Document also provided information for consideration with respect to how the Government would evaluate religious exemption requests from its Federal Government employees. The document also included the required forms to be completed and submitted by Government employees seeking such exemptions.

12. Effective October 30, 2021 the CP Policy Committee approved the CP Vaccination Mandate Policy. It was later amended on December 3, 2021. The CP Policy provided in part:

6.2 Union Employees

A union employee who does not provide an attestation that the employee is fully or partially vaccinated or has an approved exemption by November 15, 2021, **may be subject to sanctions including unpaid administrative leave, discipline, or termination of employment.**

Effective December 10, 2021, a union employee who does not provide an attestation that the employee is fully or partially

vaccinated or has an approved exemption will be immediately placed on an unpaid administrative leave of absence until the employee provides the required attestation. **The employee may also be subject to other sanctions including discipline or termination of employment.**

A union employee who does not provide an attestation that the employee is Fully Vaccinated or has an approved exemption by January 24, 2022, will be immediately placed on an unpaid administrative leave of absence until the employee provides the required attestation. **The employee may also be subject to sanctions including discipline or termination of employment.**

A union employee who provides a false attestation may be subject to disciplinary measures in accordance with the Hybrid Discipline Guidelines for unionized employees, up to and including unpaid suspensions and termination of employment. Providing a false or misleading attestation, proof of vaccination, test result, or evidence in support of an exemption may also constitute fraud or perjury under the Criminal Code.

A union employee who violates this Policy in any other respect may be subject to disciplinary measures in accordance with the **Hybrid Discipline Guidelines for unionized employees, including administration leave, discipline, and termination of employment.**

Emphasis Added

13. On November 8, 2021, the Grievor, applied for a religious exemption from compliance with the CP Vaccination Mandate Policy. The Grievor's request for a religious exemption was sworn and completed on the required form provided by the Company and confirmed by a Commissioner for taking oaths in the Province of British Columbia. The Grievor also provided a letter of support from his church with the request form.

14. The next day the Company notified the Grievor that his request for a religious exemption was denied, and that if the Grievor had concerns or questions regarding Transport Canada's criteria for an exemption, he should contact Transport Canada directly. In the same correspondence, the Company further advised the Grievor that he was subject to the requirements of the Vaccination Mandate Policy, including meeting the deadlines for partial vaccination and the first attestation date. Notwithstanding the direction from the Company, it says the Grievor failed to attest to his vaccination status and to submit proof of vaccination by November 15, 2021.

15. On December 8, 2021, the Union filed a Step 2 grievance alleging that the denial of the Grievor's religious accommodation amounts to a violation of Article 17 of the Collective Agreement, Sections G(1), (3), and (4) of the Ministerial Order, and the *Canadian Human Rights Act*.

16. The Company submits that it permitted the Grievor to continue working on the basis that he, like all non-compliant employees, would become compliant with the Ministerial Order and the

Vaccination Policy by the final deadline of January 24, 2022.

17. On January 21, 2022, the Company notified the Grievor that he was non-compliant with the Ministerial Order and the Vaccination Mandate Policy, and that if he was not fully vaccinated by January 24, 2022, he would be placed on an unpaid administrative leave effective January 25, 2022, until fully vaccinated. As a result the second grievance was filed.

18. The Grievor did not become fully vaccinated against COVID-19 by the deadline required by the Ministerial Order and Vaccination Policy. The Company maintains it was therefore obligated by the Ministerial Order to place the Grievor on an unpaid administrative leave which occurred on January 25, 2022. As a result a second grievance was filed on February 7, 2022 alleging that the Grievor had been improperly placed on unpaid leave.

19. On February 15, 2022, the parties agreed that I would hear the two grievances pursuant to their Ad Hoc arbitration agreement. The Parties provided extensive submissions on June 10, 2022 and further reply submissions on June 15, 2022. The Hearing was scheduled for hearing on June 16, 2022.

20. Following the hearing and pursuant to sections 32.01 and 36 of the *Railway Safety Act*, Ministerial Orders 21-07.3 and 21-09.2 were repealed by Michael DeJong, Director General, Rail Safety effective on June 20, 2022.

UNION SUBMISSIONS

21. The Union maintains the evidence establishes the Grievor is a deeply committed Christ follower in his faith, “a worship leader,” “an upstanding Church member,” “active as a Church Board member,” “elected and entrusted by the congregation to prayerfully make scripturally based decisions,” a person who “serves the Church faithfully on an ongoing basis.” The Union argues that if the undisputed facts of his life and beliefs are not enough to satisfy the requirement of sincere religious belief and practice then the conditions of a religious exemption under the Ministerial Order are impossible to satisfy and must be viewed as meaningless. It says the Company provided no evidence to support its position that the Grievor was properly denied a religious exemption.

22. The Union submits that while the Company was required to implement a Vaccine Mandate Policy it did so without consulting with the Union. The Policy was applied to the Grievor improperly and in a discriminatory manner. It says that throughout the Mandatory Vaccination period from October 30, 2021, until it was removed June 20, 2022, CP allowed unvaccinated employees without exemptions to continue working while placing the Grievor on unpaid leave. The Union submits that the provisions of the Ministerial Order and the CP Policy clearly stated that all persons employed by the Company who are not subject to an exemption, must be fully vaccinated by no later than January 24, 2022 or placed on unpaid leave.

23. The Union submits that this is not a case of granting an exemption being a burden to other employees. It says the Company openly admits being short of qualified employees and allowing exemptions to others in violation of the Policy and Ministerial Order. The Union’s position is that despite what it says is compelling evidence provided to the Company, it denied the Grievor’s request for an exemption. After January 18, 2022 he was forced onto unpaid leave. The Union maintains that the Grievor was never asked for further information by the Company or received an explanation from the Company about why his November 8, 2021 exemption request was denied.

24. CP's documentation indicates that 56 non-complaint employees, who were not fully vaccinated and had not requested or been granted a medical or religious exemption were allowed to continue working in violation of the CP Policy and Ministerial Order after January 24, 2022. The Union argues that the document was the first time that the Union was made aware by the Company that any of its non-compliant members who had not requested an exemption had worked past January 24, 2022. The Union argues that it then determined that the member was working a normal night shift foreman on one of the winter snow removal groups in Portage La Prairie, not a flood emergency position in British Columbia.

COMPANY SUBMISSIONS

25. CP submits that under the Railway Safety Act, the Minister of Transport may require railway companies to stop any activity that might constitute a threat to safe railway operations, or to follow certain directives and corrective measures. On October 29, 2021, Transport Canada issued Ministerial Order 21-07, Vaccination Mandate for Employees, pursuant to sections 32.01 and 36 of the Railway Safety Act (the "Ministerial Order"). The Ministerial Order was amended on November 29, 2021. Prior to the Ministerial order, the World Health Organization declared COVID-19 a global pandemic in March of 2020. In response, the Government of Canada, and all Provincial governments implemented numerous forms of emergency public health measures.

26. The Company says that at the time of the Ministerial Order it was already dealing with staff shortages, track washed out by the British Columbia Flood and supply chain issues. It was necessary to allow some employees to continue working beyond January 24, 2022 despite their non-compliance status in order to ensure the safe operation of its railway and indirectly avoid interruptions to Canada's supply-chain network. In response, the Union argues that it is simply unacceptable for the Company to pick and choose between unvaccinated employees without regard to the Company Policy, the Collective Agreement and in violation of the Ministerial Order while not granting a single religious exemption to any employee in that time period.

27. The Company submits that under the terms of the Ministerial Order and the Vaccination Policy, the Grievor was required to submit proof that he was fully vaccinated by no later than January 24, 2022. The Grievor failed to satisfy this requirement and was therefore placed on an unpaid administrative leave effective January 25, 2022.

28. CP says the Grievor has failed to adduce sufficient or proper evidence that his religious beliefs prevent vaccination. The Grievor's exemption application relies on a third party's false empirical beliefs about the development and contents of COVID-19 vaccines. As a result, the Company properly applied the Ministerial Order and Vaccination Policy in rejecting the Grievor's request for an accommodation. The Company maintains that it has not inappropriately discriminated against the Grievor nor treated him unfairly. The Company has sought to comply with the terms of the Ministerial Order to the full extent possible and has fairly and reasonably applied the Vaccination Policy in doing so.

29. The Company submits that it has complied with the Ministerial Order to the fullest extent. This has included developing and implementing the Vaccination Mandate Policy and providing updates to Transport Canada regarding the ongoing status of the implementation of the Vaccination Mandate Policy since it was filed with Transport Canada on November 15, 2021.

30. CP maintains that in order to become fully compliant with the Ministerial Order, the Company has undertaken significant hiring efforts along with the re-allocation and redistribution of resources. Since the placement of all non-compliant employees on a leave of absence effective

January 24, 2022 would have placed the critical operations of the railroad at risk, a limited number of non-compliant employees were allowed to continue active employment in order to ensure the safe and uninterrupted operations of the railroad.

31. The Company submits that non-compliant employees who were permitted to continue working after January 24, 2022, were specifically permitted to continue working by management having regard to the following factors:

- The ability to maintain staffing to ensure the maintenance and safe operation of the railways and railway equipment;
- The ability to maintain sufficient operations so as to limit interruption to critical supply chains;
- Staff shortages due to COVID-19; and
- Managing the ongoing effect to railway operations caused by the British Columbia floods.

ANALYSIS AND DECISION

32. The parties provided lengthy written submissions in accordance with their agreement for expedited arbitration. I consider it useful to comment on the more significant questions of relevance but will not expand these reasons unnecessarily. I will refer to the authorities provided by the parties as I consider necessary, but will not refer to every case.

33. The Union relies on *Syndicat Northcrest v. Amselem*, [2004] 2 S.C.R. 551, 2004 SCC 47; *Ktunaxa Nation v. British Columbia* [2017] 2 SCR 386; *Stewart v Elk Valley* [2017] 1 SCR 591; *Hutterian Brethren* [2015] 2 SCR 567; *Little v. R.*, 2009 NBCA 53; *Big M Drug Mart* [1985] 1 SCR 295; *Power Worker’s Union v. Elexicon Energy*; CROA 2656; *Mission Hill Vineyards*; CROA 3322; CROA 4558), CROA 2656; CROA 2877; CROA 4440; CROA 4270; CROA 3060; CROA 3551. The Company relies on the Ministerial Order 21-07: *Vaccination Mandate for Employees*; *Guidance Material for Railway Companies* as well as the following authorities in support of their position: *Pelletier v. Community Natural Foods*, 2021 AHRC 192; *The Worker v. The District Managers*, 2021 BCHRT 41.

34. It is not in dispute that at the time of the Ministerial Order, the COVID-19 pandemic was having a significant effect on Canada’s transportation sector. The federal government was taking measures to mitigate the transmission of COVID-19 or of new variants of the virus causing COVID-19 that pose risks. There is no dispute between the parties that evidence indicated vaccines were effective at preventing severe illness, hospitalization and death from COVID-19. Pursuant to section 32.01 of the *Railway Safety Act*, the Minister considered it necessary in the interests of safe railway operations to order that:

A railway company may develop and implement a company-wide vaccination policy for all employees, including both operating employees and all other employees employed by the railway company.

35. The CP’s *Vaccination Mandate Policy* provided an objective stating:

To comply with Transport Canada’s Ministerial Order, pursuant to Section 32.01 of the *Railway Safety Act*, compelling CP to implement a policy to mandate employee vaccination against COVID-19 no later than October 30,

2021.

36. There is no disagreement between the parties that CP was facing major operational issues resulting from the November 2021 flood damage to approximately 30 locations along its mainline along the Fraser River between Kamloops and Vancouver. Employee shortages at the time are also not in dispute. The Vaccine Mandate did not simplify the operational challenges for the Company. I agree with the Company that keeping snow clear of switches at night in Manitoba is as essential to a safe and efficient railway as in British Columbia. Staff shortages at either location can impact safety and supply chain issues.

37. The Union does not challenge that the Company can establish workplace rules or policies that are reasonably connected to workplace issues. The Union submits that while this Policy was implemented as a response to a critical safety issue, it was never consulted prior to the Company implementing the Policy. It says the Policy was improperly applied to the Grievor. Further, it is inconsistent with the Collective Agreement, unreasonable, discriminatory and has not been consistently enforced.

38. The Union submits that the Company's application of the CP Policy and Ministerial Order is inconsistent with the Government's own application of its own Government Vaccine Policy. CP did not grant any religious exemptions. It argues that Government of Canada information regarding Government employees indicated that as of May 30, 2022, 993 requests for accommodation that it had received had been deemed eligible and 699 remained under consideration. Of the 993 deemed eligible 642 were approved for religious reasons.

39. The Company replies that the statistics published by the Government of Canada for its employees are not relevant to the issues in this grievance as the Core Public Administration (including the RCMP) to which those statistics relate, was subject to a vaccination policy with different standards and requirements. The Company in this instance and other federally-regulated transportation companies were subject to a Ministerial Order with specific requirements and guidance.

40. CP argues that it and other federally regulated employers in the transportation sector were given strict guidance on the requirements necessary in order to grant an exception. CP followed those requirements and the guidance documents provided by Transport Canada in assessing all requests for both medical and religious exception requests. Transport Canada has advised the Company on multiple occasions that the Company is required to comply fully with the Ministerial Order and that all non-compliant employees must be placed on an unpaid administrative leave in order to achieve compliance. I find that argument problematic given that CP allowed unvaccinated employees who did not request exemptions to continue working.

41. The Company maintains that the vaccine policy and subsequent attestation and vaccination requirements form part of a Ministerial Order mandated by Transport Canada, not the Company. The Company was complying with a Transport Canada's Ministerial Order. Moreover, it says the Union is well aware that any Federal statutory requirements, regulations, or ministerial orders supersede articles within collective bargaining agreements.

42. The Union submits that it was never consulted by CP during the development of the Policy, during implementation or amending the Policy. The Company unilaterally chose not to consult with the Union or contact employees regarding vaccine exemption requests. The Company unreasonably allowed other unvaccinated employees to continue working while refusing every

religious exemption request. It did not inform or consult with the Grievor regarding any concerns with his written request. It did not provide the employee with a fair and impartial investigation prior to placing the Grievor on unpaid leave.

43. The Union is not objecting here to the mandatory aspect of the policy in light of the Ministerial Order. However, it points out that the Order did not indicate that the Company should implement the Policy without consultation, sanction employees or place them on unpaid leave without first complying with the collective agreement investigation provisions. The Company had implemented other COVID policies and investigated alleged violations before taking any action against employees.

44. I turn to consider CP's position that federally regulated employers in the transportation sector were given strict guidance on the requirements necessary in order to grant an exception and it did so in a reasonable manner. This in opposition to the Union's argument that CP violated the Ministerial Order by unreasonably, discriminatorily and inconsistent with its CP Policy and the Ministerial Order allowed unvaccinated employees to continue working without an exemption.

45. In this case, I find that the Ministerial Order was very clear in providing only medical or religious exemptions providing:

A railway company may develop and implement a company-wide vaccination policy for all employees, including both operating employees and all other employees employed by the railway company.

.....

In accordance with the requirements and timelines set out in this Section, a railway company **must not operate railway equipment on a railway unless the company has confirmed every operating employee who is not on leave and does not fall within an exception described in Section G has provided proof of vaccination** credential (PVC), before they enter any place, or board any equipment, owned or controlled by the railway company. **Emphasis Added**

46. I also find that the Ministerial Order providing that only medically and religious exempt employees could continue working was in unison with the CP Policy which also clearly stated:

3.2. No Other Exemptions

CP will not grant any exemptions from the vaccination mandate other than those identified by Transport Canada.

47. The evidence clearly establishes that notwithstanding this clear wording of the Ministerial Order and CP's own Policy, the Company repeatedly allowed many unvaccinated employees who were not exempt to continue working.

48. On November 8, 2021 the Grievor applied for a religious exemption which was refused the next day. At that time CP was reporting to Transport Canada that:

Based on the current information, 17% of CP Employees (19% of Operations Employees) have not attested that they are fully vaccinated and are accordingly subject to testing under the Policy; this includes 6% of CP Employees (7% of Operations Employees) that are either completely unvaccinated or have not provided the required attestation.

49. On January 18, 2022 the Grievor was placed on unpaid leave. CP had reported on January

11, 2022 that:

Based on the current information, 8% of CP Employees (9% of Operations Employees) have not attested that they are fully vaccinated and are accordingly subject to testing under the Policy; this includes 2% of CP Employees (3% of Operations Employees) that are either completely unvaccinated or have not provided the required attestation.

50. CP documentation disclosure to the Union also provided that over 50 unvaccinated employees continued working after the Grievor was placed on unpaid leave. The Union submits that the disclosure was the first time the Union was made aware that any of its non-compliant members worked past January 24, 2022. As a result of seeing the document the Union contacted the Employee who indicated that he was allowed to keep working as a night shift foreman on one of the winter snow removal groups in Portage La Prairie, Manitoba. The Union argues that this employee was permitted to continue working while all other non-compliant employees who had requested religious exemptions were sent home on unpaid leave. In the Union's view, this serves to highlight the arbitrary and discriminatory manner in which the Company had dealt with the requirements of the CP Policy and the Ministerial Order in general.

51. The Union also argues that grievances were avoidable as the CP Policy did not override the Collective Agreement. The Union maintains under the collective agreement the Company is not permitted to assess discipline without investigation and meeting the requirement of reasonable cause. The Union says that in this case the Company developed the CP Policy in accordance with the Ministerial Order. CP implemented the Policy and controlled the Policy. While reporting to the Government, CP chose to refuse every request for a religious exemption while allowing other unvaccinated employees to continue working without consultation or explanation to the Union.

52. The Union submits that the CP Vaccine Mandate Policy specifically provided:

All other policies, procedures, and practices implemented by CP to minimize the risk of COVID-19, including the CP7, continue to apply to all employees, regardless of vaccination status.

53. The Union submits that investigations were conducted into allegations of employee non-compliance with other CP COVID policies in accordance with Article 15 of the Collective Agreement providing:

15.1 No employee shall be disciplined or discharged until a fair and impartial investigation has been conducted and responsibility established.

54. It says CP failed to conduct required investigations and ignored clear and specific language of the Vaccine Mandate Policy by allowing unvaccinated employees to continue working who had not requested exemptions in spite of the provision providing:

6.2. Union Employees

A union employee who does not provide an attestation that the employee is fully or partially vaccinated or has an approved exemption by November 15, 2021, may be subject to sanctions including unpaid administrative leave, discipline, or termination of employment.

55. The Union argued that the right to an investigation for an alleged Policy violations before any sanctions or discipline are imposed should not be in dispute. It submits that alleged violations

of other CP COVID policies, procedures and practices were investigated before discipline was imposed and the CP Vaccine Mandate Policy should be no different. It says that the Company's operations are subject to many orders, laws and regulations which result in Company policies. An employee who violates the any associated rules may be considered as at least potentially culpable and, as a result, will be investigated pursuant to the collective agreement. CP is similarly regulated by Transport Canada, the Human Rights Commission and implements policies accordingly such as an Alcohol and Drugs Policy, Discrimination and Harassment Policy. The Union submits that in all such applications the Company investigates before any action is taken.

56. The Union says the Ministerial Order did not provide that Employee rights under the Collective Agreement could be ignored. Contrary to CP's stated position regarding violations of other government ordered rules or regulations, the Union submits they do not override the collective agreement investigative process. In this case no investigative contact was made with the Grievor prior to the denial of his request, his failure to be vaccinated or placement on unpaid leave. The Union says it was never advised of other employees who were unvaccinated and allowed to continue working while the Grievor was not.

57. The Union submits that Employees are entitled and subject to investigations for alleged violations of those policies. Article 15 of the Collective Agreement provides for formal investigations. It says, that no formal investigations or informal contact was made with employees who had made religious exemption requests before they were refused exemption or place on unpaid leave.

58. Article 15 of the Collective Agreement recognizes the right to an investigation and that may have an initial contact component providing:

**SECTION 15
INVESTIGATIONS, GRIEVANCES AND FINAL DISPUTE RESOLUTION**

Note 1: See Appendix A-10 Informal handling, Admission of Responsibility and Deferred Discipline

Note 2: See Section 17 for Human Rights Formal Investigations

15.1 No employee shall be disciplined or discharged until a fair and impartial investigation has been conducted and responsibility established.

The Company agrees that initial investigations (phone calls without Union representation) will be memorialized in a memorandum and entered as evidence in the investigation. The Company further agrees that in the event that an initial investigation (phone call without Union representation) is not memorialized in a memorandum, the contents of the initial investigation shall not be used or relied upon as evidence in any disciplinary investigation, during the grievance procedure or at arbitration.

59. I find, as previous railway arbitration awards have noted, disciplinary investigations under the terms of a collective agreement containing provisions such as those appearing in Article 15 are not intended to elevate the investigation process to the formality of an arbitration. What is contemplated is an informal and expeditious process by which an opportunity is afforded to the employees to know the accusations against them, the identity of their accusers, as well as the content of their evidence or statements, and to be given a fair opportunity to provide rebuttal evidence in their own defense prior to the imposition of discipline.

60. In the instant case, the Union argues the Company acted purely in its own interests, ignored the collective agreement and critical aspects of the Ministerial Order, and as a result the Grievor was treated differently from other workers. Since the Company has never provided any legitimate justification, operational or otherwise, for why this should have been the case, the Union submits that the Company's actions can only be viewed as arbitrary, discriminatory and an improper application of the CP Vaccine Mandate Policy.

61. I have difficulty with the Company's response that it had no choice but to reject the Grievor's exemption request. CP allowed other unvaccinated employees who had not made exemption requests to continue working. There is no evidence that CP offered that opportunity to employees making religious exemption requests. The Ministerial order required that all employees be vaccinated with the only exceptions being medical and religious as described in Section G. The order also provided for accommodation provision to be provided for medical and religious exemptions providing:

- require all employees to be fully vaccinated by no later than January 24, 2022, unless they fall within an exception as described in Section G;
- not provide for exception to the requirement that all employees be fully vaccinated in accordance with the vaccination policy other than exceptions described in Section G;
- a railway company must have in place any other accommodation measures as set out in local public health guidance for employees described under Sections G and C(2) that are not yet fully vaccinated.

62. While the Ministerial Order was specific in only permitting medical or religious exceptions CP repeatedly reported other exempted employees to Transport Canada without objections. In spite of the clear acceptance of CP's operation exemptions it did not allow a single religious exemption in spite of the Ministerial Order giving CP flexibility by stating:

Further Considerations – Religious Grounds:

Leaders and members of a number of religions (e.g., Islam, Roman Catholicism, Judaism, Greek Orthodox, Mennonites, Jehovah's Witnesses, Christian Science) have released public statements indicating their support for the COVID-19 vaccine specifically in the interest of public health.

Nevertheless, an individual may hold a strongly held religious belief that prevents full vaccination. Emphasis Added

63. The Company argued that it and other federally regulated employers in the transportation sector were given strict guidance on the requirements necessary in order to grant an exception. It says CP followed those requirements and the guidance documents provided by Transport Canada in assessing all requests for both medical and religious exception requests.

64. In my opinion the language of the order does not provide strict guidance, or requirements to the extent implemented by the Company in this case. I find the Ministerial order went on to give information on how the Government itself would be considering its requests from Federal Government employees including:

As an **additional reference**, the Government of Canada has provided guidance with respect to how it will evaluate requests for accommodation on the ground of religion

.....

Each request is to be evaluated on a **case-by-case basis**. Managers should consider the information provided by the employee to substantiate the request for accommodation based on religion.

65. The additional reference and consideration on case by case basis was not stated as a strict requirement as suggested by the Company. I agree with the Company that the Federal Government allowing over 600 religious exemptions does not necessarily indicate that the Grievor's request was improperly denied by CP. However, Arbitrators generally agree that context is extremely important when assessing the reasonableness of any workplace policy that may infringe upon employee's rights. In this case I find the Company's position regarding strict guidance and government requirements overstated at best. The Government provided guidance, considerations and information on how it would be evaluating religious exemption requests for its employees. I do find that only medical and religious exemptions were to be permitted by a strict provisions stating that:

A company-wide vaccination policy **must not provide** for exceptions to the requirement that all employees be vaccinated in accordance with the vaccination policy **other than exceptions described in Section G (Medical and Religious Exemptions)** of the Ministerial Order. **Emphasis Added**

66. The Company submits that it reported the exemptions it granted and no objections were expressed by Transport Canada. However, I find no evidence was provided to indicate the Company's reporting or interpretation of the Ministerial order was discussed or agreed to by the Government.

67. The Union argues that despite a proper request and the compelling letter of support, the Company denied the Grievor's request for a religious exemption. After January 18, 2022 he was forced onto unpaid leave. It says the Grievor never received an explanation from the Company about why his November 8, 2021 exemption request was denied. All he ever received was an email on November 9 that simply denied his request without providing any explanation why. While his request for religious exemption was under the CP Vaccination Mandate Policy, the unsigned Employee Relations email directed him to Transport Canada for question about the exemption criteria, providing:

From: [Employee Relations Canada](#)
To: [Joshua Bergen](#)
Subject: RE: Joshua Bergen Religious Exemption Response

Joshua,

CP has reviewed your application for exemption from the vaccination requirement under the Vaccination Mandate Policy on the basis of a religious belief preventing you from being vaccinated against COVID-19.

Your application does not meet Transport Canada's requirements for exemption from the vaccination requirement and is denied.

If you have concerns or questions about the Transport Canada criteria for exemption from the vaccination mandate, we recommend that you reach out to Transport Canada directly.

Transport Canada 330 Sparks St Ottawa ON K1A 0N5

Toll-free: 1-866-995-9737, **Phone:** 1-613-998-2985

TTY: 1-888-675-6863, **Facsimile:** 613-954-4731

Email: questions@tc.gc.ca **Website:** Transport Canada

The Vaccination Mandate Policy, including the deadlines for vaccination and attestation and, if applicable, the testing requirements for employees who are not fully vaccinated apply to you.

Regards,

Employee Relations

68. The Union argues that the Company responded to the Grievors request by saying his application does not meet Transport Canada's requirements for exemption from being vaccinated is not an explanation rather than the CP Policy. The email from CP Employee Relations instructed the Grievor to contact Transport Canada regarding any questions, in spite of the fact that the CP Policy stated:

For interpretation or additional information on this policy and procedure, please contact Human Resources

69. Similarly, the Union submits that after the Grievor was forced onto unpaid leave in January 2022, the only communication he received was a letter. The letter was incorrectly dated January 21, 2021. Its correct date is January 21, 2022. Similarly, after he was forced onto unpaid leave in January 2022, the only communication he received was a letter that did not mention his request for an exemption or that it was a CP Policy. It referred to the Ministerial Order stating:

January 21, 2021

Joshua Bergen Employee# 1014831 Private & Confidential

RE: Notice of Non-compliance - Transport Canada Ministerial Order

As you are aware, safety is fundamental to how we operate our railway at Canadian Pacific.

As of today's date and pursuant to Transport Canada's Ministerial Order dated October 29, 2021 and amended November 29, 2021, all employees of Canadian Pacific Railway Company and Central Maine & Quebec Railway Canada are required to:

1. Have received at least one dose of a COVID-19 vaccine approved by Transport Canada. Unless an employee has received an approved exemption in accordance with Transport Canada's Ministerial Order; and
2. Provide an attestation regarding their COVID-19 vaccination status. The Company's records indicate that you have not yet complied with these requirements as of today's date. As a result, you are being placed on an unpaid administrative leave effective immediately. During this leave, you will not be permitted on company property and all relevant accesses will be suspended.

Effective January 25, 2022 the Ministerial Order requires that employees be fully vaccinated (meaning that 14 days has elapsed since receiving one dose of the Janssen/Johnson & Johnson vaccine or a second dose of another approved vaccine) by no later than January 24, 2022. If you are not fully vaccinated as of January 25, 2022, you will be non-compliant with the Order

and will remain on unpaid administrative leave until you become fully vaccinated and have provided CP with an attestation to that effect.

Furthermore, your entitlement to Weekly Indemnity Benefits and access to extended health, life and dental benefits coverage will be suspended effective January 25, 2022. You will not be eligible to accrue pensionable service while on unpaid administrative leave.

There will be no provision to substitution vacation time or any other banked time in exchange for any portion of the unpaid leave of absence, nor will you be eligible to accumulate service for vacation during this timeframe.

Sincerely,

Charles Girard

Director Track & Structures Revelstoke

70. The Union argues that it was up to CP, not Transport Canada to consider the exemption request under the CP Policy and come to a reasoned decision about it. However, it argues that no such consideration occurred in this case. The Company simply dismissed the request the day after it was made. It failed in its duty to inquire, and thereby violated the duty to accommodate. I find that the Company correspondence directing the Grievor to contact Transport Canada if he had any questions or concerns in direct conflict with the CP Policy which directs employees to contact CP Human Resources. The conflicting instructions detract from the recognized requirement for a policy to be clear unequivocal and brought to the attention of the employees.

71. The Company relies on *Pelletier v. 1226309 Alberta Ltd.* - Community Natural Foods, 2021 AHRC 192 52 and *The Worker v. The District Managers*, 2021 BCHRT 41, in that each case must be assessed on a case-by-case basis, however it is clear from the case law that a complainant must do more than merely identify a particular belief, claim that it is sincerely held and that it is religious in nature. Instead, a complainant must provide a sufficient objective basis to establish that the belief is a tenet of a religious faith (whether or not it is widely adopted by others of the faith), and that it is a fundamental or important part of expressing that faith. Simply pointing to religious texts and extrapolating an interpretation precluding vaccination from those texts is insufficient.

72. I find that the CP cases relied are not on point with these facts and are of little value. They are Human Rights Tribunal decisions regarding mandatory face masks policies with no exemptions. This is a case of a unionized employee who was refused an exception to a vaccine mandate provided for in the Company Policy. He faced sanctions, was treated differently from other employees and placed on unpaid leave.

73. Every case, must be considered on its own facts and circumstances. In this case the Grievor made a request for an exemption allowed under the Company Policy. The Policy was implemented without consultation with the Union. The Grievor's request was denied by the Company, not under a provision of the Company Policy but rather the Ministerial Order. The Company denied the request stating:

Your application does not meet Transport Canada's requirements for exemption from the vaccination requirement and is denied.

74. The Grievor was advised that:

If you have concerns or questions about the Transport Canada criteria for

exemption from the vaccination mandate, we recommend that you reach out to Transport Canada directly.

75. Again at the final step of the grievance process the Company restated its reasons for refusing the exemption request as mandated by Transport Canada as requirements superseding collective agreements stating:

The vaccine policy and subsequent attestation and vaccination requirements form part of a ministerial order mandated by Transport Canada, not the Company. The Union acknowledges that the Company is complying with Transport Canada's Ministerial Order. Moreover, the Union is well aware that any Federal statutory requirements, regulations, or ministerial orders supersede articles within collective bargaining agreements.

The Federal Ministerial Order pursuant to Section 32.01 of the Railway Safety Act item 3(f) states, a Company-wide vaccination policy must include leave without pay for employees who are not fully vaccinated or do not fall within an exception as described in Section G as of January 24, 2022. The Ministerial Order makes clear that employees who are not compliant are subject to leave without pay. As such, provisions within the collective dealing with discipline and or leave become irrelevant with respect to being put on leave without pay when as required by the Ministerial Order.

The Company encourages all unionized employees to raise concerns related to the vaccination order directly with Transport Canada as the company is obligated to abide by the language contained in the Transport Canada order. Emphasis Added.

76. It was not until submissions at arbitration that the Company raised issues stated in the Grievors letter of support from his church. The issues were not specified by the Company as part of its position in the Joint Statement of Issue. The Company argued that the Grievor's Religious Exemption Grievances should be dismissed on the basis that Section G (4) requires the employee to explain his or her sincerely held religious belief. It says the Grievor has failed to do so, instead relying on the Letter of Support authored by his church. The Company says that a plain reading of the Letter of Support does not establish that the Grievor has a sincerely held religious belief prohibiting the receipt of a COVID-19 vaccine. It is nothing more than an expression of support by the Grievor's church stating in part: Cross Roads Pentecostal Assembly fully supports Joshua Bergen's religious belief that receiving a vaccine that uses fetal cell lines in the development or testing of that vaccine violates his sincerely held religious beliefs concerning the sanctity and protection of pre-born children.

77. CP argues that at no time has the Grievor himself authenticated that he has a sincerely held religious belief against receipt of COVID-19 vaccinations. Cross Roads Pentecostal Assembly can certainly support a decision made by the Grievor but that does not, on its own, establish the Grievor's sincerely held religious belief.

78. CP argues that the Letter of Support of the Grievor's request for exemption from Cross Roads Pentecostal Assembly indicated it does not prohibit the receipt of most vaccines. The Company submits that the Grievor's Religious Exemption Grievance should be dismissed on the basis that Section G (4) requires the employee to explain his or her sincerely held religious belief.

It says the Grievor has failed to do so, instead relying on the Letter of Support authored by his church. The Company says that a plain reading of the Letter of Support does not establish that the Grievor has a sincerely held religious belief prohibiting the receipt of a COVID-19 vaccine. CP says it is nothing more than an expression of support by the Grievor's church.

79. CP argues that the Letter of Support states:

Cross Roads Pentecostal Assembly fully supports Joshua Bergen's religious belief that receiving a vaccine that uses fetal cell lines in the development or testing of that vaccine violates his sincerely held religious beliefs concerning the sanctity and protection of pre-born children.

80. CP argues that at no time has the Grievor himself authenticated that he has a sincerely held religious belief against receipt of COVID-19 vaccinations. Cross Roads Pentecostal Assembly can certainly support a decision made by the Grievor but that does not, on its own, establish the Grievor's sincerely held religious belief. CP argues that the Letter of Support clearly states that Cross Roads Pentecostal Assembly does not prohibit the receipt of most vaccines.

81. I find however that the Company's denial letters provided to the Grievor and to the Union in the Grievance process did not include the reasoning of his church's supporting letter as a factor in the denial. There is no evidence that this was a consideration in an evaluation of the Grievor's request when it was submitted. The evidence is absent of the reasoning at any time in documents provided to the Grievor or the Union. CP argues that the Grievor has failed to comply with section G (4) because he did not provide an attestation of a sincerely held religious belief. Rather, the Grievor simply referred to an enclosed letter from the Pastor of Cross Roads Pentecostal Assembly. CP says that on this basis alone the Religious Exemption Grievance should be dismissed. Section G (4) requires the employee to explain his or her sincerely held religious belief. CP says the Grievor has failed to do so, instead relying on the Letter of Support authored by a third party. A plain reading of the Letter of Support does not establish that the Grievor has a sincerely held religious belief prohibiting the receipt of a COVID-19 vaccine. CP says it is nothing more than an expression of support by the Grievor's Church stating:

Cross Roads Pentecostal Assembly fully supports Joshua Bergen's religious belief that receiving a vaccine that uses fetal cell lines in the development or testing of that vaccine violates his sincerely held religious beliefs concerning the sanctity and protection of pre-born children.

82. I find no evidence that the issue of the vaccine use of fetal cell lines in the development or testing was ever raised by the Company prior to arbitration. It is not relied on in the Joint Statement of Issue by the Company. No reasoning for the decision was expressed by the Company in responses directly to the Grievor. CP repeatedly referred the Grievor to Transport Canada regarding questions or concerns.

83. Evidence established that at the time of the Grievor's exemption request he had held various positions as welder, snow removal and crew bus driver in the bargaining unit. He has worked discipline free for CP around Revelstoke and Kamloops, British Columbia since early 2020. On November 8, 2021 he submitted a request to the Company on the form provided with the Policy that he be exempt from the requirement to be vaccinated against Covid-19 based upon his religious convictions and sworn before a Commissioner of Oaths.

84. The Grievor is 34 years old, has been married 12 years and has two children. The Grievor,

gave testimony that consenting to receipt of the Coronavirus vaccine and enter his body would violate his lifelong commitment to good health and his fundamental freedom of conscience and religion. The Grievor gave detailed evidence of being a deeply committed Christ follower in his faith, a worship leader, a committed Church member and active as a Church Board member.

85. The Church's letter of support for his exemption confirmed the Grievor's testimony of being an elected Board Member and entrusted by the congregation to make scripturally based decisions. He gave evidence and supporting video of himself as a person who serves the Church faithfully on an ongoing basis. To be vaccinated is deeply disturbing to him even though his Church does not encourage members to reject COVID vaccination.

86. I found the Grievor's testimony was compelling. He presented in an honest, genuine and forthright manner. His testimony was consistent with the Church's letter. The Grievor submitted a religious exception sworn, and completed on the required form confirmed by a Commissioner for taking oaths in the Province of British Columbia. I find the Grievor was not using the exemption request as a means of promotion for his religion. I cannot find his exemption request to be an infringement or burden shifting to other employees. I find no evidence indicating that CP met an objective of better safety by allowing some to work without an exemption while refusing the Grievor's religious exemptions

87. The Company has repeatedly stated that any statutory requirements, regulations, or ministerial orders supersede articles within collective bargaining agreements. I am not persuaded by this argument. In this case the Ministerial Order provided for the implementation of a Company Policy. It was implemented to respond to the COVID pandemic and a resulting potential safety issue. At the time it was implemented CP was also facing staffing shortages and supply chain issues created by the floods on the Fraser River.

88. I find the Company did not comply with the Ministerial Order or its own Policy regarding limiting exemptions solely to religious and medical reason. It unilaterally exempted employees it chose and refused all religious exemption request including the Grievor's.

89. The Union does not claim that this is a case about the merits of being vaccinated or the effectiveness of COVID-19 vaccines. The Union claims that the Company's application of its Vaccine Mandate Policy was improperly applied in an inconsistent manner that discriminated against the Grievor. The Union claims that it was not consulted regarding implementation of the CP Policy or the Exemptions granted while declining this religious exemption.

90. I find that CP had the authority and obligation to properly evaluate with the Grievor's exemption request notwithstanding its claims of strict guidelines and requirements preventing it from granting requests set down by Transport Canada. I find the Company clearly had broader powers to make decisions over religious exemption than it stated. I find the Ministerial guidance and additional reference material regarding how the Government would review applications from Federal Government employees was not stated as binding to the Company. I find it was clear in allowing flexibility on a case by case basis.

91. I recognize that at the time of implementation the Company was dealing with the COVID pandemic, staff shortages, supply chain issues and the emergency situation of inoperable mainline track along the Fraser Valley caused by the flood. I find no evidence that the Company intended to discriminate between workers in the response to the emergency and those seeking religious exemptions to the Vaccine Mandate Policy. However, discrimination may occur, as in this case

even though management may have had no intention to discriminate.

92. I find CP exercised its jurisdiction in granting exemptions for reasons of staff shortages which were not found in the Ministerial Order. CP justified the granting of exemptions to unvaccinated employees who had not requested exemptions on the basis that it reported those exemptions to Transport Canada without receiving any objection. However, I find it made no such attempt to grant and report any religious exemptions. There is no evidence showing that there were different safety implications, burden or additional hardship for the Company in granting the religious exemption requested by the Grievor in contrast to those who were granted exemptions without requesting an exemption. Clearly those who simply refused to be vaccinated may have been placed in an advantageous position to those who chose to request a religious exemption.

93. The CP communications with the Grievor denying his exemption request and responses by the Company in the grievance process clearly show that the argument against statements in his church's supporting letter were not stated at any time prior to the Company's submissions at arbitration. The Union submits that the decision-makers considering the Grievor's request point to the rejection of all the requests without conducting an individualized assessment of the bona fides of the professed religious beliefs. Employees were subject to investigations for violations of other COVID policies but not CP's Vaccine Mandate Policy. Those employees were given the opportunity presented in investigations to be fully informed of the reasons for alleged violations and respond with Union representation.

94. As I also stated above, based on all of the facts and circumstances of this case that the Company was faced with unquestionable staffing, operational and safety issues at the time. Some resulting from COVID and the BC floods. The Union alleged that the Company did not consult with it regarding the implementation of the CP Vaccine Mandate Policy or the review process for exemptions of any kind for its members. While not relied on by the Union or considered by me in reaching this decision, it is noteworthy in obiter the apparent spirit and intent of the parties regarding safety issues and meaningful consultation found in Section 16 of the collective agreement. The provisions may have been productively utilized in addressing their common interests of this case relating to safety where in it provides:

HEALTH AND SAFETY

Company Duties

16.1 The Company shall institute and maintain all precautions to guarantee every employee a safe and healthy workplace and to protect the environment. The Company shall comply with the Canada Labour Code, Part II, its regulations, codes of practice, and guidelines and all relevant environmental laws, regulations, code of practice and guidelines. All standards established under these laws shall constitute minimum acceptable practice to be improved upon by agreement of the ES Health & Safety Policy Committee.

ES Health & Safety Policy Committee

16.2 The Company and the Union agree to maintain the established ES Health & Safety Policy Committee in accordance with the Canada Labour Code Part II, its regulations, codes of practice and guidelines and environmental laws, regulations, codes of practice, and guidelines. This

committee will serve as the policy committee under the applicable section of the Canadian Labour Code.

95. In view of all of the foregoing, I find that the Company has applied the CP Vaccine Mandate Policy inconsistently and improperly in these facts and circumstances submitted to me. The Policy was improperly applied to the Grievor when he was placed on unpaid leave at the same time other unvaccinated employees who did not make any request were allowed to continue working. The grievances are allowed and the Grievor shall be compensated for all loss wages and benefits with mitigation.

96. I will retain jurisdiction in the event there are any difficulties in the interpretation, application or implementation of this award.

Dated this 18th, day of October, 2022.

A handwritten signature in black ink, appearing to read "Tom Hodges", is enclosed in a thin black rectangular border.

Tom Hodges

Arbitrator