

SUPERIOR COURT
(Civil Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-17-127307-232

DATE: February 23, 2026

BY THE HONOURABLE JEFFREY EDWARDS, J.S.C.

CANADIAN PACIFIC KANSAS CITY RAILWAY
Plaintiff

v.

**JAMES CAMERON, ARBITRATOR FOR THE RAILWAY OFFICE OF
ARBRITRATION**

Defendant

and

TEAMSTERS CANADA RAIL CONFERENCE
Impleaded Party

JUDGEMENT (Judicial Review)

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1- Overview

[1] Canadian Pacific Kansas City Railway (**CPKC** or **Company**)¹ is a railway company operating in Canada, the United States of America and Mexico.

[2] On April 5, 2021, CPKC hired Michael Ferrada as a railway conductor.

[3] Mr. Ferrada was hired in the middle of the Covid-19 Pandemic which started in March 2020. Mr. Ferrada's place of work was the CPKC terminal in Revelstoke, British Columbia, Canada.

[4] In October 2021, the Canadian federal government acquired vaccines for immunization of the population against the Covid-19 virus. The vaccines were then distributed to the provincial health authorities which made them available to the public. On October 29, 2021, the federal Minister of Transport required employees of federally regulated railway companies to be vaccinated against the Covid-19 virus (**Minister's Order**²). The Minister's Order provided for exemptions based on medical and religious grounds³. The Minister's Order created certain accommodations for a person who received such an exemption. Notably, an employee who received an exemption was required to be tested for the Covid-19 virus every 72 hours in order to continue to be allowed to be present on the employer's premises. The approved testing included screening by a diagnostic test commonly known as a PCR (polymerase chain reaction) test or swab test⁴.

[5] On November 5, 2021, Mr. Ferrada requested an exemption for the vaccination based on religious grounds, namely that of his faith as an observant of the Seventh-Day Adventist Church⁵. At the same time, Mr. Ferrada refused to be tested. He stated that his refusal to submit to testing was also based on religious grounds.

[6] On November 11, 2021, CPKC refused Mr. Ferrada's application for a religious exemption⁶. On November 12, 2021, Mr. Ferrada submitted to his employer a vaccine status attestation indicating that he was not vaccinated. As a result, Mr. Ferrada understood that he was not permitted to be present on CPKC's premises. For this reason, Mr. Ferrada did not present himself for work. Mr. Ferrada's supervisor indicated to him that as a result of his non-vaccinated status, he was unable to work. The supervisor placed Mr. Ferrada on an off (sick) status but Mr. Ferrada never accepted

¹ On April 14, 2023, therefore after most of the facts in the present dispute had taken place, Canadian Pacific Railway Ltd. merged with Kansas City Southern Railway Company to create the Canadian Pacific Kansas City Railway or CPKC. However, the Court will use the abbreviation CPKC throughout the present judgement.

² Exhibit P-5 (B), Tab 2. See also Exhibit P-3, Tab 1.

³ Exhibit P-3, Tab 1, Section G.

⁴ Exhibit P-3, Tab 1, Section H.

⁵ Exhibits P-5 (B), Tabs 4 and 5.

⁶ Exhibit 5.5, Tab 5. See also Tab 13 of Exhibits attached to Exhibit P-3 (Letter of January 9, 2022).

that designation. Mr. Ferrada stated that he was available to work, if allowed to do so.

[7] On December 16, 2021, a superintendent of CPKC sent Mr. Ferrada a notice requesting him to attend an investigation hearing that was scheduled for December 22, 2021, on the basis of his alleged excessive “absenteeism”. The venue for the hearing was the administrative building located on CPKC’s property in Revelstoke, British Columbia.

[8] Mr. Ferrada advised CPKC by email that he could not attend the hearing. He feared disciplinary sanctions being imposed upon him for being illegally present on the Company’s property, since he was neither vaccinated nor tested as required by the Minister’s Order and CPKC policy. CPKC sent Mr. Ferrada two other notices to be present at investigation hearings (January 5, 2022 and January 8, 2022) to be held at the same location. Mr. Ferrada again emailed CPKC that he was unable to attend the hearings since he was neither vaccinated nor tested.

[9] On January 9, 2022, CPKC terminated Mr. Ferrada’s employment. According to the termination letter, CPKC concluded that Mr. Ferrada was no longer interested in maintaining his employment⁷. On January 26, 2022, CPKC confirmed by a second letter to Mr. Ferrada that he had been terminated on the ground that he was no longer interested in maintaining his employment⁸.

[10] On February 15, 2022, the Impleaded Party, Teamsters Canada Rail Conference (**Union**) filed a grievance under its collective agreement with CPKC (**Collective Agreement**)⁹ regarding Mr. Ferrada’s termination. The Union requested Mr. Ferrada’s reinstatement as well as payment of lost wages.

[11] Approximately 7 months after Mr. Ferrada’s dismissal, on September 19, 2022 and on September 29, 2022, CPKC offered Mr. Ferrada reinstatement, under certain conditions. The parties were not able to agree on the terms of a possible reinstatement and as such, Mr. Ferrada was not reinstated.

[12] On August 8, 2023, the arbitration hearing of the Union’s grievance took place before defendant James Cameron, arbitrator (**Arbitrator**). On September 18, 2023, the Arbitrator rendered his decision, granting in part the grievance (**Decision**)¹⁰.

[13] First, the Arbitrator decided that CPKC, in light of its knowledge of the reasons given by Mr. Ferrada for not being able to be physically present on site on CPKC property, failed to hold a fair and impartial investigation hearing. The Arbitrator was of the view that CPKC should have proposed to Mr. Ferrada an alternative to being physically present on CPKC’s property for the hearing, including the possible use of

⁷ Exhibit P-3, Tab 13.

⁸ Exhibit P-5 (B), Tab 16. Also P-3, Tab 16.

⁹ Exhibit P-2.

¹⁰ Exhibit P-1.

video-conferencing technology, such as *Zoom* in order to allow him to participate remotely.

[14] Second, the Arbitrator decided that, even if a fair and impartial hearing had been conducted, there was no just cause in the circumstances to terminate Mr. Ferrada's employment. CPKC's reasons for termination were absenteeism and failure to attend the investigation hearings, leading CPKC to conclude that Mr. Ferrada was no longer interested in maintaining his employment. According to the Arbitrator, CPKC was aware, and Mr. Ferrada had informed CPKC of the reason for his absence and had confirmed that he wanted to maintain his employment. The Arbitrator also noted that prior to the sending of the notices for the investigation hearings and the termination, the Minister's Order and CPKC policy had been modified under a new policy, effective December 10, 2021. Under that revised order and policy, the recommended minimum disciplinary sanction for an unvaccinated employee without an approved exemption, was unpaid administrative leave.

[15] Third, in light of the Arbitrator's two previous conclusions, the Arbitrator, ordered Mr. Ferrada's reinstatement. Regarding the damages claimed, the Arbitrator remitted the issue to the parties for determination. In the event that the parties were unable to agree on damages, the Arbitrator retained jurisdiction to make a determination in that regard.

[16] On October 18, 2023, CPKC filed an Application for Judicial Review (**Application**) of the Decision before the Superior Court of Quebec.

[17] After reviewing the evidence and the arguments submitted by CPKC and the Union, the Court is of the opinion that in light of the legal and factual constraints that bear on the Decision, it should not be disturbed. CPKC's Application is dismissed, with legal costs.

2- Questions in Issue

- 1) Did the Arbitrator render an unreasonable decision in concluding that Mr. Ferrada did not receive a fair and impartial investigation?
- 2) Did the Arbitrator render an unreasonable decision in concluding that CPKC did not have just cause to terminate Mr. Ferrada's employment on the stated grounds of dismissal?

3- Context

3.1. General Legal Principles and Standard of Review

[18] The parties agree that the applicable standard of review for the Decision is that of reasonableness. In *Canada (Minister of Citizenship and Immigration) v. Vavilov*¹¹, regarding the standard of reasonableness for an application for judicial review, the Supreme Court stated:

“[82] Reasonableness review aims to give effect to the legislature’s intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law.

[83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker’s reasoning process and the outcome. **The role of courts in these circumstances is to review, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the “range” of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the “correct” solution to the problem.** The Federal Court of Appeal noted in *Delios v. Canada (Attorney General)*, 2015 FCA 117, 472 N.R. 171, that, “as reviewing judges, we do not make our own yardstick and then use that yardstick to measure what the administrator did”: para. 28; see also *Ryan*, at paras. 50-51. Instead, the reviewing court must consider only whether the decision made by the administrative decision maker — including both the rationale for the decision and the outcome to which it led — was unreasonable.

[93] **An administrative decision maker may demonstrate through its reasons that a given decision was made by bringing that institutional expertise and experience to bear:** see *Dunsmuir*, at para. 49. In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons.

Respectful attention to a decision maker’s demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.

[94] The reviewing court must also read the decision maker’s reasons in light of the history and context of the proceedings in which they were rendered. For example, the reviewing court might consider the evidence before the decision maker, the submissions of the parties, publicly available policies or guidelines that informed the decision maker’s work, and past decisions of the relevant administrative body.”

[Emphasis added.]

[19] In *Vavilov*, the Supreme Court specified that the burden to show unreasonableness is on the party challenging the decision. In the present matter, that is CPKC. Accordingly, CPKC must demonstrate that the Decision contains a major and

¹¹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

central flaw which requires the intervention of the Court. A minor flaw or misstep is insufficient to justify disturbing the Decision:

“[100] The burden is on the party challenging the decision to show that it is unreasonable. Before a decision can be set aside on this basis, the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. **Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable.**”

[Emphasis added.]

[20] The Supreme Court also emphasized that the reviewing court should, barring exceptional circumstances, respect and not disturb the findings of facts of the decision:

[125] **It is trite law that the decision maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings.** The reviewing court must refrain from “reweighing and reassessing the evidence considered by the decision maker”: *CHRC*, at para. 55; see also *Khosa*, at para. 64; *Dr. Q*, at paras. 41-42. Indeed, many of the same reasons that support an appellate court’s deferring to a lower court’s factual findings, including the need for judicial efficiency, the importance of preserving certainty and public confidence, and the relatively advantageous position of the first instance decision-maker, apply equally in the context of judicial review: see *Housen*, at paras. 15-18; *Dr. Q*, at para. 38; *Dunsmuir*, at para. 53.

[Emphasis added.]

3.2 Institutional Context of Arbitration and Joint Statement of Issue

[21] The attorneys of the parties emphasized to the Court that the Decision was rendered by an arbitrator within and pursuant to the framework of the *Canadian Railway Office of Arbitration and Dispute Resolution (CROA & DR)*. This center of arbitration was created in 1965. The CROA & DR specializes in adjudicating arbitration disputes of railway companies operating in Canada. Arbitrators of the CROA & DR are governed by rules set out in a memorandum of agreement entered into between Canadian railway companies and the unions representing employees of those companies (**Memorandum of Agreement**)¹². Pursuant to the procedure set out in the Memorandum of Agreement, the parties must first submit to the arbitrator a *Joint Statement of Issue* stating the facts of the dispute and the parties’ respective positions¹³. Four days prior to the scheduled arbitration hearing, each party is required to submit a written statement, along with its

¹² Exhibit P-6 (November 1, 2023 Edition).

¹³ Exhibit P-6, paragraph 10. See Exhibit P-5.1.

evidence and argument¹⁴. Two days before the scheduled hearing, each party may also submit rebuttal submissions¹⁵.

[22] The parties' attorneys stated to the Court that the governing law of the dispute is the Canadian Common Law of labour, as applicable in all areas federal jurisdiction governed by the *Canada Labour Code*¹⁶. As such, provincial laws, including the *Civil Code of Quebec* do not apply. The parties' attorneys explained that in this type of arbitration, the hearing proceeds on the basis of the documents filed and no witnesses are heard. The duration of the arbitration hearing in the present matter was approximately one and a half (1.5) hours.

[23] The *Joint Statement of Issue* submitted by the parties reads as follows¹⁷.

JOINT STATEMENT OF ISSUE:

DISPUTE:

Appeal of the employment file closure of Conductor Michael Ferrada of Revelstoke, BC.

JOINT STATEMENT OF ISSUE:

Under Transport Canada's Ministerial Order dated October 29, 2021, all employees of Canadian Pacific Railway Company were required to have received at least one dose of an approved COVID-19 vaccine, unless they had received an approved exemption, and to have provided an attestation regarding their vaccination status by no later than November 15, 2021 (Tab 1).

On November 5, 2022, Mr. Ferrada filed a request for a religious exemption. This request was denied on November 8, 2022. (Tab 2) On November 12, 2021, Mr. Ferrada attested as being unvaccinated (Tab 3).

On November 16, 2021, a Notice of Non-compliance was issued requiring compliance by November 23, 2021 (Tab 4). System Bulletins, Vaccination Mandate Policy and FAQs issued to employees in the fall of 2021 are available at Tab 5.

On November 18, 2021, Mr. Ferrada was called for work, and after a discussion with the Crew Dispatcher, the Crew Dispatcher placed him in an off (Sick) status. (Tab 6)

Mr. Ferrada was issued a Notice of Investigation for December 22, 2021 in connection with "Your alleged excessive absenteeism; extending from November 18th to present." (Tab 8) Mr. Ferrada responded, explaining that he would not be able to attend the investigation, and provided reasons for his inability to attend.

The Company sent Mr. Ferrada subsequent Notices of Investigation on December 31, 2021 for "Your failure to appear for a company-scheduled investigation at the Revelstoke

¹⁴ Exhibit P-6, paragraph 11. See Exhibit P-4A (Submissions of the Company); P-5A (Union's Submissions).

¹⁵ Exhibit P-6. Exhibit P-4(B)(C) (Company's Reply Submissions); P-5B (Union's Reply Submissions).

¹⁶ *Canada Labour Code* (R.S.C., 1985, c. L-2).

¹⁷ Exhibit P-5, Tab 1.

GYO on December 22nd, 2021 at 15:00.”, and “Your alleged absenteeism; extending from November 18th to present.” On January 6, 2022, further Notices of Investigation were sent to Mr. Ferrada for “Your failure to appear for two company-scheduled investigations at the Revelstoke GYO on December 22, 2021 at 15:00, and January 5th, 2022 at 11:00.”, and “Your alleged excessive absenteeism; extending from November 18th to present.” (Tabs 9-12) Mr. Ferrada again responded on January 7, 2022, explaining why he would not be able to attend.

Mr. Ferrada’s employment file was closed on January 9, 2022 (Tab 13). This matter was grieved by the Union (Tab 14).

On September 19, 2022, the Company offered to reinstate Mr. Ferrada under certain terms and conditions. This offer was declined the following day. (Tab 15) The Company advised Mr. Ferrada of its decision to unilaterally reinstate him into Company service. On September 29, 2022, Mr. Ferrada refused the Company’s unilateral reinstatement. The Union subsequently advised Mr. Ferrada was prepared to accept reinstatement; however, as he had moved, he required to book on in Kenora, ON. The Company did not agree to this request; however, maintained its intent to reinstate Mr. Ferrada into his employment at his Home Terminal of Revelstoke. Mr. Ferrada did not return. (Tab 16)

UNION POSITION

The Union contends that Mr. Ferrada was not afforded a fair and impartial investigation under the requirements of Article 39 of the Collective Agreement. For this reason, the Union contends that the dismissal/file closure is null and void and ought to be removed in its entirety and Mr. Ferrada be made whole. The Union argues the Company would have suffered no prejudice nor undue hardship had they rescheduled the investigation for a later date or utilized other means to conduct the formal investigation.

The Union contends the Company has failed to meet the burden of proof or establish culpability regarding the allegations outlined above. The Union further argues the facts do not translate into an indication that Mr. Ferrada was no longer interested in the employment relationship.

The Union contends the termination of Mr. Ferrada is discriminatory, arbitrary, and excessive in all of the circumstances.

The Union requests that the Company show Mr. Ferrada reinstated without loss of seniority and benefits, and that he be made whole for all lost wages with interest. In the alternative, the Union requests that the penalty be mitigated as the Arbitrator sees fit.

COMPANY POSITION

The Company has reviewed the grievance in its entirety and cannot agree with the Union’s contentions nor the requested resolution.

The Company maintains the grievor’s culpability as outlined in the discipline letter was established and based on all the facts on hand. Discipline was determined following a review of all pertinent factors, including those described by the Union.

The Company has carefully reviewed the objections raised as well as details of the Union’s allegations in its grievance. The Grievor chose on his own accord to not attend any statement and get his version of events on record. Therefore, the Company had no

choice than to make a decision based on the facts before them.

The Company maintains the discipline assessed was appropriate, warranted and just in all the circumstances. Accordingly, the Company cannot see a reason to disturb the discipline assessed and requests the Arbitrator be drawn to the same conclusion.

3.3. Arbitrator's Decision and CPKC's Application for Judicial Review

[24] In the Decision, the Arbitrator first summarized the submissions of each party¹⁸. He decided that there were three questions in dispute:

- 1) Did Mr. Ferrada receive a fair and impartial investigation hearing?
- 2) If so, did CPKC have just cause to terminate Mr. Ferrada's employment?
- 3) If the answer to either of the first two questions is no, is Mr. Ferrada entitled to reinstatement and damages?

[25] Neither party disputes that the Arbitrator correctly determined the controlling issues in dispute.

[26] Regarding the first question, the Arbitrator decided that Mr. Ferrada did not receive a fair and impartial hearing. That conclusion was sufficient to annul the result of the hearing, namely Mr. Ferrada's termination. Nonetheless, the Arbitrator examined and answered the second and third questions.

[27] Regarding the second question, the Arbitrator decided that CPKC did not, in any event, have just cause to terminate Mr. Ferrada.

[28] Regarding the third question, in light of the Arbitrator's conclusions with the respect to the two previous questions, the Arbitrator decided that Mr. Ferrada was entitled to reinstatement and damages. With respect to damages, the Arbitrator remitted the issue to the parties for determination and remained seized of the issue in the event that they were unable to agree.

[29] In the Application, CPKC submits that the Arbitrator's answer to each question in issue is unreasonable. CPKC initially sought to overturn each of these conclusions, quash and set aside the Decision and dismiss the Union's grievance¹⁹. In its factum in support of the Application, CPKC submits that the questions before the Court are²⁰:

- a) Did the Arbitrator render an unreasonable Decision in concluding

¹⁸ Exhibit P-1, paragraphs 3 and 4.

¹⁹ Application, Court Docket No. 1, conclusions, p.17.

²⁰ Paragraph 5, " Factum in support of Plaintiff's Demand for Judicial Review " dated 18 January 2024.

that the Grievor failed to receive a fair and impartial investigation?

- b) Did the Arbitrator render an unreasonable Decision in concluding that CPKC did not have a just and sufficient cause to terminate the Grievor's employment?
- c) If the answer to both questions above is "no", was the Arbitrator's Decision to reinstate the Grievor and award damages unreasonable given the Grievor's prior refusal to be reinstated as of September 29, 2022?

[30] At the Court hearing before the undersigned, CPKC maintained only its contestation of the first and second conclusions to these questions. With respect to the conclusion on the third question (Reinstatement and Damages), CPKC stated that it no longer had any representation to make to the Court.

4- Analysis and Decision

4.1. Did the Arbitrator render an unreasonable decision in concluding that Mr. Ferrada did not receive a fair and impartial investigation hearing ?

[30] Under the Collective Agreement, it is a codified requirement that no disciplinary sanction can be assessed against an employee until a fair and impartial investigation has taken place. Article 39.05 of the Collective Agreement reads in part as follows:

Employees will not be disciplined or dismissed until a fair and impartial investigation has been held and until the employee's responsibility is established by assessing the evidence produced.

[31] It is also settled law and not contested by either party that if an employee is not given a fair and impartial investigation hearing, any disciplinary sanction imposed as a result of that hearing is void *ab initio*²¹. CPKC organized the investigation hearings and summoned Mr. Ferrada to attend the hearings. CPKC held those hearings on CPKC's property, in particular at its General Yard Office (**GYO**)²². The GYO is CPKC's administrative office building located at its terminal in Revelstoke, British Columbia.

[32] Mr. Ferrada responded to the request to attend the hearings. He explained that he would not be able to attend and provided reasons. Mr. Ferrada wrote to CPKC that, according to his understanding of the law and CPKC policy, in light of his unvaccinated and untested status, he was not allowed to be on CPKC property²³.

²¹ CROA 3061, CROA 3221, CROA 4663.

²² In the letter summoning Mr. Ferrada to the hearing, the office is referred to as the "GYO".

²³ Exhibit P-4 (B), Tab 10 (Dec. 21, 2021), Exhibit 4.11 (Jan. 7, 2022).

[33] On January 6, 2022, CPKC sent Mr. Ferrada a notice by email regarding the holding of an investigation hearing to take place on January 8, 2022²⁴. On January 7, 2022, Mr. Ferrada responded²⁵:

According to the last bulletin I saw it stated that I had to be vaccinated or swabbed to be on CP property. **So unless the rules have changed and you are not enforcing those protocols I will not be stepping onto CP property. Like I stated before I never booked sick on the 18th of November, and I have been ready and willing to work on that day and every day since then. According to your rules, I have to swab or be vaccinated to be able to be on CP property or to work. Two things I refuse to do due to religious beliefs.**

[Emphasis added]

[34] Despite Mr. Ferrada stating that he was unable to attend in person and his inquiry as to whether the rules regarding the prohibition to the effect that an unvaccinated and untested person was not allowed to be present on CPKC property, CPKC did not respond. Furthermore, CPKC did not offer Mr. Ferrada an alternative to be physically present at the hearing, such as appearing via video-conference. CPKC did not offer Mr. Ferrada the possibility to hold the hearing at a location where Mr. Ferrada would be able to attend, without violating the Minister's Order and CPKC policy.

[35] After reviewing the evidence and representations of the parties, the Arbitrator decided:

13. The grievor was properly summoned on three occasions to attend an investigative hearing. He did not attend, for the reasons given in writing by the grievor to the Company.

14. Both the Company and the Union plead that the other could have sought a postponement of the hearing or requested an alternative mode of holding the meeting. **Given that the meeting is being held at the instigation of the Company, the importance of the meeting and the consequences to the grievor, and given at least a prima facie plausible explanation for the inability of the grievor to attend, I find that the Company should have explored alternatives to a face to face meeting.**

15. **Clearly, the meeting could have been held over Zoom, with written questions and answers, by telephone, or it could have been postponed until the grievor could attend.** The Company already had announced that non-vaccinated employees would be placed on Leave Without Pay and possibly other sanctions including termination. However, this change did not apply to those employees with an approved exemption (see Company Bulletin CPSB-106-21, Union Exhibits, Tab 9).

16. **The grievor was never given the opportunity to explain further his reasons for not taking the vaccination or participating in on-going swab testing. If he had, it is possible that his religious exemption could have been fleshed out and granted,**

²⁴ Exhibit P-3, Tab. 12. See also Exhibit P-3, Tab. 11. To a previous request to attend an investigation hearing, Mr. Ferrada had also responded that he was not able to physically attend since he was working elsewhere as a result of not receiving his salary from CPKC.

²⁵ Exhibit P-4 (B), Tab. 11.

thereby avoiding entirely the ensuing termination. The grievor was never given the opportunity to accept work without a vaccination, which apparently had occurred in the Revelstoke area.

17. For these reasons, I find that the grievor was not given a fair hearing. Based on the collective agreement and the CROA jurisprudence, I find his discipline void *ab initio*.

[Emphasis added.]

[36] CPKC argues that the Arbitrator's conclusion in this respect is unreasonable. CPKC submits that the relevant article of the Collective Agreement states that the investigation hearing is to be held at the employee's main home terminal and that this was the GYO at the Revelstoke terminal. CPKC argues that the requirement of finding an alternative to an in-person meeting constitutes an illegal addition to the Collective Agreement and the Arbitrator had no power to make such an addition.

[37] The relevant article of the Collective Agreement reads in part as follows: 39.0.1 (6):

Investigations should be conducted at the employee's main home terminal to the extent possible. However, **should a superintendent** whose office is at a distant terminal **find that it is necessary for an investigation to be conducted at their office, the employee would be advised** to appear at that point. When this is required, **the company will provide appropriate transportation** for the employee and their representative where necessary.

[Emphasis in bold and underlining is added.]

[38] The Union submits that the conclusion of the Arbitrator in this regard is reasonable.

[39] First, the first sentence of Article 39.0.1 (6) does not present a rigid or immutable rule. In fact, the text itself states that the suggested location of the "main home terminal" is only to be followed to the "extent possible" and that those explicit words grant flexibility to the Company to seek and require, where appropriate, suitable alternative arrangements for a hearing. Furthermore, the Union submits that CPKC's argument with respect to an alleged addition to the Collective Agreement is unfounded in that CPKC's own submissions to the Arbitrator state that it was within the purview of the investigation committee to adjust the type of hearing, such as conducting the hearing virtually by video-conferencing through the internet. However, CPKC argues that it was exclusively the responsibility of the employee or the Union to make such a proposal²⁶.

[40] In the Court's view, the Union is correct that the conclusion of the Arbitrator is

²⁶ Submissions to the Arbitrator : Exhibit P-4A, para 88, p. 573.

reasonable on this point. It is inconsistent on the part of CPKC to state that the relevant article of the Collective Agreement does not permit flexibility regarding the adjustment of the hearing type or location and at the same time to state that it does permit such flexibility. In fact, as the Decision mentions at paragraph 14, both parties submitted that alternative methods to holding the hearing could have and should have been taken but differ as to which party had the responsibility to initiate such a proposal.

[41] The Arbitrator concluded that, in the circumstances, it was the responsibility of the employer CPKC to explore alternatives to an in-person hearing. The Arbitrator ruled:

14. Given that the meeting is being held at the instigation of the Company, the importance of the meeting and the consequences to the grievor and given at least a prima facie plausible explanation for the inability of the Grievor to attend. I find that the Company should have explored alternatives to a face to face meeting.

15. Clearly the meeting could have been held over Zoom with written questions and answers, by telephone, or it could have been postponed until the grievor could attend.

[Emphasis added.]

[42] In the Court's view, for the following reasons, that conclusion is not unreasonable.

[43] The hearing was being held at the instigation of the Company. It was the Company that was organizing the hearing. The employee stated that he was unable to attend a hearing at the venue proposed by the Company. The employee inquired as to whether the law and company rules regarding the prohibition by a non-vaccinated and untested employee to be present on CPKC property did not apply. The Company did not respond. Furthermore, the drafting of Article 39.0.1 (6) of the Collective Agreement in its second sentence is consistent with the submission of the Union that it was the responsibility of the Company to seek alternatives to holding the investigation hearing at the Company's terminal.

[44] Mr. Ferrada was therefore not able to present his position on being admissible for exemptions to being vaccinated and untested, on the possibility of finding an alternative to allow him to continue to work at CPKC, as well as the possibility of being placed on unpaid administrative leave.

[45] The investigation hearing took place on January 9, 2022. That was 9 months after the beginning of the Covid-19 pandemic. At that time, video-conferencing, such as through *Zoom* technology, was widely known and used.

[46] The Court concludes that CPKC has not established that the Arbitrator's conclusion that CPKC failed in the circumstances to provide the employee with a reasonable opportunity to present his position at the investigation hearing is unreasonable.

[47] As a result, CPKC has failed to establish that the Arbitrator's conclusion that Mr. Ferrada was not given a fair hearing is unreasonable. That ground of CPKC is therefore dismissed.

4.2. Did the Arbitrator render an unreasonable decision in concluding that CPKC did not have just cause to terminate Mr. Ferrada's employment?

[48] The Court has confirmed the reasonableness in the circumstances of the Arbitrator's conclusion that Mr. Ferrada did not receive a fair and impartial hearing. Therefore, the disciplinary sanction imposed of dismissal is void *ab initio* and must be cancelled. It is therefore not necessary that the Court examine the next question in issue. However, since the parties also pleaded and presented that question, the Court will provide its answer.

[49] Further to the holding of the investigation hearing held on January 8, 2022, CPKC terminated Mr. Ferrada.

[50] Two termination letters were sent to him dated respectively January 9, 2022²⁷ and January 26, 2022²⁸.

[51] Both letters include the following text:

Therefore, the Company can only assume that you are no longer interested in maintaining your employment relationship with Canadian Pacific Railway. In this regard, your employment record is being closed, effective immediately.

[52] As appears from the above-mentioned text, CPKC concluded that the absences of Mr. Ferrada demonstrated his intention to abandon his employment and his lack of interest in maintaining his employment with the Company.

[53] However, that conclusion is entirely unsupported by the evidence and contradicts the facts, as presented in the joint record.

[54] Mr. Ferrada explained to CPKC his reasons for not attending the investigation hearings. Therefore, his absences were not unexplained. Mr. Ferrada informed CPKC that, according to his understanding, if he did attend the investigation hearing at the designated location, he would be in violation of the law and Company policy. CPKC neither disabused Mr. Ferrada of that belief nor told him that his understanding was incorrect.

[55] Furthermore, Mr. Ferrada's work absences were not unexplained. Mr. Ferrada had explained specifically to his employer the reasons for his absence. He stated that

²⁷ Exhibit P-3, Tab 13. Note that the letter is erroneously dated 2021 and not 2022.

²⁸ Exhibit P-3, Tab 16. Note that the letter is erroneously dated 2021 and not 2022.

he was unable to be vaccinated or to undergo vaccine testing for religious reasons, and that as a result of his unvaccinated status, he was told and his understanding was that, according to the law and to Company policy, he was not legally permitted to be present for work at CPKC.

[56] On December 21, 2021, Mr. Ferrada's replied to the request to attend the first investigation hearing. He wrote to the Company as follows²⁹:

Hello everyone,

Following up to this email as I will not able to make it for this investigation.

I never booked off sick on December 15th till present. I was ready and willing to work as per the parameters I agreed to when I was hired.

Due to Transport Canada enforcement and CP Rail acceptance of those Transport Canada parameters, a bulletin stating that if I wanted to continue working I had to disclose personal medical/health information to an non medical body. To do so I had to apply for a religious exemption from a forced injection/testing. Then attest about that injection by submitting that personal health information to CP Rail to be viewed by non medical personnel. Forced as in a choice that is not a choice but extortion. Take it or you lose your livelihood, apartment, way of life or take a injection **that is against your religious beliefs.**

I decided to disclose as per request and submitted per CP Rail specifications including a signed letter from my pastor on official letter head signed by a notary. I was denied for an unknown reason. No reason would be disclosed to me by the CP Rail. They said it was Transport Canada's guidelines but would not tell me what guidelines I didn't pass. That email has my statement of refusal of injection or testing. Once again neither enforcements were part of my agreement for employment. If both had been explained to me prior to accepting employment I would have never accepted employment. **My understanding with the "Welcome to working for CP Rail package" I received, that CP Rail supported and upheld personal religious beliefs as per the Canadian Constitution and the Charter of Human Rights. In fact, my religious denomination was listed as one that CP Rail supported. Human Rights/Religious Freedoms do not change due to circumstance no matter how severe.**

I have done my very best to be a good employee while employed with CP Rail. The last bulletin I saw was before Nov. 15th which stated I couldn't come to work on the 15th or post 15th if not vaccinated. I also couldn't come in if I didn't have a swab test. I had neither of those requirements so I knew I could not come in. I also received a email from Mr. Brad Templeton which outlined some things that I didn't quite understand. I verified it at work with a union rep and my understanding I was not allowed to come to work after the 15th. After the 15th I would be placed on unpaid leave and following Nov. 23rd I would be terminated for not complying. I checked my online employee standing after the 18th. No where did it say I was on sick leave. It showed me in a unknown Revelstoke BrakeMan Spare Pool which I could not find looking through the pool listings. The term BrakeMan is no longer used by CP Rail as it is outdated incorrect language and I figured I was in a unlisted unpaid leave pool, of which was in 18th position in that pool. I did not book off sick at any point after Nov 15th. I

²⁹ Exhibit P-4 (B), Tab 10.

was ready and willing to work.

I did my best to follow the rules and did not falsifying [sic] sick documents or lie to continue working. I have not claimed sick pay, used benefits while not working, or used my ID to get company discounts while not working after the 15th.

I lost my apartment and had to find other work to continue supporting myself. This is why I cannot make it tomorrow as I am working hard making a living. **I worked hard for CP and I will continue to have a good work ethic.** My morals/religious beliefs do not change due to hardship, extortion or coercion. God has taken care of me all my life and will continue to do so. I know that not following your mandates for injections will result in termination. I would prefer to be terminated in good standings, but I understand that termination usually is a black mark on an employment history. **I will not resign.** I enjoyed my employment with CP Rail while it lasted and the managers, trainers, and employees I worked with were all kind and helpful.

[Emphasis added.]

[57] According to the doctrine and case law, resignation from employment requires a clear intent on behalf of the employee to resign, as well as physical indicia to support that intention. In *Canadian Labour Arbitration*, D.J.M. Brown, D. M. Beatty and A.J. Beatty write:

It is one of the longest-standing rules of arbitration law that the right to resign or quit one's employment is uniquely the employee's. It is the means by which workers are able to terminate an employment relationship. **A person will be found to have quit his or her employment only when he or she does so voluntarily. In the absence of evidence manifesting a clear intent to resign, it is not open for an employer to deem an employee to have quit over his or her objection.**

[Emphasis added.]

[58] The Arbitrator concluded that Mr. Ferrada was not terminated for just cause since, according to the preponderance of the evidence, he never expressed his intention to abandon his employment position but rather expressed the opposite intention. He stated that he would not resign. The Arbitrator stated:

21. The discipline was based on the absenteeism from work of the grievor from November 18, 2021, until the date of termination, together with his failure to appear for three properly scheduled investigation dates. **The Company concluded that in light of the on-going absence of the grievor, that it was entitled to "assume" that he had abandoned his position.**

22. This flies in the face of the facts, known to the Company:

- 1) It knew the reasons for the failure of the grievor to respond to a call to work on November 18, 2021;
- 2) It knew the reasons for the failure of the grievor to attend any of the three scheduled investigation hearings;

- 3) The grievor had not simply left town and failed to communicate with the Company. The grievor did respond twice in lengthy emails to explain his absences;
- 4) **The grievor, in the view of the Company, could be wrong in his perception that he could not attend on Company property. The Company never attempted to correct this view;**
- 5) **The grievor expressly did not resign from his position and maintained that he had enjoyed his time as a Conductor.** As set out in his December 21 email to Trainmaster Kulbisky (Union documents, Tab 12):

I lost my apartment and had to find other work to continue supporting myself. This is why I cannot make it tomorrow as I am working hard making a living. **I worked hard for CP and I will continue to have a good work ethic.** My morals/religious beliefs do not change due to hardship, extortion or coercion. God has taken care of me all my life and will continue to do so. I know that not following your mandates for injections will result in termination. I would prefer to be terminated in good standings, but I understand that termination usually is a black mark on an employment history. **I will not resign.** I enjoyed my employment with CP Rail while it lasted and the managers, trainers, and employees I worked with were all kind and helpful.

23. The Company could have potentially disciplined the grievor for his absences. **However, it was not reasonable for the Company to conclude that he had abandoned his position.** As noted in by Arbitrator Flaherty in **CROA 4820**:

If the Company was dissatisfied with the Grievor's information or believed he was ignoring directions, it had a number of available options, possibly including discipline. **However, faced with ongoing and regular contact from the Grievor, it was entirely unreasonable for the Company to conclude that he had abandoned his job.**

[Emphasis added.]

[59] The Arbitrator concluded that the reason given by CPKC for termination, absenteeism based on abandonment of position by the employee, was not supported either by the facts in evidence or the applicable law.

[60] Furthermore, the Arbitrator noted that prior to the notification of the investigation hearings (December 17, 2021³⁰, December 31, 2021³¹ and January 6, 2022³²), the Minister's Order had been modified (November 29, 2021)³³. CPKC's policy was also modified (December 1, 2021)³⁴.

³⁰ Exhibit P-3, Tab 8.

³¹ Exhibit P-3, Tab 9.

³² Exhibit P-3, Tab 11.

³³ Exhibit P-5, Tab 7 (29 Nov. 2021), section B.3.F.

³⁴ Exhibit P-5, Tab 8 (1 Dec. 2021).

[61] As a result of these changes, effective December 10, 2021, CPKC's policy was modified such that the recommended minimum sanction for an employee who was not vaccinated without an exemption was unpaid administrative leave³⁵. For this reason, the Arbitrator concluded that Mr. Ferrada's termination was arbitrary since CPKC did not follow its own policy when it terminated him, that it did not treat Mr. Ferrada in the same way it treated others in similar circumstances, and it did not provide a justification for any variance.

[62] In that regard, the Arbitrator stated:

24. It was also Company policy to put unvaccinated employees on a Leave Without Pay. (See Company Bulletin CPSB 106-21). Instead of following their own Policy, the Company chose to terminate the employment relationship on the basis of abandonment. The grievor was not afforded the same treatment offered to other employees in similar circumstances.

25. The decision to terminate the employment relationship was clearly arbitrary and cannot stand.

26. I therefore find that the Company did not have just cause to terminate the employment of the grievor.

[63] At the Court hearing, CPKC's attorney argued that there was a contradiction or flaw in the Decision at paragraph 23. He argued that the arbitrator mentioned the possibility that CPKC could potentially have imposed a disciplinary measure on Mr. Ferrada regarding his absences, but that it was unreasonable in the circumstances to conclude that he had abandoned his position.

[64] The Court rejects this argument. There is no contradiction or flaw in the reasons of the Decision. The parties requested that the Arbitrator decide whether Mr. Ferrada was terminated for just cause. To do so, the Arbitrator had to evaluate whether the grounds stated by the Company in the termination letters sent to Mr. Ferrada showed just cause. It was not necessary for the Arbitrator to assess other hypothetical grounds or courses of action that the Company did in fact not follow. The Court is therefore of the view that CPKC has failed to establish a flaw in the reasoning of the Decision, in particular a flaw that would justify the Court's intervention.

[65] Furthermore, one type of potential disciplinary sanction that CPKC could have hypothetically imposed is entirely consistent with the reasons expressed by the Arbitrator, namely that of unpaid administrative leave. The Company chose not to impose such a sanction but instead to terminate Mr. Ferrada.

[66] In light of the above, the Court concludes that CPKC has failed to prove that the conclusion of the Arbitrator to the effect that CPKC did not have just cause to terminate Mr. Ferrada's is unreasonable.

³⁵ Exhibit P-5, Tab 9 (3 Dec. 2021).

4.3. Other Points

4.3.1 Reinstatement and Damages

[67] As previously mentioned, CPKC's attorney made no representation to the Court with a view to contest the Arbitrator's conclusion regarding reinstatement. The Union's attorney emphasized that the Arbitrator's conclusion to reinstate Mr. Ferrada was the normal and standard conclusion that flowed from the Arbitrator's conclusions to the two questions in issue. The Union's attorney also emphasized that both of CPKC's reinstatement offers to Mr. Ferrada were subject to conditions and that Mr. Ferrada was well within his rights to refuse to accept those conditions. As CPKC no longer argues that the conclusion of reinstatement was unreasonable, it is not necessary for the Court to examine this question further. Regarding the question of damages, the Arbitrator explicitly decided to remain seized of the issue so that issue is not subject to the Application.

4.3.2. Language of judgement and whether to withhold rendering of the judgement pending preparation of a French translation

[68] All the proceedings and exhibits of the parties in this case are in English. The language of the persons involved is English. All the facts of the case took place in Revelstoke, British Columbia. The Decision was rendered in English. The attorneys of both parties argued the present case in English. The attorneys of both parties requested that the present judgement be rendered in English.

[69] Under Section 133 of the *Constitution Act, 1867*, the Superior Court of Quebec - as any court established in the Province of Quebec - has an absolute right to issue or render its judgement in either English or French. That section reads as follows³⁶:

133 **Either the English or the French Language** may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; **and either of thoses Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts**

133 Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la **langue française ou de la langue anglaise**, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; et **dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité de la présente loi, et par-devant tous les tribunaux ou**

³⁶ R.S.C (1985), Appendix II, N° 5. Note that the same rule applies in Manitoba. Section 23 of the *Manitoba Act, 1870*, R.S.C. (1985) App. II, N° 8.

<p>of Quebec.</p> <p>The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.</p>	<p>émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.</p> <p>Les lois du parlement du Canada et de la législature de Québec devront être imprimées et publiées dans ces deux langues.</p>
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[Emphasis added.]

[70] In the same way that it is a constitutionally guaranteed right of members of Parliament or of the National Assembly of Quebec to address their respective legislative chambers in the language of their choice, either in English or in French, the Canadian constitution guarantees since 1867, now approximately 160 years, the right of a judge of a court of Quebec, at her or his sole discretion, to render judgement in either English or French. That right, entrenched in Section 133 of the *Constitution Act, 1867*, can only be modified by a constitutional amendment to Section 133 of the *Constitution Act, 1867*.

[71] Under Section 133 of the *Constitution Act, 1867*, a judgement rendered in either English or French only is equally authoritative, executory and binding. There is no requirement that such a judgement be first translated in the other language before being rendered. That section protects the right of the litigant and members of society at large, including the media, to obtain rapidly and without delay a judgement rendered which affects or may affect their rights.

[72] On June 1, 2024, Article 10 of the *Charter of the French Language*³⁷ came into force³⁸. This article reads as follows:

<p>10. Une version française doit être jointe immédiatement et sans délai à tout jugement rendu par écrit en anglais par un Tribunal judiciaire lorsqu'il met fin à une instance ou présente un intérêt pour le public.</p> <p>Tout autre jugement rendu par écrit en anglais est traduit en français à la demande de toute personne; celui rendu par écrit en français est traduit en anglais à la demande d'une partie.</p> <p>Les frais de la traduction effectuée en application du présent article sont assumés par le ministère ou par</p>	<p>10. A French version shall be attached immediately and without delay to any judgment rendered in writing in English by a court of justice where the judgment terminates a proceeding or is of public interest.</p> <p>Any other judgement rendered in writing in English shall be translated into French at the request of any person; a judgment rendered in writing in French shall be translated into English at the request of a party.</p> <p>The costs for a translation made under this section are borne by the</p>
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³⁷ CQLR c. C-10.

³⁸ This article was added by the *Act respecting French, the Official and Common Language of Quebec*, S.Q.2022, ch.14.

l'organisme qui l'effectue ou qui assume les coûts nécessaires à l'exercice des fonctions du Tribunal qui a rendu le jugement.	government department or the body that makes it or bears the costs necessary for the exercise of the functions of the court that rendered the judgment.
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[Emphasis added.]

[73] Article 10 of the *Charter of the French Language* is not a constitutional amendment to Section 133 of the *Constitution Act, 1867*, and therefore cannot modify the rights given thereunder to the Court, to the parties and to other persons.

[74] It should be noted that Section 133 of the *Constitution Act, 1867*, is not part of the *Canadian Charter of Rights and Freedoms*³⁹ adopted in 1982, and as such it is not subject to its Section 33, commonly referred to as the “Notwithstanding clause”.

[75] Furthermore, the Supreme Court of Canada has adopted, amongst other canons of constitutional interpretation, a principle that it “presumes a harmony, coherence and consistency” regarding statutory provisions and constitutional rights and requirements⁴⁰.

[76] The application of Article 10 of the *Charter of the French Language* does not necessarily conflict with the rights granted under Section 133 of the *Constitution Act, 1867*. Based upon its wording, Article 10 does not purport to modify Section 133. Article 10 recognizes in fact that a judgement issued by a Quebec court of justice may be rendered either exclusively in French or in English. Article 10 (1) states that in certain circumstances (written judgement that terminates a proceeding or is of public interest), a judgement rendered in English is subject to a new translation requirement. Article 10 (3) specifies however that the responsibility to prepare such a translation and to bear the costs thereof is that of the Quebec government.

[77] In accordance with Article 10 (1) of the *Charter of the French Language*, once the unofficial French version of the “judgment rendered in writing in English” is prepared and finalized, it is to be attached “immediately and without delay” to the original and official English version, already rendered. The Superior Court of Quebec has always taken the position that the responsibility to prepare such a French translation in these circumstances is that of the Quebec government alone, in particular the Quebec Ministry of Justice⁴¹. For that purpose, the Quebec government has delegated part of

³⁹ R.S.C. (1985), App. II, N° 44.

⁴⁰ *Bell ExpressVu Limited Partnership v. Rex*, 2002 CSC 42, para. 27.

⁴¹ Rapport d'activité 2024-2025, Cour Supérieure du Québec, p. 38: https://coursuperieureduquebec.ca/fileadmin/cour-superieure/A_propos/Rapports_d_activites_et_donnees_judiciaires/2024-2025_Rapport_activite_CS.pdf:

« Cette obligation de traduction n'incombe pas aux juges eux-mêmes. Ainsi, dans tous les cas, les traductions ne sont ni officielles ni révisées par les juges. »

that responsibility to a Quebec government agency, the Société québécoise d'information juridique (**SOQUIJ**)⁴².

[78] In the present matter, the Court is of the view that, in the exercise of its constitutionally protected and guaranteed discretion pursuant to Section 133 of the *Constitution Act, 1867*, it is appropriate to render the present judgement in English, notably in light of the fact that English is the language of the parties, of the proceedings, of the exhibits and that all the facts in dispute occurred in the Province of British Columbia.

[79] Does that decision necessarily require that the Court hold back the rendering of the present judgement until an unofficial French translation is prepared and finalized by translators remunerated by the Quebec Ministry of Justice?

[80] In the Court's view, such an interpretation would be inconsistent and not supported by the terms of Article 10 of the *Charter of the French Language*. Article 10 of the *Charter of the French Language* does not state that an English judgement cannot be rendered or should be "held back" (or use equivalent terms) pending the preparation of an unofficial French translation.

[81] Such an interpretation would systematically create an obstacle of access to justice by creating an additional wait time for a judgement written in English, which would not exist for a judgement written in French. The old adage "Justice delayed is justice denied" continues to be a pressing reality of modern life and the justice system. Furthermore, such a requirement would not be consistent with either the letter or the spirit of Section 133 of the *Constitution Act, 1867*

[82] It should also be noted that Article 10 does not use the word "simultaneously" and does not state that it is a requirement to render or issue simultaneously the original English judgement and the French translation. For this reason, the word "simultaneous" appears not to have been used in order to avoid a conflict with the rights granted under Section 133.

[83] According to the terms of Article 10 of the *Charter of the French Language*, the government obligation to translate a judgement issued in English is only triggered *after* a judgement is actually "rendered in writing in English by a court of justice". The past tense of the verb "to render" is used. In order for a judgement to be "rendered", it has to necessarily and minimally be first signed by the judge and communicated to the parties.

[84] After such a judgement is rendered, the Quebec government, and not the Court,

« La responsabilité de traduire les jugements prévus à l'article 10 relève de l'État qui, par l'entremise du MJQ [ministère de la Justice du Québec], assume les coûts de fonctionnement et de soutien nécessaires à cette fin. ».

⁴² *Ibid.*

has a statutory obligation to prepare a translation. After the unofficial French translation of the judgement is completed, it must be attached “immediately and without delay” to the original English version, notably in the Court Record.

[85] The Court concludes that there is no legal requirement to retain or hold back the issuance of any judgement written in English pending preparation of a translation at a future, determined or undetermined, time. If the Court was obliged to do so, it would not respect either Article 10 of the *Charter of the French Language* or Section 133 of the *Constitution Act, 1867*.

[86] That is a matter of interpretation of the relevant provisions⁴³. Article 10 of the *Charter of the French Language* is applied in accordance with its wording and in light of Section 133 of the *Constitution Act, 1867*. For this purpose, the Court presumes that Article 10 of the *Charter of the French Language* is valid and in force. The Court make no determination at this point whether Article 10 is either inoperable, unconstitutional or invalid.

[87] At some point in the future, the Court may be called upon to decide that question. The present judgement makes no determination in that regard.

[88] Accordingly, the Court will sign the present judgement written in English and send it to the parties. In so doing, the Court will “render” the present judgement. Such rendering of the judgement triggers *ipso jure* the statutory obligation stated at Article 10 of the *Charter of the French Language* requiring the Quebec government to prepare an unofficial and unrevised French translation. Such translation, once completed, shall immediately and without delay be attached to the present judgement.

[89] Moreover, that is consistent with the practice currently being followed. When the judge concludes that, in the exercise of her or his discretion, judgement should be rendered immediately in English, she or he signs the judgment in English only and sends it to the parties. Afterwards, following its own resources and delays, SOQUIJ will prepare an unofficial and unrevised French translation.⁴⁴

[90] In many cases, such as the present one, the Court renders a judgement in the common language of the parties, English or French. In the event that one party is English-speaking and the other party is French-speaking, traditionally but not on a mandatory basis, the Court renders the judgement in the language of the party whose position was rejected by the Court. That is a matter of discretion of the Court and the exercise of that discretion is protected by Section 133 of the *Constitution Act, 1867*. As stated, in Article 10 (2) of the *Charter of the French Language*, either party may request to receive a translation of a judgement written either in English or in French, prepared

⁴³ *Adoption* — 09201, 2009 QCCA 1583, para. 35 and 36; *ITUMMU v. Noël*. (2003), AZ-50864342.

⁴⁴ *Rapport d'activité 2024-2025*, Cour supérieure du Québec, *supra* note 41, p. 38.

by a Quebec government translator⁴⁵.

[91] Although there is no legal requirement to hold back the rendering of an English judgement pending the preparation of an unofficial French version thereof, it should be noted that exceptionally a judge may decide, in the exercise of her or his constitutionally protected discretion, that it is in the interest of Justice to issue an English and French version of the judgement at the same time when translation services offered by the Quebec government make it possible to do so. One example could be if one party is English-speaking and the other party is French-speaking and the positions of both parties have been dismissed, in whole or in part, and there is no time sensitive issue for the rendering of the judgement. Again, that would be a matter of the exercise of the constitutionally protected judicial discretion pursuant to Section 133 of the *Constitution Act, 1867*.

[92] In order to avoid any ambiguity in the future unofficial French translation of the present section of the judgement, the Court will also issue paragraphs 68 to 91 in French.

4.3.3. Langue du jugement et si le Tribunal doit attendre la préparation d'une traduction en français avant de rendre le jugement

[93] Toutes les procédures et toutes les pièces au dossier sont rédigées en anglais. Les personnes impliquées dans le différend, tant en demande qu'en défense, sont de langue anglaise. Les faits du dossier ont eu lieu dans la ville de Revelstoke, en Colombie-Britannique. La décision d'arbitrage est rédigée en anglais. Les plaidoiries des avocats des deux parties au Tribunal au cours de l'audience ont été présentées en anglais. Les avocats des deux parties ont exprimé le souhait que le présent jugement soit rendu en anglais.

[94] L'article 133 de la *Loi constitutionnelle de 1867* accorde à la Cour supérieure du Québec – ainsi qu'à tout tribunal établi au Québec – un droit absolu de rendre et d'émettre des ordonnances ou des jugements en français ou en anglais, à son choix. Cet article prévoit ce qui suit⁴⁶ :

133 Dans les chambres du parlement du Canada et les chambres de la législature de Québec, l'usage de la **langue française ou de la langue anglaise**, dans les débats, sera facultatif; mais dans la rédaction des archives, procès-verbaux et journaux respectifs de ces chambres, l'usage de ces deux langues sera obligatoire; **et**

133 **Either the English or the French Language** may be used by any Person in the Debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; **and either of those Languages may be used by any Person or in any Pleading**

⁴⁵ The translation costs are assumed by the Quebec government.

⁴⁶ L.R.C. 1985, Annexe II, N°5. Notons que la même règle s'applique au Manitoba. Voir l'article 23 de la *Loi sur le Manitoba, 1870*, L.R.C. (1985), Annexe II, N°8.

<p>dans toute plaidoirie ou pièce de procédure par-devant les tribunaux ou émanant des tribunaux du Canada qui seront établis sous l'autorité de la présente loi, et par-devant tous les tribunaux ou émanant des tribunaux de Québec, il pourra être fait également usage, à faculté, de l'une ou de l'autre de ces langues.</p> <p>Les lois du parlement du Canada et de la législature de Québec devront être imprimées et publiées dans ces deux langues.</p>	<p>or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.</p> <p>The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those Languages.</p>
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[Le Tribunal a mis une partie du texte en gras.]

[95] Tout comme il s'agit d'un droit protégé de nature constitutionnelle pour un député au Parlement canadien ou à l'Assemblée nationale du Québec de s'exprimer à sa chambre législative respective dans la langue de son choix, en français ou en anglais, la constitution canadienne garantit depuis 1867, donc depuis près de 160 ans, le droit d'un juge d'un tribunal établi au Québec, à sa seule discrétion, de rendre jugement en français ou en anglais. Ce droit, enchâssé à l'article 133 de *la Loi constitutionnelle de 1867*, ne peut être modifié que par la voie d'une modification constitutionnelle.

[96] Suivant l'article 133 de la *Loi constitutionnelle de 1867*, le jugement rendu uniquement en français ou uniquement en anglais a la même force de loi, revêt la même valeur juridique et est exécutoire et contraignant. Il n'y a aucune exigence qu'un jugement rédigé uniquement dans l'une ou l'autre de ces langues ne soit traduit dans l'autre langue avant d'être rendu et afin d'avoir force de loi. Cette disposition protège le droit de tout justiciable de même que de tout participant dans la société civile, y compris les médias, d'avoir accès rapidement et sans obstacle au jugement rendu qui affecte les droits des justiciables en cause de même que toute personne de la société civile dont les droits sont ou peuvent être affectés par celui-ci.

[97] Le 1^{er} juin 2024, l'article 10 de la *Charte de la langue française*⁴⁷ entre en vigueur⁴⁸. Cet article prévoit ce qui suit :

<p>10. Une version française doit être jointe immédiatement et sans délai à tout jugement rendu par écrit en anglais par un Tribunal judiciaire lorsqu'il met fin à une instance ou présente un intérêt pour le public.</p>	<p>10. A French version shall be attached immediately and without delay to any judgement rendered in writing in English by a court of justice where the judgement terminates a proceeding or is of public interest.</p>
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⁴⁷ RLRQ c.C – 10.

⁴⁸ La nouvelle formulation de l'article 10 résulte de l'adoption d'une loi modificative à savoir, la *Loi sur la langue officielle et commune du Québec, le français*, L.Q. 2022, c.14.

<p>Tout autre jugement rendu par écrit en anglais est traduit en français à la demande de toute personne; celui rendu par écrit en français est traduit en anglais à la demande d'une partie.</p> <p>Les frais de la traduction effectuée en application du présent article sont assumés par le ministère ou par l'organisme qui l'effectue ou qui assume les coûts nécessaires à l'exercice des fonctions du Tribunal qui a rendu le jugement.</p>	<p>Any other judgement rendered in writing in English shall be translated into French at the request of any person; a judgment rendered in writing in French shall be translated into English at the request of a party.</p> <p>The costs for a translation made under this section are borne by the government department or the body that makes it or bears the costs necessary for the exercise of the functions of the court that rendered the judgment.</p>
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[Le Tribunal a mis une partie du texte en gras.]

[98] L'article 10 de la *Charte de la langue française* ne constitue pas une modification constitutionnelle de l'article 133 de la *Loi constitutionnelle de 1867*, et ne modifie pas les droits garantis suivant cet article qui sont conférés aux tribunaux, aux justiciables et aux autres personnes de la société civile.

[99] Notons que l'article 133 de la *Loi constitutionnelle de 1867* ne fait pas partie de la *Charte canadienne des droits et libertés*⁴⁹ adoptée en 1982 et ne peut donc pas être visée par l'article 33 de celle-ci, soit la clause dérogatoire, connue sous le vocable de « clause nonobstant ».

[100] Notons également que, selon les enseignements de la Cour suprême du Canada en matière d'interprétation constitutionnelle, un des principes d'interprétation pertinents est celui qui « présume l'harmonie, la cohérence et l'uniformité »⁵⁰ entre les dispositions d'une loi et les dispositions constitutionnelles conférant les droits et établissant les exigences de nature constitutionnelle.

[101] Suivant ce principe d'interprétation, la mise en œuvre de l'article 10 de la *Charte de la langue française* ne soulève pas nécessairement un conflit ou une négation des droits prévus à l'article 133 de la *Loi constitutionnelle de 1867*. Selon sa formulation, l'article 10 de la *Charte de la langue française* n'énonce pas qu'il vise à modifier l'article 133 de la *Loi constitutionnelle de 1867*. L'article 10 de la *Charte de la langue française* reconnaît qu'un jugement d'un tribunal québécois peut être rendu exclusivement en français ou en anglais. L'article 10, al. 3 de la *Charte de la langue française* prévoit seulement que certains jugements rendus en anglais (ceux qui sont rendus par écrit et qui mettent fin à l'instance ou présentent un intérêt pour le public), sont visés par une nouvelle exigence de traduction après que le jugement est rendu. L'article 10, al. 3 de la *Charte de la langue française* précise qu'il incombe alors au gouvernement du Québec d'effectuer la traduction en français du jugement rendu en anglais et d'en assumer les

⁴⁹ L.R.C. (1985), App. II, N° 44.

⁵⁰ *Bell ExpressVu Limited Partnership c. Rex*, 2002 CSC 42, para. 27.

coûts afférents.

[102] Suivant l'article 10, al. 1 de la *Charte de la langue française*, une fois la traduction préparée et finalisée du « jugement rendu par écrit en anglais », il y a lieu de joindre cette traduction française, non officielle et non révisée par le tribunal, « immédiatement et sans délai » au jugement original de teneur officielle, déjà rendu en anglais. Selon la prise de position constante de la Cour supérieure du Québec, la responsabilité de préparer une traduction française d'un jugement rendu en anglais relève uniquement du gouvernement du Québec, en particulier du ministère de la Justice du Québec⁵¹. De même, celui-ci a délégué une partie de cette responsabilité à un organisme gouvernemental québécois, soit la Société québécoise d'information juridique (**SOQUIJ**)⁵².

[103] Dans le présent dossier, la Cour est d'avis que suivant l'exercice de sa discrétion constitutionnellement protégée et garantie aux termes de l'article 133 de la *Loi constitutionnelle de 1867*, il est approprié de rendre le présent jugement en anglais, eu égard notamment aux faits qu'il s'agit de la langue des parties impliquées, des procédures, des pièces, que tous les échanges entre les parties ont eu lieu en anglais et que tous les faits à l'origine du différend ont eu lieu dans la ville de Revelstoke en Colombie-Britannique.

[104] Cette décision quant à la langue du jugement entraîne-t-elle nécessairement que le Tribunal doit retenir l'émission de ce jugement jusqu'à la finalisation d'une traduction ou d'un projet de jugement par les traducteurs payés par le ministère de la Justice du Québec ou un autre organisme du gouvernement du Québec ?

[105] Le Tribunal est d'avis qu'une telle interprétation serait erronée, non justifiée et contraire à la teneur de l'article 10 de la *Charte de la langue française*. Cet article n'énonce pas et ne prévoit pas qu'il y a lieu de « retenir » (ni n'emploie d'autre terme semblable) le moment auquel le jugement rédigé en anglais devrait être rendu ni ne prévoit qu'il y a lieu d'attendre, pendant une période additionnelle requise pour la préparation d'une traduction française non officielle, avant de pouvoir le rendre.

[106] De même, une telle interprétation entraînerait systématiquement un obstacle de temps additionnel de l'accès à la justice en créant un délai d'attente d'un jugement

⁵¹ Rapport d'activité 2024-2025, Cour Supérieure du Québec, p. 38 : https://coursuperieureduquebec.ca/fileadmin/cour-superieure/A_propos/Rapports_d_activites_et_donnees_judiciaires/2024-2025_Rapport_activite_CS.pdf :

« Cette obligation de traduction n'incombe pas aux juges eux-mêmes. Ainsi, dans tous les cas, les traductions ne sont ni officielles ni révisées par les juges. »....

« La responsabilité de traduire les jugements prévus à l'article 10 relève de l'État qui, par l'entremise du MJQ [ministère de la Justice du Québec], assume les coûts de fonctionnement et de soutien nécessaires à cette fin. ».

⁵² *Ibid.*

rédigé en anglais qui n'existerait pas pour le jugement rédigé en français. Le vieil adage selon lequel "la justice rendue en retard équivaut à un déni de justice" demeure une réalité incontournable de nos jours et de notre système de justice. Un tel obstacle ne paraît ni respecter ni s'accorder à la lettre et à la finalité de l'article 133 de la *Loi constitutionnelle de 1867*.

[107] Notons que l'article 10 de la *Charte de la langue française* n'emploie pas le mot « simultané » et ne crée pas une exigence selon laquelle les textes anglais et français d'un jugement doivent être rendus de manière simultanée. Il appert que le mot « simultané » n'a pas été employé afin d'éviter un conflit avec les droits conférés en vertu de l'article 133 de la *Loi constitutionnelle de 1867*.

[108] Or, suivant la teneur explicite de l'article 10, al. 1 de la *Charte de la langue française*, l'obligation du gouvernement du Québec de préparer une traduction en français d'un jugement écrit en anglais et d'y joindre la version française non officielle, est uniquement enclenchée *après* et une fois que le « jugement [est] rendu par écrit en anglais par un Tribunal judiciaire ». Le temps passé du verbe « à rendre » est employé. Or, pour qu'un jugement soit « rendu », il doit nécessairement et minimalement être signé par la ou le juge et communiqué aux parties.

[109] Après que le jugement est ainsi « rendu », le gouvernement du Québec et non le tribunal, a l'obligation statutaire de préparer et de finaliser une version française non officielle ainsi que de la joindre « immédiatement et sans délai » au jugement en anglais déjà rendu, notamment au dossier de la Cour.

[110] La Cour conclut qu'il n'y a aucun motif valable juridique pouvant obliger le tribunal à retenir l'émission du présent jugement ou de tout autre jugement rédigé en anglais, au cours d'une période additionnelle pendant laquelle une traduction en français serait préparée et finalisée à un moment futur, indéterminé ou déterminé. Si le Tribunal était obligé de le faire, cela ne respecterait ni l'article 133 de la *Loi constitutionnelle de 1867* ni l'article 10 de la *Charte de la langue française*.

[111] Il s'agit d'une question d'interprétation des dispositions pertinentes⁵³. À cette fin, le Tribunal tient pour acquis le caractère valable et en vigueur de l'article 10 de la *Charte de la langue française*. La Cour ne décide pas si l'article 10 de la *Charte de la langue française* est de nature inopérante, inconstitutionnelle ou non valide.

[112] À l'avenir, le tribunal aura peut-être à statuer à cet égard mais le présent jugement ne fait pas de détermination à ce sujet.

[113] Compte tenu de ce qui précède, le Tribunal procède à signer le présent jugement rédigé en anglais et le communiquera aux parties. En ce faisant, le Tribunal « rend » jugement. En rendant ce jugement, le Tribunal enclenche *ipso jure* l'obligation statutaire prévue à l'article 10 de la *Charte de la langue française* qui requiert que le

⁵³ *Adoption* — 09201, 2009 QCCA 1583, para. 35 and 360; *ITUMMU c. Noël*. (2003), AZ-50864342.

gouvernement du Québec, par l'entremise des traducteurs de son choix, prépare une traduction française non officielle et non révisée du présent jugement rendu en anglais. Une fois la traduction complétée, conformément à l'article 10, al. 1 de la *Charte de la langue française*, la version traduite en français devra être jointe « immédiatement et sans délai » au jugement officiel rédigé en anglais, notamment au dossier de la Cour.

[114] Cela est d'ailleurs conforme à la pratique suivie actuellement. Lorsque la ou le juge conclut que, suivant l'exercice de sa discrétion, il y a lieu de rendre le jugement en anglais de manière immédiate, elle ou il le signe et l'expédie aux parties dans cette langue seulement. Par la suite, le service de traduction de SOQUIJ s'occupe de préparer, suivant leurs propres ressources et délais, une traduction française, non officielle et non révisée.⁵⁴

[115] Dans la plupart des dossiers, comme celui-ci, le Tribunal rend jugement dans la langue commune des parties, soit le français ou l'anglais. Advenant qu'une des parties est de langue anglaise et que l'autre est de langue française, de manière traditionnelle mais non de manière obligatoire, le Tribunal rend jugement dans la langue de la partie dont les prétentions ont été rejetées par le Tribunal. Cela relève de la discrétion judiciaire et l'exercice de cette discrétion est protégé par l'article 133 de la *Loi constitutionnelle de 1867*. Tel que prévu à l'article 10, al. 2 de la *Charte de la langue française*, l'une ou l'autre des parties peut demander à recevoir une traduction d'un jugement rendu en français ou en anglais⁵⁵.

[116] Même s'il n'y a aucune exigence juridique qui oblige le Tribunal à retenir l'émission d'un jugement rédigé en anglais au cours d'une période d'attente pour la préparation et la finalisation d'une version française non officielle, il y a lieu de noter que de manière exceptionnelle, le Tribunal peut décider, suivant l'exercice de sa discrétion revêtant une protection constitutionnelle, qu'il est dans l'intérêt de la Justice d'émettre le texte officiel en anglais et la version française non officielle au même moment dans la mesure où le gouvernement du Québec offre le soutien de traduction qui permet de le faire. Un exemple pourrait être un dossier lors duquel une partie est de langue française et l'autre partie est de langue anglaise et que les prétentions des deux parties sont rejetées, en tout ou en partie et qu'il n'y a aucune conséquence pour une des parties de devoir attendre une période de temps additionnelle et indéterminée. De nouveau, la décision du tribunal à ce sujet relève d'une discrétion judiciaire visée par une protection constitutionnelle aux termes de l'article 133 de la *Loi constitutionnelle de 1867*.

5- Conclusion

[117] The Court concludes that CPKC has failed to demonstrate that the Decision is unreasonable. The Court concludes that, in light of the legal and factual constraints that bear on the Decision, it is reasonable and should not be disturbed.

⁵⁴ *Rapport d'activité 2024-2025*, Cour supérieure du Québec, *supra* note 50, p. 38.

⁵⁵ Le gouvernement du Québec assume les coûts d'une telle traduction.

FOR THESE REASONS, THE COURT:

[118] **DISMISSES** Canadian Pacific Kansas City Railway's Application for Judicial Review;

[119] **WITH LEGAL COSTS** in favour of the Impleaded Party, Teamsters Canada Rail Conference.

JEFFREY EDWARDS, J.S.C.

Me Carl Leblanc-Trudeau
FASKEN MARTINEAU DUMOULIN SENCRL, S.R.L.
ATTORNEYS FOR PLAINTIFF
Canadian Pacific Kansas City Railway

Me Sylvain Beauchamp
Me Julianna Duholke
MELANCON MARCEAU GRENIER COHEN
Attorneys for the Impleaded Party
Teamsters Canada Rail Conference

Date of hearing: September 30, 2025