

Intelligence MEMOS



From: Daniel Schwanen
To: Labour Minister Steven MacKinnon and Transport Minister Pablo Rodriguez
Date: September 6, 2024
Re: **NEW THINKING NEEDED ON LABOUR RULES AT SUPPLY CHAIN CHOKE POINTS**

Millions of Canadians and hundreds of thousands of businesses were relieved when the Canada Industrial Relations Board (CIRB) ordered Canadian National and Canadian Pacific Kansas City to resume services, and for their workers to return to their jobs. At the same time, it sent their contract disputes to binding arbitration.

This decision came after lockouts by the two companies last week, and strikes called by members of the Teamsters union.

The CIRB had earlier ruled that rail transport of commodities is not an essential service and its suspension would not pose a threat to public health and safety since there are alternatives, most notably trucking. That might have made sense under the narrow definition of the essential service concept under the Canada Labour Code, but it sidestepped the crucial fact that contracts at both companies had come to a simultaneous end for the first time ever.

A simultaneous stoppage at the two railways, together owning 75 percent of the tracks and accounting for 95 percent of Canada's annual rail-tonne kilometres, would have robbed consumers and producers of sufficient alternatives, no matter how much Canada's trucking industry – which has faced its own supply chain problems in the form of shortages of qualified drivers and interprovincial regulatory barriers – stepped up to the plate.

Canadians – already reeling from the interrelated effects in recent years of low productivity, high inflation and slow growth in their purchasing power – were facing the prospects of emptying shelves of certain perishable goods. The consequences for farmers would have been particularly devastating.

Half of Canada's imports and exports are moved by rail at some point on their Canadian journey. Not surprisingly, the stoppage made the news across the globe, hurting Canada's reputation just as our country had begun to address its potential maritime bottlenecks – for example, major investments in the Port of Vancouver, which has been severely disrupted by major floods, fires and work stoppages in recent years. We had also finally climbed to seventh spot in the 2023 World Bank logistics index, after being mired for years between ninth and 20th.

Such stoppages do not position Canada well ahead of the 2026 trilateral review of the Canada-United States-Mexico Agreement, in which our key arguments for not raising more trade barriers include that Canada is a reliable, fair and high-quality supplier to US industry and a top export market for more than 30 US states.

For Canadians, this episode is another reminder that the strength of Canada's supply chains directly affects the availability and affordability of supplies, including essential goods such as food. They are vital also for getting the product of our labour, land and investments in Canadian businesses to global markets. Supply chains are the blood vessels of our economy and are foundational to our ability to grow our businesses and generate high incomes.

Rail and major transportation systems and hubs are part of Canada's critical infrastructure. While they may not be "essential" services in the sense that their withdrawal constitutes an immediate threat to the safety and security of Canadians, without their safe and efficient operation, the public at large suffers potentially grievous damages, beyond what the parties directly involved in the dispute might suffer. There was no other alternative but for the minister to intervene.

The question is how to avoid such situations in the future. The bargaining framework needs to be subject to rules recognizing the abiding public interest in the safe and secure operation of critical infrastructure providing a modicum of continuing services. The exact overlap of labour contracts between the two major railways should not be allowed to happen again.

The federal transport regulator has a crucial role to play in avoiding future work stoppages. One of the key issues in these negotiations concerns the necessary harmonization of recent rules on duty and rest periods and statutory paid leave with existing agreements, and whether this can be accomplished without harm to the railway workforce or to safety. Minimum rules and standards should be updated, consistent with the safety and health of rail workers and of Canadians who live next to the tracks, while allowing for scheduling and compensation models that allow the flexibility required to operate an enormous network in a highly competitive environment.

Given the widespread benefits of having our railways remaining cost competitive, the federal government should consider alternatives to the current negotiation framework affecting railways, ports and seaways, ones that would give more weight to the public good. An arbitrator may rule on this dispute, but the longer-term health of workers, the industry, and the Canadian economy requires more sophisticated thinking.

Daniel Schwanen is senior vice-president at the C.D. Howe Institute.

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A version of this Memo first [appeared](#) in The Globe and Mail.