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**THE KING'S BENCH
Winnipeg Centre**

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BETWEEN:

KEITH DOUGLAS STOWE

Plaintiff

and

TRANSX LTD.

Defendant

STATEMENT OF CLAIM

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File No. CST-1.7

FILED
KING'S BENCH
OCT 31 2023
LAW COURTS
WINNIPEG



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Winnipeg Centre**

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STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Kings's Bench Rules*, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGEMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

October 31, 2023
Date

Issued B. Bethe
Deputy Registrar

TO: TRANSX LTD.
2895 Inkster Blvd.
Winnipeg, MB
R3C 2E6

CLAIM

1. The Plaintiff seeks the following remedies against the Defendant of this action:
 - a. Judgment against the Defendant for damages in a sum to be determined at the trial of this matter, or in such other amount as is determined by this Honourable Court, representing remuneration in lieu of notice in relation to the Plaintiff's entitlement to:
 - i. Individual Mileage and Accessorial Pay;
 - ii. Holiday pay;
 - iii. Recognition Award(s); and
 - iv. Extended Benefits.
 - b. The Plaintiff seeks all of his common law and or statutory entitlements;
 - c. Special damages incurred in relation to mitigation including seeking alternative employment, relocation and retraining expenses and other out-of-pocket expenses in an amount to be determined at trial;
 - d. Prejudgment and post judgment interest pursuant to the *Manitoba Court of King's Bench Rules*;
 - e. Costs of this action on a full indemnity basis including cost of all experts on a full fee basis plus any applicable taxes; and
 - f. Such further and other relief as this Honourable Court may deem just and equitable in the circumstances.

The Plaintiff pleads and relies upon the following:

- a. *Manitoba Employment Standards Code*, CCSM c. E-110, specifically ss. 4(2), 5, 29(1), 29(2), 43, 44, 60.1, 61(1), 61(2), 76, 77(1), 77(2), 86(1), 88, 133(1), 135(1), 135(3), 139(1), 140(1), 140(2), and 141;
- b. Canadian National Railway Company – Vaccination Mandatory Policy; and
- c. Such other enactments and legislation as the Plaintiff may advise and this Honourable Court may consider given the circumstances.

DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- a. **"Partially Vaccinated"** means having received the first dose of a two-dose series of a Health Canada approved vaccine that provides protection against COVID-19.
- b. **"Fully Vaccinated"** means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19 and having allowed the time recommended by public health authorities to produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.
- c. **"Proof of Vaccination"** means providing the employer official documentation issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered (including a QR code, if issued by the applicable authorities) confirming receipt of the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19. In time, this may require providing proof of receipt of booster shots, when and as recommended by the applicable public health authorities.
- d. **"Privacy"** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information, including but not limited to, medical and health records.
- e. **"Informed Consent"** means the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, over-reaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to make an understanding and enlightened decision.
- f. **"Policy"** refers to the Mandatory Vaccination Policy requiring employees of the Canadian National Railway Company and its subsidiary, TransX Ltd (**"Employees"**) to be Fully Vaccinated by January 24, 2022.

B. THE PARTIES

3. The Plaintiff, Keith Stowe (**"Stowe"**) is a 49 year-old individual who resides at or near Virden, in the Province of Manitoba.
4. The Defendant TransX Ltd. (**"TransX"** or the **"Company"**) is incorporated pursuant to the laws of Manitoba, and is headquartered in Winnipeg, Manitoba. TransX is a subsidiary of the Canadian National Railway Company (**"CN"**). TransX provides integrated transportation solutions and operates one of the widest transportation networks in North America.

C. THE POLICY

5. The Plaintiff opposed the Policy requirement to reveal medical records and private health information, namely his COVID-19 status.

6. The Policy required that all Employees be fully vaccinated before 24 January 2022, and that they receive their first dose of vaccine before 15 November 2021, where a 2-dose series vaccine was administered.
7. The Policy applied to all Employees, regardless of position, job function, status, or work location, as well as to all applicants for employment with TransX including TransX's contractors, consultants, agents and suppliers and anyone who accesses TransX properties in Canada.
8. The Policy provided for limited exemptions, and "[a]n employee claiming an exemption from the vaccination requirement on the basis of a medical condition, religious belief, or other ground recognized by Transport Canada must apply for an exemption in accordance with the Vaccination Mandate Exemption Procedure." Requiring an exemption is also discriminatory, as that individual is forced to disclose private medical information or religious beliefs, which are both deeply personal and private. The Plaintiff refused to disclose his personal vaccination status and did not apply for an exemption.
9. The Policy discriminated against an identifiable group of Canadians (those who had not received a COVID-19 vaccine) and did not provide exemptions for those who had natural immunity to COVID-19, or those with conscientious objections or for those working remotely or with little to no contact with other colleagues.
10. At Section E of the Policy, it discriminated by mandating that all employees attest as to their medical status regarding the COVID-19 vaccine and those who did not provide Proof of COVID-19 vaccination were put on leave without pay and threatened with loss of employment. This was discrimination based upon an identifiable group due to medical records.
11. As a TransX Employee, the Plaintiff was subject to the Policy, which required that he be Fully Vaccinated against COVID-19 as defined above and that he disclose his vaccination status to TransX by way of an attestation in the form provided by Canadian National Railway Company.
12. Section E of the Policy, "Vaccination Requirements and Timeline", states that "after 24 January 2022, employees who are not Fully Vaccinated, have not provided Proof of Full COVID-19 Vaccination to TransX and have not obtained an exemption based on medical contraindications or sincerely-held religious beliefs will be placed on an unpaid leave of absence and/or subject to such other administrative or disciplinary measures as may be deemed appropriate by TransX in the circumstances, up to and including termination of employment."
13. The Policy required an attestation of a medical record.
14. The Policy also required that employees provide Proof of Vaccination when requested by a designated TransX representative as "failure to produce the proof on demand is a violation" of the Policy.
15. The Policy required employees to be Fully Vaccinated by 24 January 2022, which meant that employees "must have completed a full course of vaccination no later than 9 January 2022."

16. The Policy stated that all employees not on leave and unless an employee had an approved exemption, "must, no later than 24 January 2022, provide an attestation in the form provided by TransX confirming that the employee is Fully Vaccinated."
17. TransX's Covid-19 Vaccination Mandate Exemption Procedure ("Exemption Procedure") recognized natural immunity for 90 days if an employee received a positive COVID-19 test. However, the Policy overall did not allow proof of natural immunity as an appropriate alternative to the COVID-19 vaccination for those who did not consent to the vaccination.
18. For an interim period between 15 November 2021 and 24 January 2022, the Policy allowed for testing as an alternative to employees being Fully Vaccinated. The employee was responsible to source the appropriate tests, have a test performed every 72 hours, and pay for the costs. However, the Policy did not allow COVID-19 testing option as an appropriate alternative to the COVID-19 vaccination for those who did not consent to the vaccination and required employees to be Fully Vaccinated by 24 January 2022, or risk violation of the Policy.
19. The Policy indicated that mandatory COVID-19 testing was a satisfactory means of maintaining the health and safety of employees in the workplace. The Policy discriminated against those who did not consent to the vaccination or who did not consent to providing their vaccination record to their employer, effectively forcing such individuals to consent to a medical treatment they could not accept or risk losing their employment.
20. Non union employees were placed on unpaid leave effective 15 November 2021. The Plaintiff was directly impacted by such enforcement of the Policy.

D. THE VACCINES

21. Five vaccines are currently authorized in Canada to treat symptoms of COVID-19: AstraZeneca, Moderna, Pfizer, Novavax, and Johnson & Johnson. All COVID-19 vaccines are still undergoing clinical trials until 2023 or later. None of these prevent the infection or transmission of COVID-19, or any of its variants. Nor has a complete list of the ingredients of any of these vaccines been published.
22. These vaccines are experimental. Long-term effects have not yet been sufficiently studied and there is emerging evidence of significant risks. These vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. The vaccines could cause other side effects that remain unknown at this time due to their relatively recent development. No one can be certain about the long-term effects of a vaccine that has not been in existence for the long term and has not been studied over a span of years.
23. The COVID-19 vaccines recommended by Canadian public health authorities are also known to cause severe adverse effects and injuries for some individuals. Health Canada has warned about various serious reactions from the COVID-19 vaccinations. Recent data directly from Pfizer shows cases of serious reactions including myocarditis, pericarditis, Bell's Palsy, thrombosis, immune thrombocytopenia, venous thromboembolism, acute myocardial infarction, cardiac sarcoidosis anaphylaxis and even syphilis.
24. Vaccinated and unvaccinated Canadians can be infected with and transmit COVID-19. The CEO of Pfizer has publicly acknowledged that vaccines do not provide immunity to COVID-

- 19 or its known variants. They merely claim to provide some "benefits" or "protection" that in certain circumstances at best lessens severity of symptoms or potentially reduces the risk of hospitalization.
25. The "benefits" or "protection" of the vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual's age, and when the vaccine was administered in relation to any variant of concern.
26. The recent and continued release of Post Authorization Adverse Events Reports, by the US Food and Drug Administration ("FDA") regarding the Pfizer COVID-19 vaccine, indicate that adverse reactions and side-effects, up to and including death, are not only more severe, but more frequent than anticipated based on initial data released to the public. The FDA's own documentation reports that during the Reporting Interval alone, 1,223 deaths were reported with 9,400 cases having an unknown outcome.
27. The draconian steps taken by the Company to enforce its Policy as well as the Policy itself are incongruent with its claims of promoting safety and wellbeing.
28. The Policy discriminates against an identifiable group of Canadians (those who have not received a COVID-19 vaccine) and does not provide exemptions for employees who have natural immunity to COVID-19 or those with conscientious, medical, or religious objections, or for those working remotely or with little to no contact with other colleagues.

E. THE EMPLOYMENT

29. The Plaintiff was hired as a Class 1 Truck Driver and worked faithfully and honourably for TransX for a period of 4 years. At all material times, Stowe performed his duties ethically, diligently, and effectively, and was a competent, hard-working, and valuable employee.
30. The key terms of the Plaintiff's employment contract included that:
- a. His employment was indeterminate;
 - b. His base pay rate was \$0.50 per mile;
 - c. He was entitled to receive an additional \$0.01/mile for every year of employment;
 - d. He was entitled holidays at 10% of base pay;
 - e. He was entitled to share in TransX's extended benefits program;
 - f. He was entitled to reasonable notice or pay in lieu of reasonable notice for termination without cause.

The Wrongful Dismissal

31. The bulk of the Company's Code of Ethics (the "**Code**") concerns financial, legal, and regulatory matters. TransX claims to have a zero tolerance for discrimination, harassment and violence, and endeavours that all employees be treated with integrity, trust, and respect.
32. The Code was supplemented in October 2021 with its Company-wide Vaccination Policy. Violation of the Policy comes with disciplinary action up to and including termination of employment.
33. The Policy did not provide for rapid antigen testing as a clear alternative. Many facilities and employers adopted testing policies whereby both vaccinated and unvaccinated individuals

were regularly tested for COVID-19. This accommodation for testing was based upon scientific recognition that vaccinated and unvaccinated individuals contract COVID-19 and potentially transmit the virus. In any case, the risk of infection, let alone serious illness or death, was vanishingly low for all but a statistically miniscule segment of the elderly population, almost none of whom were part of the Canadian workforce.

34. Without notice, on 19 November 2021, TransX advised the Plaintiff by email that he was being placed on unpaid leave of absence. This constitutes a constructive dismissal in law. There was no contract of employment which permitted lay-offs and the Plaintiff had never been laid off previously. There was no term of the employment contract which permitted an involuntary unpaid leave of absence or suspension without pay.

35. Accommodations may be limited by undue hardship or denied because the activity is a *bona fide* requirement. Where taking part in an activity can be shown to be a *bona fide* requirement, employers are required to accommodate to the point of undue hardship (for instance, by assigning an employee an alternative assignment or method of compliance).

36. The Policy created a hostile and toxic work environment at TransX. The testing unless vaccinated requirement effectively revealed one's vaccination status, causing employees to experience harassment in the workplace due solely to their vaccination status. No viable options were offered.

37. Stowe says that, even if successfully established by the employer, which is not admitted, but expressly denied, one act of insubordination is not sufficient to give rise to just cause for dismissal.

38. Stowe opposed the blanket Policy requirement to reveal his medical records and says that the Policy discriminated by mandating that all employees attest to their medical status regarding the COVID-19 vaccine. Those who did not were put on leave without pay and threatened with termination. This discriminates against an identifiable group based upon medical records.

39. Stowe did not attest to his vaccination status. The Plaintiff claims wrongful dismissal from TransX, effective 19 November 2021 for refusal to vaccinate under CN's Vaccination Policy. He was dismissed without just cause, without notice, and without pay in lieu of notice.

F. DAMAGES FOR WRONGFUL DISMISSAL

40. Stowe was terminated on a without-cause basis, and is entitled to pay in lieu of common law reasonable notice, in addition to any statutory minimum entitlements found in provincial legislation. Pursuant to standard contractual principles, Stowe is entitled to be restored to the position he would have been in if he/ had continued to remain employed with the Company for the balance of the notice period. This clearly includes the base pay rate, benefits, vacation pay and other entitlements that would have accrued during the applicable notice period.

41. The Plaintiff claims entitlement to notice of 6 months or payment in lieu thereof.

42. The Policy and resulting actions by TransX unilaterally changed the terms of employment, revoked employment and privileges, causing its employees to take a leave of absence or quit.

43. Upon acceptance of his offer of employment with TransX, the Plaintiff did not agree to any condition of employment involving compulsory vaccinations. The Policy is causing severe hardship and irreparable harm to Employees, including Stowe.
44. The Plaintiff says that TransX is legally obliged to respect the autonomy and dignity of its employees, and the confidentiality of their medical information, even after the employees have died; TransX is obliged not to use medical knowledge to violate the human rights and civil liberties of its employees, even under threat from government authority. These duties have not been demonstrated in the application of the Policy.
45. There is no scientific data to support the conclusion that the COVID-19 vaccines had any impact upon reducing the spread of the virus.
46. As a result of these breaches, Stowe has suffered the following damages:
- a. Loss of employment opportunities;
 - b. Loss of income;
 - c. Loss of opportunity for future income; and
 - d. Other such damages as will be proven at the trial of this action.

October 31, 2023

Date of issue

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