CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 138

Heard at Montreal, Tuesday, January 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Brotherhood claims that the Company violated Article 1 of the Agreement covering unlicensed personnel in the Newfoundland Steamship Service by using shore-based non-railway cleaning women to work on ships while in port at North Sydney and Port aux Basques.

JOINT STATEMENT OF ISSUE:

On June 12, 1967 the Brotherhood protested a Company proposal to contract out the cleaning of passageways, women's toilets and other areas used by the public while the ships are in port during the tourist season. This normally extends from the middle of June till the middle of September. The Company denied there was any violation of the Agreement.

On or about June 16, 1967 the Company re-introduced a former work method by using six women at North Sydney and six women at Port aux Basques to assist the regular ships' Stewards Department employees to clean the public areas of the ships.

On July 15, 1968 a formal grievance was lodged by the Brotherhood when the previous practice of using shore-based cleaning women was again introduced.

On August 7, 1968 the Company informed the Brotherhood that the work did not come under the jurisdiction of employees represented by the Canadian Brotherhood of Railway, Transport and General Workers.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. A. PELLETIER EXECUTIVE VICE-PRESIDENT	(Sgd.) K. L CRUMP ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

W. S. Hodges, Labour Relations Assistant, C.N.R., Montreal
B. Noble, Senior Agreements Analyst, C. N. R., Montreal

And on behalf of the Brotherhood:

G.	MacIntyre -	Representative, C.B.ofR.T.&G.W., Sydney, N.S.
J. A.	Pelletier -	Executive Vice President C.B.ofR.T.&G.W. Ottawa
L. K.	Abbott -	Regional Vice President, C.B.ofR.T.&G.W. Moncton, N.B.
J.	Parsons	Local Chairman, C.B.ofR.T.&G.W. North Sydney

AWARD OF THE ARBITRATOR

There is no question that the cleaning women referred to in the joint statement of issue are in fact the employees of an independent contractor and not of the railway. The work which they perform is work wbich had previous been performed by railway employees coming within the bargaining unit. It should be noted, however, that no member of the bargaining unit has been displaced. The work done by the cleaning women is supplemental to the work of employees in the Stewards Department. The company found that there was inufficient time during the turnaround period to allow the regular staff to perform the regular cleaning functions. It is the union's contention that such functions come within the scope of the collective agreement, and that a spare board arrangement could have been developed, so that the work could be performed by members of the bargaining unit.

The jurisdiction of the arbitrator in a case such as this is only to determine whether there was or has not been a breach of the collective agreement. The issue then is whether the collective agreement, either expressly or by necessary implication, restricts the company from contracting-out such work as it has done in this case.

The bargaining unit covered by collective agreement 5.25 consist of unlicensed employees in a number of classifications set out in article 1 of the collective agreement. It was not argued that the female cleaners in fact are within one of those classifications, although it is clear that their work overlaps that of assistant stewards. In any event, the female cleaners are not employees of the railway. Article 2 sets out the seniority grouping of employee and article 3.1 provides for the compilation of seniority lists of persons employed in positions covered by the agreement. Collective agreements commonly contain such provisions, and I cannot find therein any implication as to the propriety or otherwise of contracting-out. Article 39 deals with what may be the routine work of certain employees. Article 39.2 provides that employees shall not be required to perform certain sorts of work between 8:00 p.m. and 6:00 a.m. daily. It is questionable whether this provision refers to the sort of work done by the cleaning women, but in any event, the article deals with working conditions of the railway's employees. It does not relate to the issue in this case, which is whether the railway properly contracted the work out to an independent employer.

The foregoing were the only provisions of the collective agreement cited by the union in support of their contention. As I have indicated, I cannot conclude from those provisions that there is any

express or implied prohibition against contracting-out, nor can I find such prohibition elsewhere in the collective agreement. The union, in its well-documented brief, based its argument mainly on the spirit and intent of the agreement as a whole and of collective bargaining in general. The debate on the question of contracting-out has been carried on for many years; sound reasons have been advanced in support of each side. One of the more recent reported cases is the Russelsteel case, 17 L.A.C. 253, in which a board of arbitration of which Professor H. W. Arthurs was chairman held that it could not be said that there was either express or implicit prohibition of contracting-out in the collective agreement before the award. In the award of the majority, at p.256, it is said:

> "....The wide notoriety given to labour's protests against this practice, the almost equally wide notoriety, especially amongst experienced labour and management representatives, of the overwhelming trend of decisions, must mean that there was known to these parties at the time they negotiated the collective agreement the strong probability that an arbitrator would not find any implicit limitation on management's right to contract out. It was one thing to imply such a limitation in the early years of this controversy when one could not speak with any clear certainty about the expectations of the parties; then, one might impose upon them the objective implications of the language of the agreement. It is quite another thing to attribute intentions and undertakings to them today, when they are aware, as a practical matter, of the need to specifically prohibit contracting out if they are to persuade an arbitrator of their intention to do so."

In the instant case, it is particularly clear that no such prohibition was contemplated by the parties to the present agreement, for in 1958, in 1965 and more recently in 1968 the union has sought tbe insertion in collective agreements of provisions relating to contracting-out. Many collective agreements do contain such provisions. There is none in this agreement, and in all the circumstances I can only conclude that none was intended.

Accordingly, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR