

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 192

Heard at Montreal, Tuesday, December 9th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT  
HANDLERS,  
EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claims of employees M.D. Gudmundson and J. R. Saunders of Winnipeg, Manitoba, for all time not worked account work being contracted to Sigfusson Transfer.

JOINT STATEMENT OF ISSUE:

Employees Gudmundson and Saunders had been laid off by reason of a reduction in staff under Article 15.1 of the Agreement.

Article 15.1 reads as follows:

"When reducing forces, seniority shall govern subject to qualifications."

The Brotherhood contends that Article 15.8 of the Agreement was violated by not recalling employees Gudmundson and Saunders to duty when work was contracted out to Sigfusson Transfer.

Article 15.8 reads as follows:

"When forces are increased, employees shall be returned to service in order of seniority. Employees shall qualify in accordance with the provisions of Clause 14.1. Employees desiring to avail themselves of this provision must file their names and addresses with the proper Company Officer. Employees failing to report for duty or to give satisfactory reasons for not doing so within seven calendar days from date of notification shall have their names removed from the seniority list."

The Company contends that the Agreement was not violated in that the Agreement does not stipulate that all work must be performed by employees of the Company.

FOR THE EMPLOYEES:

FOR THE COMPANY:

(Sgd.) L. M. PETERSON  
GENERAL CHAIRMAN

(Sgd.) C. C. BAKER  
MANAGER, INDUSTRIAL RELATIONS,  
CP TRANSPORT

There appeared on behalf of the Company:

C. C. Baker - Manager Industrial Relations, C.P.Transport,  
Vancouver

And on behalf of the Brotherhood:

L. M. Peterson - General Chairman, B.R.A.C., Don Mills,  
Ontario  
G. Moore - Vice General Chairman, B.R.A.C., Moose Jaw,  
Sask.  
F. C. Sowery - Vice General Chairman, B.R.A.C. Montreal  
W. J. Dickinson - District Representative, B.R.A.C. Toronto

#### AWARD OF THE ARBITRATOR

This grievance is based on the alleged violation of article 15.8, set out in the Joint Statement of Issue. That article sets out the recall rights of employees, where "forces are increased". The "forces" referred to are the employees of the company performing work within the bargaining unit. In assigning work to its own employees, the company is of course bound by the provisions of the collective agreement. In the instant case, however, the company has contracted-out certain work. It did not increase its working force, but apparently retained its working force at the then reduced level.

As has been pointed out in similar cases, the jurisdiction of the arbitrator is only to determine whether there has or has not been a breach of the collective agreement. The great bulk of arbitration cases on the matter of contracting-out have held that its prohibition must be expressly set out in the collective agreement. It is not the desirability or otherwise of such a provision which concerns the arbitrator, but only whether or not it is set out in the agreement. In the instant case the provision for recall in order of seniority cannot properly be read as a prohibition against contracting out. No other provision is suggested as having that effect. Accordingly, there has been no violation of the collective agreement, and the grievance must be dismissed. Reference is made to Cases 138, 151 and 176.

J. F. W. WEATHERILL  
ARBITRATOR