CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 598

Heard at Montreal, Tuesday, March 8, 1977

Concerning

CANADIAN PACIFIC TRANSPORT COMPANY LIMITED
(CP TAANSPORT - WESTERN DIVISION)

and

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

EXPARTE

DISPUTE:

Claim of four hundred and thirty miles at pro rata rate in favour of C. Morden, when leased operator performed work normally performed by driver.

EMPLOYEES'S STATEMENT OF ISSUE:

On September 19th, 1976, J & T Trucking, a leased operator, brought a load into Calgary.

Letter of Understanding of July 21st, 1976, states in part - "Will you please ensure that brokers are only used when our own equipment or employees are not available."

The Union contend men and equipment were available.

The Company did not agree.

FOR THE EMPLOYEE:

(SGD.) R. WELCH
SYSTEM GENERAL CHAIRMAN

There appeared on behalf of the Company:

C. C. Baker - Director of Labour Relations & Personnel,CP Transport, Van.
D. Cardi - Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

R. Welch - System General Chairman, B.R.A.C., Vancouver
R. C. Smith - National Vice President, " Montreal

AWARD OF THE ARBITRATOR

This case involves the "contracting-out" of certain work by the Company. The Company did in fact use the services of a contractor to pull a loaded CP Transport trailer into Calgary on September 19, 1976. It is the Union's contention that this would constitute a violation of the collective agreement unless it were the case that Company equipment or drivers were not available.

There is no provision in the collective agreement as such which deals with the matter of contracting-out. The Union relies, however, on a letter, issued by the Company immediately or shortly before the signing of the collective agreement and without which, in the Union's contention, the collective agreement would not have been signed. This letter, which is in the form of internal Company correspondence, involves a directive that "brokers are only used when our own equipment or employees are not available". This letter does not appear to be an agreement between the parties, although it may have been issued as a result of such agreement. lt is not referred to in the collective agreement. There is, then, a serious question as to the status of the letter, and in particular whether it can be relied on as having the force of a provision of a collective agreement.

ln my view, it is not necessary to make a final determination of that question in this case. Even assuming that the letter may be relied on in these proceedings as having the force of a collective agreement provision, the letter at most restricts the use of contractors where Company equipment or employees are not available. ln the instant case, while there were equipment and employees available in Calgary, Calgary was the destination of the load in question and it would have been necessary to send men and equipment out some 215 miles to meet the leased operator and return with the load. There was no eastbound movement from Calgary until the following day. ln these circumstances, I do not consider that the Company's equipment or employees were "available". Thus, there was no violation of the undertaking set out in the letter, whatever its status.

For the foregoing reasons, the grievance must be dismissed.

J. F. W. WEATHERILL
ARBITRATOR