

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1115

Heard at Montreal, Tuesday, July 5, 1983

Concerning

CANADIAN NATIONAL RAILWAY COMPANY
(CN Rail Division)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Contracting out of the renovations at the CN Station at North Battleford, Saskatchewan.

JOINT STATEMENT OF ISSUE:

The Company required certain renovations to be carried out at the CN Station at North Battleford, Saskatchewan and allowed Greyhound Bus Company, the user of the space, to contract out the work.

The Brotherhood contends that the Company violated the letter dated March 5, 1982, concerning the contracting out of work when the renovations of the CN Station at North Battleford, Saskatchewan were contracted out.

The Company disagreed with the Brotherhood's contention.

FOR THE BROTHERHOOD:

(SGD.) A. F. CURRIE
System Federation General
Chairman.

FOR THE COMPANY:

(SGD.) D. C. FRALEIGH
Assistant Vice-President
Labour Relations.

There appeared on behalf of the Company:

P. E. Scheerle	- System Labour Relations Officer, CNR, Montreal
J. A. Cameron	- Manager Labour Relations, CNR, Montreal
T. D. Ferens	- System Labour Relations Officer, CNR, Montreal
D. A. Skelly	- Employee Relations Officer, CNR, Winnipeg

And on behalf of the Brotherhood:

A. F. Currie	- System Federation General Chairman, BMW, Winnipeg
F. L. Stoppler	- Vice-President, BMW, Ottawa

AWARD OF THE ARBITRATOR

The material portions of the letter governing contracting-out are as follows:-

"In accordance with the provisions as set out on Page 49 of the above-mentioned award, it is agreed that work presently and normally performed by employees represented by the Associated Non-Operating Railway Unions signatory to the Memorandum of Settlement dated March 5, 1982, will not be contracted out except:

1. when technical or managerial skills are not available from within the Railway; or
- "2. where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
3. when essential equipment or facilities are not available and cannot be made available from Railway-owned property at the time and place required; or
4. where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; or
5. the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
6. where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

Where a Union contends that the Railway has contracted out work contrary to the foregoing and this results in an employee being unable to hold work, the Union may progress a grievance in respect of such employee by using the grievance procedure which would apply if this were a grievance under the Collective Agreement. Such grievance shall commence at (*), the union officer submitting the facts on which the Union relies to support its contention. Any such grievance must be submitted within 30 days from the alleged non-compliance."

The work in question was generally of a sort "presently and normally performed by employees" in the bargaining unit. The contracting-out, however, did not affect the rights of employees on the "seniority territory", that is the Saskatchewan Area, in which the work was performed, because such persons were fully employed, and thus not "unable to hold work" at the material times, so that no right of grievance arose with respect to such employees under the provisions of the contracting-out letter. Had there been such employees on layoff in that area at the time, it would be my view that their

grievance should succeed, other things being equal.

It is contended that the contracting-out did affect employees elsewhere in the Prairie Region, although not in the Saskatchewan area, since there were a number of qualified employees at Winnipeg who were laid off at the material times (although they were recalled prior to the completion of the work in question). If such persons were otherwise entitled to perform the work in question, then their continuing to be laid off while the work was contracted-out meant, in my view, that they were "unable to hold work" as a result, and that they would have the right to grieve.

In fact, on the material before me, most of the employees laid off at Winnipeg were not in the classification and did not have the skills required for the work in question. Such persons, then, would not have been assigned to the work in any event, as not being within one of the classifications of employees who normally perform the work.

It may be that some of those on layoff at Winnipeg did have the qualifications and would have been entitled to the work had they been in the Saskatchewan Area. (There is no evidence in respect of any particular employee.) Rights to work, however, are exercised in respect of seniority territories, and it is only where displacement rights within a territory have been exhausted that displacement may occur on a regional basis. There is no general right to assignment on a regional basis. In the instant case, it has not been shown that any of the grievors could in fact be said to have been unable to hold work because of the contracting-out in question.

It was also contended that the Company had not discussed this matter with the Union at the beginning of the year, as the contracting-out letter contemplates. At that time, however, the Company had no plans in respect of the work in question, and there cannot be said to have been any violation of the letter in the circumstances.

For the foregoing reasons, the grievance is dismissed.

J. F. W. WEATHERILL,
ARBITRATOR.