

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1178

Heard at Montreal, Wednesday, January 11, 1984  
Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)  
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim of the Union that the Company violated Wage Agreement No. 41 and the letter on contracting out dated March 5, 1982, when it permitted outside forces to repair the Columbia Street crossing in Vancouver, B.C. rather than employ track forces from the Port Moody and Coquitlam Sections on an overtime basis. Claim is for overtime at their respective rates of pay for 12 hours on February 26, 1983, and 11 hours on February 27, 1983, for six employees on the Coquitlam Section and four employees on the Port Moody Section (names are appended).

PORT MOODY SECTION

B. S. Girewal  
A. S. Chima  
G. S. Saran  
S. S. Sangha

COQUITLAM SECTION

G. S. Gill  
P. S. Gill  
A. S. Deol  
K. S. Bal  
T. S. Mann  
S. Digiacomo

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. The Company had qualified employees available from the Port Moody and Coquitlam Sections to perform this work.
2. No notice was given to contract work to outside forces as required by Appendix B-12, Wage Agreement 41 and, therefore, the grievance procedure outlined in B-12 is not applicable.
3. The Company violated Section 7.1 and Understanding No. 2 of Wage Agreement 41.
4. The six employees from Coquitlam Section and four employees from Port Moody Section be compensated at overtime rates of pay for 12 hours on February 26, 1983, and 11 hours on February 27, 1983.

The Company contends that the contracting out was in accordance with Wage Agreement No. 41 and the letter on Contracting-Out dated March 5, 1982, as contained in Appendix B-12. The Company also contends

that none of the 10 grievors were unable to hold work as a result of the contracting-out which took place on February 26 and 27, 1983, therefore, pursuant to the final paragraph of the letter on Contracting-Out, there is no grievance under the terms of the Collective Agreement and the dispute is not arbitrable. The Company further contends that even if the dispute were determined to be arbitrable, the exceptions to the letter on Contracting-Out, Appendix B-12, Wage Agreement No. 41, apply, and therefore, the Company declines the Union's contention and denies payment.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

?(SGD) H. J. THIESSEN  
System Federation  
General Chairman

(SGD.) L. A. HILL  
General Manager,  
Operation and Maintenance.

There appeared on behalf of the Company:

F. R. Shreenan - Asst. Supervisor, Labour Relations, CPR,  
Vancouver  
P. E. Timpson - Labour Relations Officer, CPR, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen - System Federation General Chairman, BMW, Ottawa  
L. DiMassimo - Federation General Chairman, BMW, Montreal  
R. Gaudreau - Vice-President, BMW, Ottawa  
G. Valence - General Chairman, BMW, Sherbrooke  
E. J. Smith - General Chairman, BMW, London

#### AWARD OF THE ARBITRATOR

In this case the trade union grieves under Article 7.1 of the collective agreement and the Letter of Contracting Out dated March 5, 1982 that the six named grievors were improperly denied the opportunity to work overtime owing to the company's decision to contract out the work in question.

The contracted work in issue involved the break-up and removal of existing pavement on a public railway crossing located at Colur Street in Vancouver, B.C. Apparently the repair work was occasioned by a request made by the City of Vancouver on February 23, 1983, in anticipation of the visit of Her Majesty The Queen who was scheduled the following week to pass over the crossing on her route through the City. The work was scheduled to be performed on the week-end of February 26 and 27.

The company because of the emergency situation caused by the immediate deadline for the completion of the work and its lack of proper equipment and machinery to perform the work felt compelled to engage a contractor. In this regard only that portion of the work involving improvements to the railway crossing were contracted out. Employees who were required to perform "required lifting and rehabilitation of the track east and west of the crossing" were

called into work on an overtime basis. These employees worked alongside the contractor while using the company's machinery to perform the work assigned specifically to them.

The company argued that the grievances were not arbitrable because the said contracted work did not directly result in an employee "being unable to hold work". In this regard the company relied upon C.R.O Case 1004 which reads as follows:

"...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 . . .

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". (Emphasis added)."

In any event the company submitted that work in question and was exempted by items (3) and (5) of the Letter of Contracting Out from the requirement that it be assigned to bargaining unit employees.

In light of the trade union's failure to convince me that the precedent referred in C.R.O.A. Case 1004 is distinguishable or otherwise at variance from the facts described in these particular circumstances, I can find no reason to depart from its reasoning. The grievance therefore is not arbitrable.

Moreover, even if the issue was arbitrable the company has convinced me that owing to the early deadline for the completion of the work and the unavailability of the machinery necessary to complete the work, contracting out was warranted by reason of the exemptions in the letter of contracting out.

The grievance is denied.

DAVID H. KATES,  
ARBITRATOR.