CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1694

Heard at Montreal, Tuesday, October 13, 1987

Concerning

VIA RAIL CANADA

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT and GENERAL WORKERS

DISPUTE:

Contracting out of work formerly performed by CN employees at Brantford and Stratford.

JOINT STATEMENT OF ISSUE:

On May 9, 1986, CN and Via Rail Canada Inc. issued a joint notice to the Brotherhood under Article "J" of the 1985 Special Agreement concerning the abolishment of a number of positions at various locations, including that of Janitor at Brantford and Labourer at Stratford, as a result of VIA assuming responsibility of passenger station buildings.

At the time of the transfer of the stations at Brantford and Stratford, the employees concerned were involved in maintenance activities related to both VIA and CN operations.

The Corporation did not establish similar positions at these locations on the basis that its maintenance requirements were less than four hours per day and elected to contract out such work to an outside party.

The Brotherhood claims that the contracting out of this transferred work is contrary to Appendix "C" of Agreement No. 1.

The Corporation contends that its action did not constitute a violation of Appendix "C".

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. McGRATH	(SGD.)A. D. ANDREW
National Vice-President	Director, Labour Relations

There appeared on behalf of the Company:

M. St-Jules	Manager, Labour Relations, Montreal
R. Klimczak	Manager, Human Resource, VIA Ontario
C. Pollock	Officer, Labour Relations, Montreal

W. Wilson Observer

And on behalf of the Brotherhood:

T. N. Stol Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

Appendix C to the Collective Agreement provides, in part, as follows:

> This has reference to the award of the Arbitrator, the Honourable Ememet M. Hall, Dated December 9, 1974, concerning the contracting out of work.
>
> 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 Brotherhood will not be contracted out except ...
>
> (4) where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; ...

The evidence establishes that in respect of both the Brantford and Stratford positions, what existed previously was one full job. In other words, under the employment of CN, the Janitor and Labourer, respectively, performed functions which were transferred into the hands of VIA Rail as well as a substantial number of functions which were retained by CN. While VIA Rail subsumed work previously performed by members of the Brotherhood under the employment of CN, the work in question was not that of its Bargaining Unit with VIA Rail Canada Inc. Most importantly, what VIA Rail inherited was a different job mix than had been administered by CN, and one which was considerably smaller in its content. It appears not disputed that in each location the total amount of work involved would occupy no more than approximately an hour and a half in each working day.

It is well established that the exception to the prohibition against contracting out described in Paragraph 4 of Appendix C operates "where some new or occasional venture is contemplated which would require, if the employer's own forces were to be used, some capital or operating expenditure beyond those of the existing operations and which would not be justified for the venture contemplated." (CROA Case No. 713, and see also CROA Case No. 1596)

It is common ground that the Corporation never before performed janitorial services of the kind which were contracted out in the instant case at Stratford and Brantford. In both locations, therefore it found itself involved in a "new venture", and concluded that the retaining of one complement position, whether on a half-day or full-day basis could not be economically justified. That

conclusion is amply justified by the objective realities. The Arbitrator is satisfied that the circumstances in which it found itself, and the conclusion which the Corporation arrived at, are well within the contemplation of Paragraph 4 of Appendix C to the Collective Agreement, and that in these circumstances the contracting out of the work in question is permissible. The circumstances in this case are to be distinguished from those in C.R.O.A. Case No. 1596 where it was found that the work of an entire bargaining unit position was contracted out.

For these reasons the grievance must be dismissed.

MICHEL G. PICHER
ARBITRATOR