CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1812

Heard at Montreal, Wednesday, 13 July 1988

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Contracting out of work Purchases & Materials at Union Station contrary to Appendix VII of Agreement 5.1.

BROTHERHOOD'S STATEMENT OF ISSUE:

Clearing of customs for shipments of U.S. smalls to and from U.S.A. by truck, rail or air was work presently and normally performed by employees represented by the C.B.R.T. & G.W. (5.1 Agreement). This work was contracted out to Federal Express and Purolater contrary to Appendix VIII of the 5.1 Agreement.

The Company claims that this matter was not processed in a timely fashion when processed by the Brotherhood in a letter dated November 30, 1987 at Step Three of the grievance procedure, whereby the employees were notified on May 29, 1987.

It is the Brotherhood's contention that the Company failed to advise the "Union Representatives" (Local Chairperson(s), Representative and Regional Vice-President) in writing of its intention to contract the above mentioned work out contrary to Appendix VIII. This matter was not brought to the attention of the "Union Representatives" until November 16, 1987 and is therefore timely.

It is the Brotherhood's request that the clearing of customs will continue to be performed by their members under the 5.1 Agreement and that any loss of wages or benefits be paid to employees who may have been adversely affected.

FOR THE BROTHERHOOD:

(SGD) TOM McGRATH
National Vice-President

There appeared on behalf of the Company:

S. F. McConville - Labour Relations Officer, Montreal
M. M. Boyle - Labour Relations Officer, Montreal
D. Devoe - Observer

And on behalf of the Brotherhood:

T. N. Stol - Regional Vice-President, Toronto
A. Cerilli - Regional Vice-President, Winnipeg
R. Storness-Bliss - Regional Vice-President, Vancouver

AWARD OF THE ARBITRATOR

The Brotherhood grieves the contracting out of work in the Purchases and Materials Department at Toronto. It is common ground that although the contracting out that is the subject of the grievance commenced in May of 1987, it was not brought to the attention of the Regional Vice-President of the Brotherhood until November 19, 1987. It is also common ground that under Appendix VIII of the Collective Agreement the Company is under an obligation to advise the Brotherhood, no later than January 31 of each year, of any contracting out which it plans. It must also advise the Brotherhood in writing no less than thirty days prior to any other contracting out which would have a material and adverse effect on employees. No notice of either kind was served on the Brotherhood in the instant case, the Company taking the position that there has been no material and adverse effect on employees. There is, however, no evidence with respect to whether the contracting out implemented in May of 1987 was in a sufficient planning stage in January of that year, as to bring it within the obligation of notice under Appendix VIII, notwithstanding that it might have no adverse effect on employees. Appendix VIII also provides that where the Brotherhood contends that the Company has contracted out work contrary to the provisions of the appendix, the Brotherhood is entitled to file a grievance commencing at the level of the Regional Vice-President "within thirty days from the alleged noncompliance".

It should appear self-evident that the parties intend the time limits within their Collective Agreement to operate fairly and rationally. Where it is disclosed that an employee or a union officer has no knowledge, nor any reasonable grounds for knowledge, that a violation of the collective agreement has occurred, it would appear entirely inconsistent with the intention of the parties to count the time established from the date of the violation of the agreement, and without any reference to the date at which the employee, or the Union as the case may be, knew or reasonably should have known of the violation of the agreement. A collective agreement is the repository of many rights, some vesting in individual employees, some in groups of employees, and others in the union itself. As a general matter, issues of work jurisdiction, including disputes with respect to the issue of contracting out, are presumptively issues of concern to a union. Individual employees who are transferred to other work and continue to pursue gainful employment without any loss of wages may have little reason to recognize or grieve an alleged contracting out inconsistent with the terms of their collective agreement. A union, on the other hand, whose interests naturally extend to the protection of its work jurisdiction and integrity of its bargaining unit, may have far more reason to assert a claim in such circumstances. In the Arbitrator's view that is reflected in part by the agreement of the parties in the language of Appendix VIII. They have specifically

agreed that contracting out is to be discussed at the Union level and that a contention that the Company has wrongfully contracted out work is to be progressed commencing at the level of the Regional Vice-President of the Brotherhood.

The issue then becomes whether in the instant case the Regional Vice-President of the Brotherhood knew or reasonably should have known of the contracting out which commenced in May of 1987. It is common ground that he was given no notice of that action by the Company, either in January, assuming that it was then being planned, or within the minimum delay of thirty days prior to its implementation in May. There is, moreover, nothing in the material before the Arbitrator to suggest that, prior to the filing of an individual complaint by an employee on November 16, 1987 addressed to the local chairman of the Brotherhood, any Union officer had any reason to know that the change in dispute had been implemented. In these circumstances I am satisfied that it would be inequitable to hold the Brotherhood to a thirty day time limit calculated from the implementation of the contracting out in May of 1987. Put differently, I am satisfied that by necessary implication, through the language of Appendix VIII of the Collective Agreement, the parties would have intended, as an understood term, that the thirty day time limit provided within Appendix VIII must be calculated from the date on which the Brotherhood knows, or reasonably should know, the events which are the basis of the alleged noncompliance. To conclude otherwise would mean that a party violating the agreement could escape liability by fraud or subterfuge, concealing its actions for the duration of the time limit for grievances. It should be stressed that no such intention is alleged or disclosed here. I am not prepared to conclude, however, that the parties to this agreement intended their contract to allow the possibiliy of such a result. Indeed, the Company's arguments were to the contrary.

For the purposes of clarity, it should be emphasized that none of the Arbitrator's observations should be construed as bearing on the merits, to be argued later, of whether there has been a contracting out with a material and adverse effect on employees within the meaning of Appendix VIII of the Collective Agreement. For the foregoing reasons the preliminary objection of the Company with respect to the timeliness of this grievance must be dismissed. The grievance shall therefore be re-listed for a hearing on its merits.

July 15, 1988 (SGD) MICHEL G. PICHER
ARBITRATOR