CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1910

Heard at Montreal, Wednesday, 12 April 1989

Concerning

ONTARIO NORTHLAND RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Union claims that work normally performed by their members was awarded to the Brotherhood of Railway Carmen.

JOINT STATEMENT OF ISSUE:

On June 27, 1988, it was brought to the attention of the Union that the Car Department personnel were performing the task of rebanding carloads of lumber that had shifted or broken bands in transit.

The Union contends that this rebanding of loads has always been the responsibility of the C.B.R.T. and G.W. claiming that the Company violated Article 2.6 of the Collective Agreement.

A resolution was not achieved in the grievance procedure.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) M. PITCHER	(SGD) P.A. DYMENT
Representative	General Manager

There appeared on behalf of the Company:
M. Restoule - Labour Relations Offier, North Bay
D. Haggar - Superintendent, Train Operations, North Bay

And on behalf of the Brotherhood:
M. Pitcher - Representative, Toronto

AWARD OF THE ARBITRATOR

The position of the Brotherhood in the instant grievance is premised on the implicit assertion that it has exclusive jurisdiction over the work in dispute. While it is not disputed that for a number of years the rebanding of damaged loads of lumber was done by bargaining unit employees, I cannot conclude, on the basis of the material before me, that the job descriptions appearing in Article 2 of the Collective Agreement, relied upon in part by the Brotherhood, are intended as an agreed assignment of exclusive jurisdiction over the work so

described. Such a conclusion would, in my view, require clear and unequivocal language to that effect.

The descriptions in Article 2 are, in my view, intended to clarify the delineation of workers in the bargaining unit for the purposes of classification and wages. For example, the definition of clerical workers as employees who regularly devote not less than four hours per day to writing and calculating for the purposes of keeping records and similar work cannot easily be construed is intended to provide a clear definition of an area of exclusive work jurisdiction.

The second argument advanced by the Brotherhood is to the effect that the Company's action in assigning the rebanding work to carmen within its employment amounts to a contracting out in violation of the prohibition against contracting out contained within the appendices of the Collective Agreement. With this submission I cannot agree. Contracting out is well understood to generally involve the assignment of work to the employees of another employer. That is, in the strictest terms, what occurred in CROA 713. In that case even though the contracting out was to a subsidiary of the employer, the arbitrator found that the prohibition had been violated. In the instant case the work in question which, as noted, has not been defined under the Collective Agreement as exclusively belonging to the Union, was reassigned to other employees of the Company. In the circumstances I can find no contracting out and, therefore, no violation of the prohibition against it found within the appendices of the Collective Agreement.

For these reasons the grievance must be dismissed.

April 14, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR