

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1948

Heard at Montreal, Thursday, 14 September 1989

Concerning

ONTARIO NORTHLAND RAILWAY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The contracting out of part of the cleaning work at the Englehart train station.

JOINT STATEMENT OF ISSUE:

When the new train station at Englehart, Ontario was open part of the cleaning work was contracted out.

The Brotherhood contends that this is in violation of the letter of May 22, 1985, concerning contracting out of work and hence a violation of the Collective Agreement

The Company maintains that the work contracted out is not in violation of the Collective Agreement nor of the letter of May 22, 1985.

FOR THE BROTHERHOOD:

FOR THE COMPANY:

(SGD) M. PITCHER
REPRESENTATIVE

(SGD) P. A. DYMENT
PRESIDENT & C.E.O.

There appeared on behalf of the Company:

M. Restoule	- Labour Relations Officer, North Bay
A. Telfour	- Manager, Customer Services & Bus Operations, North Bay

And on behalf of the Brotherhood:

M. Pitcher	- Representative, Toronto
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AWARD OF THE ARBITRATOR

The facts are not in dispute. The janitorial duties respecting the cleaning of the train station at Englehart, Ontario have at all material times, been normally and regularly performed by a bargaining unit member. Recently a new station was built which is slightly

larger, involving more area to be cleaned. It is common ground that a single full-time employee cannot handle the load, and that the extra work does not justify the creation of a new full-time position. The Company submits that in these circumstances it was justified in contracting out the part-time cleaning work in respect of the expanded space in the Englehart station.

The employer's rights with respect to contracting out, as well as the Brotherhood's protections, are described in the letter of March 5, 1982 contained within the Collective Agreement. It provides, in part, as follows:

This has reference to the award of the Arbitrator, the Honourable Emmett M. Hall, dated December 9, 1974, concerning the contracting out of work.

In accordance with the provisions 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 the 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.

The conditions set forth above will not apply in emergencies, to items normally obtained from manufacturers or suppliers nor to the performance of warranty work.

On the material before me I cannot but conclude that at the time of the contracting out the cleaning of the Englehart station was "work presently and normally performed by employees" within the bargaining

unit. The next question is whether the exceptions listed within the letter obtain in the circumstances. The only provision which might arguably be raised is sub-paragraph (4). In the Arbitrator's view, however, that provision can have no application in the instant case. If it could be shown that the use of a part-time bargaining unit employee would force the Company to absorb an exorbitant operating expenditure entirely out of keeping with the value of the services performed, the suggestion that this exception applies might be compelling. That is not the case, however. Putting the employer's case at its highest, and with the fullest understanding for its motives, the most that can be said is that it appears there is a marginal financial saving for the Company to utilize a contractor to provide part-time cleaning rather than to schedule a bargaining unit employee to work part-time for the same hours. That is not the kind of prejudice or dislocation to the employer contemplated in Paragraph 4. If it were otherwise, as the Brotherhood's representative suggests, it would be open to the Company to contract out, for example, all of the running trade work on a newly established rail line, or the maintenance work in a newly built shop whenever it is cheaper to do so. To so conclude would remove the protections of bargaining unit integrity clearly intended by the letter of March 5, 1982.

In the Arbitrator's view the instant case is closely analogous to that found in CROA 1812. The fact that the additional work in question amounts to something less than a single full-time job does not take the case outside the protections of the prohibition against contracting out, or place it within the exceptions to that general rule.

For the foregoing reasons the grievance is allowed. The Arbitrator finds and declares that the contracting out of the portion of the janitorial duties at the Englehart train station giving rise to this grievance is in contravention of the letter of March 5, 1982 which binds the parties. The Company is ordered to assign the work in question forthwith to the Brotherhood's membership, with any compensation in respect of dues and other adjustments as may be appropriate.

September 15, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR