CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1968

Heard at Montreal, Wednesday, 15 November 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Claim that the Company violated Appendix XVI of Agreement 10.1.

JOINT STATEMENT OF ISSUE:

During 1987, the Company relaid 58.1 miles of trackage on the Alliance Subdivision as part of a Grain Line Rehabilitation Program.

The used rail had to be dismantled, picked up and transported to the nearest siding where it was stockpiled in preparation for sale. This work was contracted out to M-4 Holdings and was performed between August 10 and December 17, 1987 inclusive.

The Union contends that the rail should have been picked up and dispersed by bargaining unit employees who have traditionally and historically performed this work.

The Company denies that it violated the Agreement by having the work contracted out to M-4 Holdings.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) G. SCHNEIDER	(SGD) W. W. WILSON
SYSTEM FEDERATION GENERAL CHAIRMAN	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

N. Dionne	- Labour Relations Officer, Montreal
D. C. St. Cyr	- Manager, Labour Relations, Montreal
D. L. Brodie	- Labour Relations Officer, Montreal
M. Benedetto	- Co-Ordinator, Engineering, Montreal
J. Huskins	- Technical Support Engineer, Saskatoon

And on behalf of the Brotherhood:

M. Gottheil	- Counsel, Ottawa
G. Schneider	- System Federation General Chairman, Winnipeg

AWARD OF THE ARBITRATOR

The material establishes, beyond substantial dispute, that the Company re-laid 58.1 miles of trackage on the Alliance Subdivision in furtherance of the Grain Line Rehabilitation Program. The dismantling and transportation of the used rail was subcontracted to M-4 Holdings Ltd., which performed the work between August 10 and December 17, 1987. It is common ground that during that period of time the Company did not have available manpower from either its laid off or active work force to perform the work in question. The position advanced by the Brotherhood is that the Company should have rescheduled the pick-up operation, perhaps to the beginning of the following work season, so that it could be assigned to bargaining unit members.

As a general matter it is the prerogative of the Company to schedule work. While its rights in that regard may be to some extent circumscribed by the terms of the Collective Agreement, the Arbitrator cannot conclude that in the circumstances of this case the Company was not entitled to expedite the pick up of the used rail on the Alliance Subdivision during the late summer and fall of 1987. It appears that the line was scheduled for the laying of additional ballast which could have interfered with the efficiency of removing the used rail. In all of the circumstances I am satisfied that the Company acted for valid business purposes and that the case falls within exception (3) of the Appendix XVI of the Collective Agreement which provides that contracting out is permitted

> "when essential equipment or facilities are not available and cannot be made available from railway-owned property at the time and place required;"

On that basis the grievance must be dismissed.

The Company further submitted that the work in question did not qualify as work "presently and normally" performed by members of the bargaining unit. Its argument in that regard is based on the Company's view that the Grain Line Rehabilitation Program was a separate and discreet project in respect of which it was entitled to revert to contracting out. With that submission the Arbitrator has some difficulty. As the material discloses, the track maintenance functions performed in respect of that program extended over a period of some eleven years, from 1977 to 1988. In a general sense, the removal of used rail is and always has been work presently and normally performed by members of the Brotherhood. It is, moreover, conceded that performing work year after year on the exceptional basis of paragraph 3 of Appendix XVI cannot, of itself, take work outside the concept of what is presently and normally performed by members of the bargaining unit. While, given the disposition of the grievance on the basis related above, it is not necessary for the Arbitrator to rule on this matter, I would have substantially more difficulty with the Company's position were it based solely on an assertion that rail removal of the type here under consideration was not presently and normally work of the bargaining unit.

Subject to these observations, for the reasons related above, the grievance must be dismissed.

November 17, 1989 (Sgd.) MICHEL G. PICHER
ARBITRATOR