CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1972

Heard at Montreal, Thursday, 16 November 1989

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

The alleged contracting out of work to Ideal Container Limited at Montreal.

JOINT STATEMENT OF ISSUE:

On August 6, 1986, a flat car loaded with lumber arrived at Montreal and was spotted at Ideal Container Limited's trackage. Ideal Container Limited transhipped the carload on to a flatbed trailer and delivered the load to General Forest Products.

The Brotherhood contends that the Company has violated Appendix VIII of Agreement 5.1 by contracting out work normally performed by their members to Ideal Containers Limited.

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) TOM McGRATH	(SGD) W. W. WILSON
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT LABOUR RELATIONS

There appeared on behalf of the Company:

S. Grou	- Labour Relations, Officer, Montreal
M. M. Boyle	- Manager, Labour Relations, Montreal
D. Meekin	- Labour Relations Officer, Montreal
G. St. Arnaud	- Manager, Intermodal Operations, Montreal

And on behalf of the Brotherhood:

G. Ct	- Representative, Montreal
R. Moreau	- Regional Vice-President, Montreal
R. mard	- Local Chairman, Montreal

AWARD OF THE ARBITRATOR

The material establishes to the satisfaction of the Arbitrator that no contracting out is disclosed in the specific circumstances of this case. It is common ground that on July 22, 1986 Westar Timber Ltd. contracted with the Company to move a carload of lumber from Engen, British Columbia to General Forest Products, c/o Ideal Containers Ltd., at Point St. Charles, Quebec. The shipment was by bulkhead flat car, and was not transported through Intermodal Services. It arrived on August 5, 1986 at Point St. Charles. At that time Ideal Containers Ltd. instructed the Company to spot the flat bed car for unloading on Ideal's team track at Point St. Charles. The material further discloses that thereafter Ideal Containers Ltd. transshipped the carload of lumber onto a Company semi-trailer and delivered it to General Forest Products in Cote St. Catharine, Quebec.

In the circumstances the Arbitrator must fully agree with the position of the Company that no contracting out is disclosed. There is no privity of contract as between the Company and Ideal Containers Ltd. for any material purpose. The Company contracted with the shipper to transport the goods to Point St. Charles where they were to be delivered to Ideal Containers Ltd. for forwarding to the ultimate receiver of the goods, General Forest Products. The movement of the lumber from the team track leased by Ideal Containers Ltd. to its final destination was not work performed by or in any way on behalf of the Company. The employer's obligation ceased entirely at the point of transfer of the goods to Ideal Containers Ltd. at the Point St. Charles Yard. Moreover, the fact that a Company trailer was used by Ideal for transshipment is of no material consequence. It is not disputed that both CN trailers and trailers belonging to Ideal Containers, as well as other carriers, are used interchangeably by reciprocal understanding among these and other companies. Even if it were established, which it is not, that the Company's trailer was leased by Ideal Containers, there is substantial doubt that that would of itself disclose a contracting out.

As part of its submission to the Arbitrator the Brotherhood has filed material suggesting that there has been a substantial degree of contracting out in respect of Intermodal Services. That is plainly not an issue falling within the purview of the joint statement of issue in this case. As Article 12 of the rules of procedure of this Office clearly states,

The decision of the Arbitrator shall be limited to the disputes or questions contained in the joint statement submitted to him by the parties ...

The issue of contracting out of Intermodal Services is plainly not before me, and cannot be dealt with in the context of this grievance. For the purposes of clarity, the outcome of this award should in no way be construed as a comment on the merits of any practice in respect of Intermodal Services.

For the foregoing reasons the Arbitrator must conclude that there is no evidence of the Company having contracted out services of any kind in the instant case. For these reasons the grievance is dismissed.

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