

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2146

Heard at Montreal, Wednesday, 15 May 1991

concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Contracting out of snow removal and sanding and salting in Toronto Yard, Toronto Division.

BROTHERHOOD'S STATEMENT OF ISSUE:

In December 1989, a contractor, Timber Brothers Sand & Gravel, commenced work in Toronto Yard, removing snow and doing sanding and salting duties. The Company has the qualified employees and the essential equipment (speedswing with snow bucket), required to perform this work.

The Union contends the Company violated Section 31 of Wage Agreement No. 41, by contracting out bargaining unit work, by not including this contract in the Company's plans with respect to contracting out of work for that year, and by not serving notice of the Company's intention in this regard. The Union further contends that the Company equipment (speedswing with snow bucket attachment), is the proper equipment for snow removal and could remove snow and spread sand and salt just as efficiently as the equipment used by the contractor.

Furthermore, this has been work normally performed by Maintenance of Way employees in previous years, and should continue to be performed by these employees.

The Union requests that Mr. D.T. Rashotte be compensated an amount equal to all hours worked by the contractor during the duration of this contract.

The Company denies the Union's contentions and declines payment.

FOR THE BROTHERHOOD:

(SGD.) L. M. DiMASSIMO  
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

R. P. Egan

-- Assistant Supervisor, Labour

D. Cook                      Relations, Toronto  
-- Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

L. DiMassimo	-- System Federation General Chairman, Ottawa
R. Della Serra	-- General Chairman, Montreal

-- System Federation General Chairman,  
Ottawa

R. Della Serra -- General Chairman, Montreal

## AWARD OF THE ARBITRATOR

The material before the Arbitrator establishes that snow removal in Toronto Yard has been contracted out by the Company for over fifteen years. Bargaining unit employees have been utilized on occasion, in heavy snowfalls, to supplement or assist the contractor. In these unique circumstances the Arbitrator is unable to conclude that at the time of the grievance the snow removal at that location would fairly be described as "work presently and normally performed by employees" within the meaning of Section 31.1 of the collective agreement. In the Arbitrator's view the facts disclosed in the instant grievance are different from those which obtained in CROA 1966, where it was found that for over twenty years the Company had assigned the snow clearance work in the St. Luc Yard and Outremont Yard in Montreal to members of the bargaining unit. For reasons which it must best appreciate, the Brotherhood has not objected to the long standing contracting out of snow removal work at the Toronto Yard. In these circumstances it cannot, in my view, assert that that is work presently and normally performed by employees of the bargaining unit at the time immediately preceding the grievance.

For the foregoing reasons the grievance must be dismissed.

May 17, 1991 (Sgd.) MICHEL G. PICHER  
ARBITRATOR

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