CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2278
Heard at Montreal, Wednesday, 9 September 1992
concerning
ONTARIO NORTHLAND RAILWAY
and
TRANSPORTATION COMMUNICATIONS UNION
DISPUTE:
An alleged violation of the Letter of Agreement on contracting out of work.
JOINT STATEMENT OF ISSUE:
As part of a promotional endeavour by the Public Affairs Department, the Company enlisted the services of the Association for the Mentally Retarded to assemble various packages of promotional material.
The Transportation Communications (International) Union initiated a policy grievance contending that the project constituted contracting out of bargaining unit work.
The Company denies the Union's contention and maintains that no violation of the letter on contracting out of work occurred.
FOR THE UNION:
FOR THE COMPANY:
(SGD.) E. J. FOLEY
(SGD.) P. A. DYMENT
GENERAL CHAIRMAN
PRESIDENT
There appeared on behalf of the Company:
M. Restoule
Manager, Labour Relations, North Bay
And on behalf of the Union:
E. Foley
Executive Vice-President, North Bay
AWARD OF THE ARBITRATOR
It is common ground that the Company contracted out the work which is the subject of this grievance. For the grievance to succeed, the Union must establish a violation of the prohibitions against contracting out provided in the collective agreement. They are contained in a Letter of Understanding dated May 22, 1985, which reads, 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 as 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 May 22, 1985, 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 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.

The Letter of Memorandum goes on to provide for regular annual meetings between the Union and the Company to discuss the Company's plans for future contracting out, as well as an obligation on the part of the Company to give the Union not less than thirty days' notice of its intention to contract out work which would have a material and adverse effect on employees.

For the prohibition against contracting out to apply, it must be established that the work in question is ``... work presently and normally performed by employees represented by the [Union]''. The evidence before the Arbitrator establishes beyond controversy that the work in question consists of labelling and stuffing envelopes with promotional material to be mailed to the Company's potential customers. It appears that the Company' activities in this regard were undertaken in earnest in or about 1990, although promotional campaigns had been conducted on a much less systematic basis in prior years. It is common ground that prior to 1990 promotional materials were assembled for mailing by a number of employees, including bargaining unit members, non-scheduled clerical staff including secretaries and receptionists, as well as members of management. With the assignment of the work to the Association for the Mentally Retarded, which performs the assembling of promotional mail on its own premises on an ``assembly line'' basis, the volume of the activity rose substantially: in 1992 it is estimated that in excess of 20,000 pieces of promotional mail will be assembled in this fashion.

Can it be said that the work in question is work ``presently and normally performed'' by members of the bargaining unit? The Arbitrator has difficulty finding that the work fits that description. The fact that certain aspects of the work may have been performed by some bargaining unit members in the past does not, of itself, make it work in respect of which ownership can be asserted for the purposes of the prohibition against contracting out. Indeed, there is no provision in the collective agreement at hand which contains language which can be construed as specifying work ownership. As noted in CROA 1910, the mere reference to classifications or positions within the terms of the collective agreement is not, of itself, conclusive of the issue of exclusive work jurisdiction.

At its highest, the Union's case is that the work in question has traditionally been performed by a number of union and non-union employees, on a relatively occasional and sporadic basis. In the circumstances I am unable to conclude that it can fairly be characterized as work presently and normally performed by bargaining unit members for the purposes of the Letter of Understanding of May 22, 1985, which governs the limitation against the contracting out of bargaining unit work. For these reasons alone, the grievance cannot succeed.

Nor can the Arbitrator conclude, given the above finding, that the Company violated any obligation of notice to the Union. For the foregoing reasons the grievance must be dismissed.

September 11, 1992

(Sgd.) MICHEL G. PICHER

ARBITRATOR