CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2427

Heard in Montreal, Tuesday, 14 December 1993
concerning
CANADIAN NATIONAL RAILWAY COMPANY

and
CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT & GENERAL WORKERS

DISPUTE:

The contracting out of pick-up and delivery work at P&M Materials Distribution Centre at MacMillan Yard contrary to Appendix IV of the Master Agreement dated July 29, 1988.

JOINT STATEMENT OF ISSUE:

Prior to October 11, 1984, pick-up and delivery work was performed by CN Route, represented by the Canadian Brotherhood of Railway, Transport & General Workers.

On October 11, 1984, the Canada Labour Relations Board certified the IBT union to represent some CN Route blue collar employees in Ontario.

In December 1986, the Company sold Transport Route Canada (CN Route), after which it continued to operate until September 1988, when TRCI became insolvent.

Canadian National then proceeded to contract the work out to Canadian Pacific and, thereafter, Hendrie Transportation.

The Union contends that the Company violated Appendix IV of the Master Agreement dated July 29, 1988, or article 35 of agreement 5.1.

The Company denies any violation of agreement 5.1 or the above-cited Master Agreement.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) T. N. STOL	(SGD.) M. M. BOYLE
NATIONAL VICE-PRESIDENT	FOR: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

J. Watt - System Labour Relations Officer, Montreal
R. Paquette - Manager, Labour Relations, Montreal
J. B. Bart - Manager, Labour Relations, Montreal
L. Steeves - Observer

And on behalf of the Brotherhood:

R. J. Stevens - Regional Vice-President, Toronto

AWARD OF THE ARBITRATOR

The instant grievance alleges a violation of article 35.1 of the collective agreement. That article deals with contracting out and reads, in part, as follows:

> 35.1 Effective February 3, 1988, work presently and normally performed by employees who are subject not the provisions of this collective agreement will not be contracted out except:

The evidence before the Arbitrator is not disputed. While it is true that prior to October 11 of 1984 the work which is the

subject of this grievance was performed by members of the Brotherhood, the union lost its bargaining rights in respect of that work by an order of the Canada Labour Relations Board, following a representation vote, at least insofar as the blue collar work in Ontario is concerned. In that circumstance the Arbitrator has no alternative but to sustain the position argued by the Company, which is that, since at least October of 1984, the work in question could not be said to be "work presently and normally performed by employees who are subject to the provisions of this collective agreement" within the meaning of article 35.1 of the collective agreement.

It is significant in my view, that when the Brotherhood lost the bargaining rights it did so pursuant to an application before the Canada Labour Relations Board under section 133 (now section 35) of the Canada Labour Code in which it was successful in obtaining a ruling from the board to the effect that CN Express and Transport Route Canada Inc., incorporating seven trucking companies, constituted a single employer for the purposes of the Code. Logically, therefore, the bargaining rights which passed to the Teamsters' union from the Brotherhood are the same bargaining rights which the Brotherhood now seeks to assert in these proceedings. However, if they did not exist then, they cannot exist now. The subsequent sale of Transport Route Canada and its eventual insolvency cannot be said to have revived the bargaining rights which the Brotherhood had prior to 1984.

In the Arbitrator's view this is not a circumstance where the principle discussed in CROA 713, also referred to in CROA 1540, can assist the Brotherhood. Very simply, it cannot now assert bargaining rights which lawfully passed to another trade union, and claim that the work in question can be said to be presently and normally performed by its members.

For the foregoing reasons the grievance must be dismissed.

17 December 1993

MICHEL G. PICHER
ARBITRATOR