CANADIAN RAILWAY OFFICE OF ARBITRATION
CASE NO. 2520
Heard in Montreal, Tuesday, 13 September 1994
concerning
Canadian National Railway Company
and
Brotherhood of Maintenance of Way Employees
ex parte
DISPUTE:

Whether work performed by a B&B Gang on a Shawinigan bridge should have been performed by a B&S Gang.

Ex Parte STATEMENT OF ISSUE:

On or about September 20, 1990, B&B employees performed steel work on the Joliette Subdivision, mileage 49.6 in Shawinigan.

The Union contends that: 1.) Granting this work to a B&B Gang was in violation of article 34.3 of agreement 10.1. 2.) These employees had neither the qualifications nor the expertise to execute this work on the steel structure. 3.) This violation has materially and adversely affected B&S employees.

The Union requests that: On behalf of Messrs. C. Gauthier, J. Genest, R. Brière, J. Dontigny and M.G. Martel, all regular time and all overtime performed for the work done at M.P. 49.6 be paid to the above.

The Company denies the Union's contentions and declined the Union's request.

FOR THE BROTHERHOOD:
(SGD.) R. A. Bowden
System Federation General Chairman

There appeared on behalf of the Company:
L. Lagacé – System Labour Relations Officer, Montreal
N. Dionne – Manager, System Labour Relations, Montreal
R. Morel – Supervisor, Structures, Quebec
K. Laviolette – Project Officer, Montreal

And on behalf of the Brotherhood:
D. Peterson – Counsel, Ottawa
D. Brown – Senior Counsel, Ottawa
A. Trudel – General Chairman, Montreal
R. Phillips – General Chairman,

AWARD OF THE ARBITRATOR

The instant grievance turns of the application of article 34.3 of Collective Agreement 10.1 which provides as follows:

34.3 Except in cases of emergency or temporary urgency, employees outside of the maintenance of way service shall not do work which properly belongs to the maintenance of way department, nor will maintenance of way employees be required to do any work except such as pertains to his division or department of maintenance of way service.

The work which is the subject of this dispute concerns the reconstruction of a road bridge over a portion of the Company's track on the Joliette Subdivision in Shawinigan, Quebec. The bridge, designed to carry local traffic across the railway was originally a wooden structure. The Company assigned a B&B gang to perform part of the work, including the demolition of the original wooden structure. The phases of the project included dismantling the bridge, installing H-piles, installing casing and

armature, pouring concrete, installing steel stringers and bed plates, installing a laminated wood deck, as well as rail guards, the bracing of the H-piles and paving of the bridge. It is common ground that the installation of the H-piles was contracted out and that that work took some two weeks to complete. The balance of the work was performed by the B&B gang assigned by the Company. The Company submits that of the tasks in question only the installation of the stringers and bed plates and the bracing of the H-piles could be characterized as work generally performed by steel bridge workers. It submits that the majority of the work in question, including such functions as dismantling the wooden bridge, installing casing and armature, pouring concrete, and the decking and paving work is well within the normal assignment of tasks made to B&B employees. By way of prior example, the Company points to the reconstruction of a wood bridge, in a very similar manner, in Truro, Nova Scotia in 1991, apparently without objection from the Brotherhood.

The Brotherhood submits that the work in question should have been assigned to a steel bridge gang belonging to the B&S Department, rather than to a gang of the B&B Department. Its counsel argues that the test for the purposes of article 34.3 is not whether the work in question is exclusive to the B&S Department, but whether it “pertains to” or is in the sense of “being appropriate to” the B&S Department. As part of its submission it argues that the type of work performed in the case at hand has not historically been done by the B&B Department.

The evidence before the Arbitrator raises some question as to the general assertion made by the Brotherhood. Bearing in mind that the Brotherhood bears the burden of proof, there are substantial questions raised in the documentary evidence before the Arbitrator to the kind of work done by B&B gangs. A letter from the Structures Supervisor, Moncton East, suggests that the entire rebuilding of bridges, including driving steel piles, forming concrete caps, pouring concrete, installing seats and placing the steel span bridges and anchor pins has frequently been performed by B&B forces, without any apparent grievances. Further documentation would indicate that while, as a general rule, steel work in relation to the construction of bridges is assigned to steel bridge workers of the B&S Department, there have been occasions where B&B forces have performed work in the erection and welding of structural steel, at least on modest scale projects where such work is incidental to their own regular assignments.

It was not argued by the Brotherhood that B&B forces are not properly assignable to the construction of new structures, or that their work must necessarily be limited to partial repairs or maintenance. Indeed, the claim is restricted to the steel structure work in the case at hand, which is a relatively small proportion of the work involved.

When regard is had to the language of article 34.3, the Arbitrator must accept that the final proviso contained within that article was intended to have some meaning. I find it difficult to reject the assertion of the Brotherhood that, prima facie, steel work in the erection of new steel bridge structures is work which pertains to the normal duties and responsibilities of the B&S Department. Neither does the citing of the example of a single bridge in Atlantic Canada establish a consistent

practice so as to support the Company's interpretation.

The grievance is questioned by the Company, on the basis that the work was, in any event, performed by union members, and that no steel bridge employees lost work or were on lay off at the time. Be that as it may, I must take the collective agreement as I find it. For reasons which they must best appreciate, the parties have inserted into the jurisdictional work protection article of their collective agreement language which acknowledges that employees of one department are not to be required to do work which pertains to that of another department. It may be that, as a practical matter, in circumstances such as this exceptions and waivers might be negotiated with the Brotherhood. In the case at hand, however, it is difficult to escape the conclusion that the work in relation to a new bridge which involves a significant amount of structural steel work must be said to be work pertaining to the Bridges & Structures Department. In the circumstances, as relates to the steel work, a violation of article 34.3 of the collective agreement is disclosed.

It is less than clear to the Arbitrator that the course of action followed by the Company occasioned a loss of wages or other benefits to the grievors, who were employed elsewhere at the time of the project in question. The matter of compensation, however, must be distinguished from the merits of the grievance, with respect to the application of the provisions of article 34.3. It is also a matter of which I can and will remain seized.

For the foregoing reasons the Arbitrator finds and declares that the Company violated article 34.3 of the collective agreement by failing to assign the installation of stringers and bed plates and the bracing of H-piles to steel bridge workers of the B&S Department, as contemplated by that article. The matter of compensation owing, if any, may be spoken to if necessary.

16 September 1994(sgd.) MICHEL G. PICHER
ARBITRATOR