

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 176

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN PACIFIC LIMITED

and

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

DISPUTE:

Brotherhood claim violation of the working agreement in that work normally performed by employees covered by agreement, Rule 1, (Linen and Equipment Handlers), now being performed by employees of Rosedale Cleaners Ltd., Calgary, not covered by the Clerks' agreement.

JOINT STATEMENT OF ISSUE:

On January 27th, 1969, the Company issued a bulletin, # D.C.S.-10 over the signature of Mr. W.L. Greenway, Superintendent, SD&PC Department, that states in part "Effective February 1st, the Department's Calgary agency will close. Mr. W.J. Stewart will be assigned to new duties at that point and the linen room operation will be discontinued. Linen for trains will be handled by the "Rosedale Cleaners Ltd." and station staff.

FOR THE EMPLOYEES:

(SGD.) R. WELCH
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) THOS. P. JAMES
MANAGER, PASSENGER SERVICES

There appeared on behalf of the Company:

D. Cardi – Labour Relations Assistant, Montreal
J. W. Moffatt – General Superintendent, Passenger Operations, Montreal

And on behalf of the Brotherhood:

R. Welch – General Chairman, Vancouver
F. Mazur – Vice-General Chairman, Port Arthur,
W. C. Y. McGregor – International Vice-President, Montreal

AWARD OF THE ARBITRATOR

The company contracted-out certain work which had until then been performed by employees within the bargaining unit. There is no doubt that the duties formerly performed by Linen and Equipment Checkers at Calgary are now performed by employees of a sub-contractor.

The matter of contracting-out has been dealt with in many arbitration cases, and reference is made particularly to **Case No. 138** and **Case No. 151** in the Canadian Railway Office of Arbitration. In the instant case the union relies particularly on Rule 1 of the collective agreement, the scope clause, which provides that the collective agreement governs the employment and compensation of employees in the classifications set forth in the Rule, and which include Linen and Equipment Checkers. A similar argument was raised in **Case No. 138**, where the union relied upon the scope clause and the reasoning in that case applies equally to this.

It must be noted that the persons now performing the work in question are not employees of the railroad, but are employees of the sub-contractor, Rosedale Cleaners Ltd. This distinguishes this case from the **De Havilland case**, 10 L.A.C. 90, relied on by the union. In that case the company assigned certain work which had been performed by employees in one bargaining unit, to employees in another bargaining unit. The company continued to have its employees perform the same job, and it was held, in effect, that the same collective agreement governed. That is not the case here. No other provision of the agreement has been suggested as having the effect of prohibiting contracting-out. The great bulk of arbitration cases have held that any such prohibition must be explicitly set out in the collective agreement. There is no such provision in this case, and the grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR