CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 182

Heard at Montreal, Tuesday, October 14th, 1969

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of Motorman S. Estabrook, Saint John, N.B., to overtime work on his assigned rest day, January 11, 1969.

JOINT STATEMENT OF ISSUE:

On Saturday, January 11, 1969, Cullinan's Transfer was hired by the Company's Perishable Plant Supervisor to transfer charcoal heaters from West Saint John, N.B., to Saint John, N.B. The Brotherhood contends that the Company should not have contracted out this work and Mr. Estabrook, who was on his rest day, should have been called for this work in accordance with Article 4.13 of Agreement 5.1.

The Company has declined the claim.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) J. A. PELLETIER	(SGD.) K. L. CRUMP
EXECUTIVE VICE-PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

D. O. McGrath	– Labour Relations Assistant, Montreal
O. W. McNamara	– Labour Relations Assistant, Montreal

And on behalf of the Brotherhood:

J. A. Pelletier	– Executive Vice-President, Montreal
L. K. Abbott	– Regional Vice-President, Moncton
W. Vance	– Representative, Moncton

AWARD OF THE ARBITRATOR

The collective agreement contains no express provision against contracting-out.

Article 4.13 of the agreement, relied on by the union, is as follows:

> **4.13** Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee who would otherwise not have forty (40) hours of work that week; in all other cases by the regular employee.

In the instant case, work, of a sort regularly performed by the company through the agency of the grievor, was required to be performed. It was not part of any assignment. Under article 4.13, then, the company could have assigned the work to an available extra or unassigned employee who would otherwise not have had forty hours of work that week. The company did not do so, nor did it assign the work to the regular employee, who was the grievor. Instead, it contracted the work out as described in the joint statement of issue.

The matter of contracting-out has been dealt with in many arbitration awards, and reference is made particularly to **Case No. 138 and Case No. 151**. The union seeks to distinguish **Case No. 138** on the ground that the work there had "previously" been performed by employees in the bargaining unit, whereas in this case the grievor has continued to perform this work on his regular assignment. In either case, the question is whether there is any prohibition against contracting-out in the collective agreement. The difference in facts between the two cases does not appear to me to be significant, and not to affect the application of the reasoning there set out.

Of greater import, perhaps, is the award in **Case No. 151**, where the union relied upon a provision identical to article 4.13. The reasoning in that case applies equally to this. In my view, article 4.13 cannot be read as a prohibition of contracting-out.

Accordingly the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR