

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 704

Heard at Montreal, Tuesday, April 10th, 1979

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

CN Express Division using Federal Commerce and Navigation Co. for handling traffic by ships from Moncton, N.B. and Halifax, N.S. to St. John's, Nfld. direct from Halifax.

JOINT STATEMENT OF ISSUE:

Until the early part of November 1978, CN Express traffic was being handled over the highway to North Sydney, then by ferry across the Cabot Strait to Port aux Basques and over the highway to St. John's.

Effective in early November 1978, most traffic between Moncton, Halifax and St. John's is being handled directly from Halifax to St. John's, by a new water service introduced by the Federal Commerce and Navigation Co.

The Brotherhood alleges that this is in violation of Appendix "B" of the Master Agreement signed at Montreal, P.Q. on April 28, 1978, concerning the contracting out of work.

FOR THE EMPLOYEES:

(SGD.) J. D. HUNTER

NATIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) S. T. COOKE

ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

G. A. Carra	– Assistant Director, Employee Relations, Montreal
C. L. LaRoche	– System Labour Relations Officer, Montreal
R. W. Armstrong	– Manager, Express Operations, Moncton
G. H. Ayer	– Manager, Employee Relations, Moncton
R. O. Waterson	– Manager Transportation, Montreal

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice President, Moncton
W. C. Vance	– Representative, Moncton

AWARD OF THE ARBITRATOR

Appendix "B" to the Master Agreement is 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 in the period to December 31, 1978, work presently and normally performed by employees represented by the Associated Non-Operating Railway Unions and the Railway Employees' Department, Division No. 4 signatory to the Memorandum of Settlement dated February 21, 1978, 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 the 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.

It is further agreed that at a mutually convenient time at the beginning of each year representatives of the Union will meet with the designated officers to discuss the Company's plans with respect to contracting out of work for that year.

In addition, the Company will advise the Union representatives involved, in writing, as far in advance as is practicable of its intention to contract out work which would have a material and adverse effect on employees.

Such advice will contain a description of the work to be contracted out; the anticipated duration; the reasons for contracting out and, if possible, the date the contract is to commence. If the General Chairman, or equivalent, requests a meeting to discuss matters relating to the contracting out of work specified in the above notice, the appropriate Company representative will promptly meet with him for that purpose.

Should a General Chairman, or equivalent, request information respecting contracting out which has not been covered by a notice of intent, it will be supplied to him promptly. If he requests a meeting to discuss Such contracting, it will be arranged at a mutually acceptable time and place.

Where a Union contends that the Railway has contracted out work contrary to the foregoing and this results in an employee being unable to hold work, the Union may progress a grievance in respect of such employee by using the grievance procedure which would apply if this were a grievance under the collective agreement. Such grievance shall commence at (*), the union officer submitting the facts on which the Union relies to support its contention. Any such grievance must be submitted within 30 days from the alleged non-compliance.

In the instant case the Company changed the routing of some of its traffic between Moncton and St. John's and almost all its traffic between Halifax and St. John's, so that the bulk of that traffic is handled by ship from Halifax to St. John's, whereas all such traffic was formerly handled by ferry from North Sydney to Port aux Basques. The ferry was operated by the Company (or an associated Company). The ships on which the loads are now carried belong to another Company with which the Company has a contractual arrangement.

The Company continues to operate the ferry service between North Sydney and Port aux Basques. It continues to transport freight from Moncton and from Halifax to St. John's. It has, in effect, instituted a new service from Halifax (Dartmouth) to St. John's, which it has "contracted-out".

The work of operating the shipping service from Halifax to St. John's is not work which was "presently and normally performed by employees" within the meaning of Appendix "B". If the "contracting-out" referred to in this case is the transport of goods by water from North Sydney to Port aux Basques, then there has been no contracting-out. If, however, it should be referred to as the contracting out of the Maritime portion of the route from Moncton or from Halifax to St. John's, then there has been a contracting-out.

If this broader view of the matter be taken, and if there was indeed a contracting-out, then it would appear to come within exceptions (3) and (4) set out in Appendix "B": the Company does not have the vessels at its disposition to operate the run from Halifax (Dartmouth) to St. John's. The change in routing is certainly a matter within the scope of the Company's authority.

If, then, there should be said to have been a contracting-out in these circumstances it was one which was open to the Company under the terms of its agreement. Whether or not such arrangements are desirable in other respects is not a question over which I have any jurisdiction.

For the foregoing reasons, it must be my conclusion that there has been no violation of the agreement and that the grievance must be dismissed.

(signed) J.F.W. WEATHERILL
ARBITRATOR