CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 713

Heard at Montreal, Tuesday, July 10th , 1979

Concerning

ONTARIO NORTHLAND RAILWAY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The Union contends that the re-assignment of transport and express work at Kirkland Lake amongst employees represented by Teamsters' Union and employees represented by CBRT&GW constituted "contracting-out".

JOINT STATEMENT OF ISSUE:

On October 26, 1978 the Company gave notice under the Job Security Agreement that, as a result of a joint traffic study, a local agreement dated April 22, 1976 would be terminated and three CBRT&GW positions abolished on February 1, 1979. Certain transport and express work was reassigned to be handled on a pooled basis by Teamster and CBRT&GW employees effective February 1, 1979. The Union claims that this was "contracting-out" and a violation of Appendix "B" of the Master Agreement dated April 28, 1978. The Union requested that Mr. T. Feroli and Mr. P. McConnell be recalled and compensated for wages and benefits lost from February 1, 1979 until recall and furthermore, that the two operations, Star Transfer Ltd. and ONR Express Services be separated, whereby all ONR express work will be handled by ONR express employees (CBRT&GW) only; this to include all extended P&D services.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.). T. N. STOL	(SGD.) R. O. BEATTY
REPRESENTATIVE	ACTING GENERAL MANAGER

There appeared on behalf of the Company:

A. Rotondo	– Manager, Labour Relations, North Bay
J. E. Savill	– Manager Operations, Transport & Express Services, North Bay

And on behalf of the Brotherhood:

T. N. Stol	– Representative, Don Mills
R. Anderson	– Local Chairman, Englehart
D. Sasseville	– Local President, Kirkland Lake

AWARD OF THE ARBITRATOR

It is clear from the Joint Statement that the reassignment of the work in question on a "pooled" basis led to the lay-off of two members of the bargaining unit, and to an increased use of employees of Star Transport Ltd., in part at least for the performance of work which had formerly been done by members of the bargaining unit. Star Transport Ltd. is a subsidiary Company, and it may be that substantially (if not technically), the same "employer" is involved, but the work was assigned to persons represented by a different bargaining agent.

Appendix "B" to the Master Agreement dated April 28, l978, and which the Company agrees is binding on it for the purposes of this case, provides in part 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:
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> **(1)** When technical or managerial skills are not available from within the Railway; or
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> **(2)** where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
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> **(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
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> **(4)** where the nature of volume of the work is such that it does not justify the capital or operating expenditure involved; or
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> **(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.

In my view, what occurred was in fact a contracting-out of certain work which had normally been performed by members of the bargaining unit. That work was thereafter performed by others, members of another bargaining unit, employees at least technically, of another employer and represented by another bargaining agent.

It is clear too that the matter does not come within most of the exceptions set out in Appendix "B". There was no emergency or lack of employees or anything of the sort that would normally justify contracting-out where that is prohibited by a collective agreement. The Company argued, however, that if there was a contracting-out, it was because "the nature or volume of the work does not justify the capital or operating expenditures involved". That exception, in my view, does not apply in circumstances such as obtain in this case. What is contemplated by the exception is the situation where some new or occasional venture is contemplated which would require, if the employer's own forces were to be used, some capital or operating expenditure beyond those of the existing operations and which would not be justified for the venture contemplated. Here, however, the Company was simply moving the performance of current operations from one group of employees over to a different group of persons, employees of another Company which it controlled. There is no question of any substantial alteration in the Company's fleet of vehicles or its facilities. It would appear that by reason of the fact that its operations were carried out through two corporate entities, with two separate groups of employees represented by two bargaining agents the Company found itself in a situation which was difficult to resolve in terms of the "equitable" distribution of work and employment. This situation is one which may well have led to certain increased expenditures because, perhaps of its "irrationality" if that is not too strong a term. But it was not the sort of matter contemplated by Appendix "B" to the Master Agreement.

On the material before me, it is my conclusion that there has been a contracting-out contrary to Appendix "B", although I would add that I do not doubt that the Company has acted in good faith in its efforts to accommodate the interests of the two bargaining units. The problems that arise in such situations are not generally ones which are properly resolved or resolvable in arbitration proceedings of this sort. The issue before me is one of violation of a particular agreement affecting a particular bargaining unit. In these circumstances, it is my view that the relief sought by the Union (apart from redress for the two individual employees adversely affected) goes too far and should not be granted.

In allowing the grievance, therefore, my award is simply that Messrs. Feroli and McConnell be recalled to work (subject to seniority) and compensated for wages and benefits lost.

(signed) J. F. W. WEATHERILL
ARBITRATOR