# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 850

Heard at Montreal, Tuesday, July 14, 1981

Concerning

## CANADIAN PACIFIC EXPRESS COMPANY

and

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

## EX PARTE

### DISPUTE:

The cancellation of linehaul run between Sault Ste. Marie and Thunder Bay, Ontario, and contracted out the work to a broker.

### EMPLOYEES' STATEMENT OF ISSUE:

In the latter part of August 1980, a linehaul run between Sault Ste. Marie and Thunder Bay, Ontario, was cancelled and the work transferred to a private contractor.

The Brotherhood grieved the unilateral move on the grounds that the work is defined in Article 1.1, therefore, comes under the scope of our Agreement, and requested the position be reinstated immediately.

The Company refused the request.

### FOR THE EMPLOYEES:

**(SGD.) J. J. BOYCE**
**GENERAL CHAIRMAN**

There appeared on behalf of the Company:
D. R. Smith – Director Industrial Relations, Personnel and Administration, Toronto
B. D. Neill – Manager Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:
F. W. McNeely – General Secretary-Treasurer, Toronto
G. Moore – Vice-General Chairman, Moose Jaw

## AWARD OF THE ARBITRATOR

Article 1.1 of the Collective Agreement is as follows:

> **1.1** The word "employee" shall mean Driver Representatives, Dockmen, Linehaul Driver Representatives, Lead Hands and Casual Employees.

The Union's contention is, essentially, that since work is being done for the Company's account by persons who would come within the scope of the job classifications listed in Article 1, such work must be performed by employees of the Company coming within the scope of the Collective Agreement. The Union also contends that the contracting out of the work in question was unnecessary, and contrary to an undertaking not to contract out.

Article 1.1 is not a prohibition of contracting out. It is a definition of the term "employee" as it is used in the Collective Agreement, and in effect simply lists those classifications of employees bound by the Agreement. It does not affect persons employed by some other employer. Of course, a question of fact may arise as to whether or not the Company exercises such a degree of direction and control over any individuals as to make them its own employees. In such a case, they would come within the scope of the Collective Agreement. That has not, however, been shown to be the case here. Rather, the Company has contracted out work formerly done by its own employees, and the work is now done by employees of another employer, albeit a related one.

Whether this arrangement was wise or unwise is not for an arbitrator to say. The only issue before me is whether or not it is contrary to the Collective Agreement. It is not, for the reasons I have given, a violation of Article 1.1, which merely sets out the classifications of persons in the employ of this Company who come within the bargaining unit. There appears to be no other provision in the Collective Agreement bearing on the matter, and there is no express prohibition of contracting out. It has been held in many cases that such a prohibition would require clear language.

As to the Company's assurances that contracting out would be reduced, such assurances do not amount to an undertaking that there will be no contracting out, and in any event are not embodied in any provision of this Collective Agreement.

For the foregoing reasons, the grievance must be dismissed.

**(signed) J. F. W. WEATHERILL**
**ARBITRATOR**