CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 999

Heard at Montreal, Tuesday, November 9th, 1982

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

EX PARTE

DISPUTE:

Contracting out of two main line switches at Watson, Saskatchewan.

EMPLOYEE STATEMENT OF ISSUE:

During the week of August 17, 1981, A & B Rail Contractors Limited of Edmonton, Alberta were assigned to install two (2) #10 - 100 lb. main line switches at mileage 93.2 Margo Sub Division.

The Organization contends that advance notice of the intent to contract was not given the General Chairman as required by the Hall award dated 09 December, 1974 and therefore Track Maintainer on the Wadena and Watson sections be paid thirty-two (32)hours each and that foremen at Wadena and Watson be paid thirty-two (32) hours each.

The Company declined the claim.

FOR THE BROTHERHOOD:

(SGD.) A. F. CURRIE
SYSTEM FEDERATION GENERAL CHAIRMAN

There appeared on behalf of the Company:

K. J. Knox	– Manager Labour Relations, Montreal
T. D. Ferens	– System Labour Relations Officer, Montreal
E. Trask	– Manager Production, Montreal
P. Scheerle	– Employee Relations Officer, Montreal

And on behalf of the Brotherhood:

A. F. Currie	– System Federation General Chairman, Winnipeg
F. L. Stoppler	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The work in question was work of a sort "presently and normally performed by employees" within the meaning of the Agreement of April 28, 1978, dealing with contracting-out. The Company was, therefore, limited in its right to contract out such work to cases coming within the exception set out in the Agreement.

In the instant case, it is the Company's position that the matter came within exception (5) set out in the Agreement, in that the required time of completion of the work could not be met with the skills, personnel or equipment available on the property.

It is the Union's position that the matter did not come within that exception and that, in any event, the Company failed to give the notice required.

The Company raises, as well, a jurisdictional objection, that the contracting out did not result in an employee being "unable to hold work" and that it may not therefore be the subject of a grievance.

It appears that the Company had indeed planned on having the work in question performed by its own forces. It was only when the Relief Foreman advised the Company that he lacked the experience and qualifications to perform the work, and when it was realized that 3 of the remaining 4 employees on the gang lacked any experience, that it was concluded the work should be contracted-out. Having regard to the fact that this work was to be done during the vacation period, the conclusion that it could not be completed on time by the personnel available appears to have been reasonable. This background accounts for the failure of notice: the original intention had been not to contract out the work.

While the contracting-out of work may be said to have a material and adverse effect on employees, even where its effect is only to deprive them of overtime (see **Case No. 688**), the right to grieve under the agreement in question arises only where an improper contracting-out (and I do not find an improper contracting-out in the circumstances described, since I consider that exception (5) applies), has resulted "in an employee being unable to hold work". The use of this language indicates that for the purpose of filing a grievance, the effect of a contracting-out must be substantial. While employees in this case might be said to have been affected by some loss of overtime, no one was laid off or otherwise "unable to hold work". The matter was, therefore, not one which could be grieved under the terms of the governing agreement.

For the foregoing reasons the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR