

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1022

Heard at Montreal, Tuesday, December 14, 1982

Concerning

CANADIAN PACIFIC EXPRESS LIMITED

and

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

EX PARTE

DISPUTE:

BROTHERHOOD:

This concerns grievance claims in the names of qualified mileage rated vehiclemen K. Sargent and D. Faught for days of mileage rated trips they were not offered on the Calgary – Maple Creek – Calgary routes.

COMPANY:

This concerns grievance claims in the names of qualified mileage-rated vehiclemen K. Sargent and D. Faught for days of mileage-rated trips they were not offered on the Calgary – Maple Creek – Calgary routes.

EMPLOYEES' STATEMENT OF ISSUE:

On dates of March 26, 27, 30 and 31st, April 1, 2, 3, 6, 7, 8 and 10, 1982, May 25, 26, 27, 28, 29, 1982, the Company provided these mileage rated trips to an outside contractor known as Jericko Trucking between Calgary – Maple Creek – Calgary.

The Brotherhood contends that these trips for the dates mentioned should have been offered to and worked by available, qualified employees K. Sargent and D. Faught due to their being members of our Bargaining Unit known as B.R.A.C., who have exclusive rights to all such work and, in keeping with Article 7.1.3 which provides that these employees shall be given all possible opportunities to improve themselves and the efficiency of the service by learning as much as possible about the duties of the positions above those they hold.

The Brotherhood further contends that these trips may not be contracted out due to the award of Mr. E. M. Hall, dated December 9, 1974 concerning the contracting out of work, which has been agreed to and followed since that date and, is applicable to this case wherein it provide that these trips would not be of an emergency nature, and, that the Company Officers must first discuss such outside contracting with this Brotherhood before offering such work to an outside Contractor, as Jericko Trucking, but, first provides all such work to their own qualified employees when equipment and employees are available as in these claims.

The Company suggest that there is no prohibition on contracting out and, as such is the case, they declined the Brotherhood's request that these two employees be paid for all such trips on such dates as worked by Jericko Trucking.

COMPANY'S STATEMENT OF ISSUE:

On dates of March 26, 27, 30 and 31st, April 1, 2, 3, 6, 7, 8 and 10, 1982, May 25, 26, 27, 28, 29, 1982, the Company utilized an outside contractor, Jericko Trucking, to perform highway service Calgary Maple Creek – Calgary.

The Union claimed payment of these trips for the grievors as they maintained that the Company was prevented from contracting out work. The Company maintains that there is no prohibition on contracting out and, as a result, have declined their claim.

FOR THE BROTHERHOOD:

(SGD.) J. J. BOYCE
GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) D. R. SMITH
DIRECTOR, INDUSTRIAL RELATIONS

There appeared on behalf of the Company:

D. R. Smith – Director, Labour Relations & Administration, Toronto
B. D. Neill – Manager, Labour Relations, Toronto
P. E. Timpson – Labour Relations Officer, CP Rail, Montreal

And on behalf of the Brotherhood:

J. J. Boyce – General Chairman, Toronto
G. Moore – Vice-General Chairman, Moose Jaw

AWARD OF THE ARBITRATOR

The thrust of this grievance is that the Company improperly contracted-out certain work. The grievors' contention is that had the work not been contracted-out, they would have performed it. Had they done so (and it has not been shown that the grievors, rather than others, would have had any entitlement to the work), it would have been in addition to their regular full time work, which they performed.

The work which was contracted-out was of a sort which would normally be performed by members of the bargaining unit. The Company arranged for its being contracted-out because certain employees were, by reason of illness or vacation or the like, unavailable for duty. It does not appear that any employee lost regular work because of the contracting-out.

In any event, the Collective Agreement does not contain any provision against contracting-out, as has been noted in a number of cases. While the Union referred to the award of the Hon. E. M. Hall dated December 9, 1974, which dealt with the matter of contracting-out, that award has not been shown to be in effect as part of a current Collective Agreement between these parties. Indeed its binding effect as between these parties would appear to have expired some years ago. Again, it has not been shown that the contracting-out which occurred in this case would have constituted a violation of that award, or that it could properly have been the subject of a grievance thereunder, there being no loss of regular work in this case.

There has not been shown to have been any violation of the Collective Agreement, and the grievance must therefore be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR