CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1230

Heard at Montreal, Wednesday, April 11, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claim of fifteen hours at pro rata rate of Mr. D. DeWolfe, Tractor Trailer Operator, Moncton, N.B.

JOINT STATEMENT OF ISSUE:

On 20 April, 1983 a Canadian National Express tractor hauling two loaded pup trailers was involved in an accident 420 km west of Moncton. The damaged tractor was unable to complete the trip to Moncton. The Company utilized a Speedway Express driver based in Grand Falls, N.B. to haul the pup trailers to Moncton.

The Brotherhood contends that the Company violated Appendix X of Agreement 5.1 by not utilizing Mr. DeWolfe to perform this work. The Company denies the contention and has declined payment of the claim.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) TOM MCGRATH	(SGD.) D. C. FRALEIGH
NATIONAL VICE PRESIDENT	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS.

There appeared on behalf of the Company:

S. A. MacDougald	– Labour Relations Officer, Montreal
W. W. Wilson	– Manager Labour Relations, Montreal
B. Gazely	– Human Resources Assistant, Toronto

And on behalf of the Brotherhood:

W. C. Vance	– Regional Vice-President, Moncton
T. McGrath	– National Vice-President, Ottawa

AWARD OF THE ARBITRATOR

As the Joint Statement of Issue indicates, a CN Express tractor hauling two loaded pup trailers was involved in an accident 420 km. west of Moncton, N.B. Because the damaged tractor was unable to complete the trip the Company contracted out the balance of the run by using a Speedway Express driver and vehicle based in Edmunston, N.B.

The Trade Union alleges that the Company was in violation of the contracting out provision contained in Appendix X of Agreement 5.01. That is to say, because the grievor, Mr. D. DeWolfe, Tractor Trailer Operator, was on call as a spare and relief employee at the time in question in Moncton, N.B., the Company was obliged to offer him the opportunity to complete the trip. Accordingly, it is requested that the grievor be compensated for the hours missed occasioned by the wrongful contracting out of the work.

As I have indicated in the past in **CROA 1173**, the Employer has available to it several "loopholes" in the contracting out provision that enables it, in appropriate circumstances, to evade the ultimate objective of the restriction contained in the collective agreement limiting its use.

In this case the Employer has resorted to each of these provisions to justify its use of Speedway Express. Firstly, it was argued that the matter was not arbitrable because the contracting out did not result in an employee "failing to hold work". Secondly, it was argued that the contracting out, assuming the dispute was arbitrable, fell squarely within exceptions (3) and (5) of the letter of contracting out. And, finally, it was argued that the Employer's discretion to contract out was unfettered by the provisions of Appendix X because, in the circumstances described, the Company was confronted with an "emergency". In this regard the contracting out provision reads:

> The conditions set forth above will not apply in emergencies ...

Even if the Company's submissions should fail on its first and second arguments, the third argument is, in my view, unassailable. What was described in evidence was a vehicular accident that occurred during the course of its regular run between Edmunston and Moncton. As a result neither tractor nor driver were in any condition to complete the run. The two trailers containing cargo were undamaged and were capable of being moved to their ultimate destination. Indeed, the Company was confronted with a deadline in reaching Moncton in order that the cargo meet its pick-up for distribution to other centres. The Company, accordingly, assessed the situation and opted in favour of utilizing a contractor.

Whether the Company's decision was prudent or imprudent is not in issue. Whether it could have achieved the same objective through use of its own employees is purely an academic consideration.

What is significant is the fact that, on an objective standard, the Company was confronted with an emergency situation. And, once an emergency situation was established the Company's decision making functions in attending to that emergency were liberated from any considerations of Appendix X. In short, the Company did not violate the contracting out provisions of the collective agreement.

For that reason, alone, the grievance must be denied.

(signed) DAVID H. KATES
ARBITRATOR