CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1244

Heard at Montreal, Thursday, May 10, 1984

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Contracting out of linoleum flooring work in 32 Atco Units at the Company's Danforth Work Equipment Shop, Ontario.

JOINT STATEMENT OF ISSUE:

During the period 28 January 1983 to 17 June 1983, the Company contracted out the replacement of linoleum flooring in 32 of its Atco Units to Alf's Flooring and Tiling.

The Brotherhood contends that the Company violated the Letter dated 5 March 1982 concerning contracting out.

It is the position of the Company that the work in question came within exceptions (2), (5) and (6) of the Letter on contracting out and that as there were no employees who were unable to hold work as a result of the contracting out, in accordance with the final paragraph of the Letter of 5 March 1982, there is no grievance under the Collective Agreement and the matter is therefore not arbitrable.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) PAUL A. LEGROS	(SGD.) D. C. FRALEIGH
SYSTEM FEDERATION GENERAL CHAIRMAN	ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

T. D. Ferens	– Manager Labour Relations, Montreal
P. E. Scheerle	– System Labour Relations Officer, Montreal
G. L. Edwards	– Labour Relations Assistant, Toronto

And on behalf of the Brotherhood:

P. A. Legros	– System Federation General Chairman, Ottawa
L. Boland	– Federation General Chairman, London
W. Montgomery	– General Chairman, Belleville
R. Y. Gaudreau	– Vice-President, Ottawa

AWARD OF THE ARBITRATOR

The Company has challenged my jurisdiction to entertain the Trade Union's grievance with respect to the contracting out of work in question because it alleges "no employee (or employees) were unable to hold work as a result of the contracting out".

The Trade Union acknowledges that no employee or employees were laid off as a result of the contracting out. Nonetheless, it complains that because employees were on lay off at the time the contracting out of work occurred the Employer thereby was in violation of the letter of contracting out. More specifically the Trade Union referred to item (2) of the letter which reads in part:

> ... it is agreed that work presently and normally performed by employees ... will not be contracted out except:
>
> (2) where sufficient employees, qualified to perform work, are not available from the active or laid off employees.

The Trade Union submitted that the CROA cases that have determined that a grievance is not arbitrable merely because an employee fails to hold work at the time the contracted work is performed been incorrectly decided. This Board was specifically requested to address itself to the apparent conflict between the past CROA decisions and the express language of Item (2) of the letter of contracting out.

It is my view that no such conflict exists. The provision of the letter requiring that the Trade Union establish that an employee is unable to hold work as a result of the contracting out of work goes to the root of the Arbitrator's authority to entertain the grievance. It is the threshold question that must be satisfied as a condition precedent to putting the Employer to the onus of showing that the contracted out work falls within the enumerated exceptions inclusive of Item (2).

Accordingly if the Trade Union cannot overcome the issue of arbitrability, as was stated by Arbitrator Weatherill in the ad hoc case referred to in the Trade Union's brief, then "whether or not there were employees already on lay off does not appear to be a material consideration".

For all the foregoing reasons the Trade Union has failed satisfy me that its grievance is arbitrable. Accordingly the grievance is denied.

(signed) DAVID H. KATES
ARBITRATOR