

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1404

Heard at Montreal, Wednesday, September 11, 1985

Concerning

CANADIAN PACIFIC LIMITED

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

A claim by the Union that the Company violated the letter on Contracting-Out dated March 5, 1982, by employing a contractor at the Tormon Freight Terminal to repair carts, chains and perform maintenance work, commencing June 4, 1984. The Union claims that Mr. G. Fortin, who was laid off on March 2, 1984 should have been recalled.

JOINT STATEMENT OF ISSUE:

The Union contends that: (1.) The work of repair and maintenance at the Tormon Freight Terminal prior to June 4, 1984 had been done by B&B employees. (2.) G. Fortin, Welder, was laid off as a direct result of contracting out of the maintenance work. (3.) The Company violated the letter on contracting Appendix B-12, Wage Agreement 41, Item (2) and by not notifying the Union of such contracting work. (4.) G. Fortin be paid his regular rate of pay since being laid off work and the contractor used to perform the work normally done by B & B employees and reinstated to his position of Welder.

The Company contends that: (1.) The layoff of the grievor was not related to or was a result of the contracting out which commenced on June 4, 1984; therefore, pursuant to the final paragraph of the letter on Contracting Out, there is no grievance under the terms of the Collective Agreement and the dispute is not arbitrable; and (2.) That even if the dispute were determined to be arbitrable, exception No. 6 of Appendix B-12, Wage Agreement No. 41, applies.

FOR THE BROTHERHOOD:

(SGD.) H. J. THIESSEN
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) G. A. SWANSON
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

J. H. Blotsky – Assistant Supervisor, Labour Relations, Toronto
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa
R. Y. Gaudreau – Vice-President, Ottawa
L. M. DiMassimo – Federation General Chairman, Montreal
G. Valence – General Chairman, Sherbrooke
G. Belanger – Local Chairman

AWARD OF THE ARBITRATOR

The principal issue to be determined in this case is whether the Company's decision to contract out certain maintenance work at the Torman Freight Terminal resulted directly in the grievor, Mr. G. Fortin, "being unable to hold work". It is common ground that Mr. Fortin was laid off on March 2, 1984, some time before the contracted out work commenced.

The CROA arbitral jurisprudence has established the principle in the interpretation of the Letter of Contracting Out dated March 5, 1982 that the contracted out work must have resulted directly in a grievor's loss of work (i.e., lay off) in order for him to enjoy the benefits of the letter (see **CROA 1173**).

Accordingly, the Trade Union argued that the reasons precipitating Mr. Fortin's lay off in March, 1984, was in anticipation of the contracting out situation. No evidence, save innuendo, was advanced to support that argument. Indeed, the Company conceded, that if that allegation was proven, it would admit violation of the Letter of Contracting Out.

The Company insisted that Mr. Fortin's lay off in March, 1984 was part of a management directed lay off of sixteen employees. This lay-off was occasioned by redundancy caused by a shortage of work.

Accordingly, since the Trade Union has failed to satisfy me that the grievor's loss of work was directly attributable to the Company's contracting out of work, I am compelled to find this grievance non-arbitrable.

(signed) DAVID H. KATES
ARBITRATOR