

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1563

Heard at Montreal, Wednesday, September 10, 1986

Concerning

### CANADIAN PACIFIC LIMITED

and

### BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

#### **DISPUTE:**

During the latter part of August, 1985, the Company hired Dominion Bridge to repair bridges at M. 32.6, 40.2 and 43.5, Shuswap Subdivision.

#### **JOINT STATEMENT OF ISSUE:**

The Union contends that: (1.) The B & B employees were capable of doing the repairs and had done so on other bridges previously. (2.) Sufficient employees were available from the active and laid off list (3.) The Company violated the letter on Contracting Out dated May 23, 1985 Appendix C of the Master Agreement dated July 9, 1985, by not advising the Union. (4.) The B & B employees be paid at their rate of pay for the same number of hours as expended by the Contractor.

The Company submits that Exceptions Nos. 1, 2, 3 and 5 the letter on Contracting Out dated May 23, 1985, contained in Appendix B-15 of Wage Agreement No. 41, apply. Furthermore, the Company denies the Union contentions and declines payment.

#### **FOR THE BROTHERHOOD:**

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

#### **FOR THE COMPANY:**

**(SGD.) L. A. HILL**  
GENERAL MANAGER, OPERATION AND MAINTENANCE

There appeared on behalf of the Company:

R. T. Bay – Assistant Supervisor Labour Relations, Vancouver  
N. T. Chizik – Assistant Regional Engineer, Vancouver  
R. A. Colquhoun – Labour Relations Officer, Montreal

And on behalf of the Brotherhood:

H. J. Thiessen – System Federation General Chairman, Ottawa  
L. M. DiMassimo – Federation General Chairman, Montreal  
V. Dolynchuk – General Chairman, Edmonton  
E. J. Smith – General Chairman, London  
M. L. McInnes – General Chairman, Winnipeg  
G. Valence – General Chairman, Sherbrooke

#### **AWARD OF THE ARBITRATOR**

The dispute arises out of repairs made to three bridges in the Shuswap Subdivision of the Company's operations, between Revelstoke and Kamloops, British Columbia. The Union grieves the contracting out of the work to Dominion Bridge Co. Ltd. It alleges that the collective agreement does not permit contracting out in the

circumstances disclosed, that bargaining unit personnel and equipment were available, that the work in question is normally performed by the Union's members, and that the Company violated its obligation to notify the Union of the contracting out. The principal response of the Company is that the repairs were effected on an emergency basis, so that the contracting-out provisions of the collective agreement do not apply. Alternatively, it asserts that the repairs in question came within the exceptions to those provisions, as there was insufficient engineering skill, manpower and equipment available at the location.

The first issue is whether the repair work in question was performed on an emergency basis. Appendix B-15 to the collective agreement expressly provides that the general prohibition against contracting out, and the enumerated exceptions to that rule, "... will not apply in emergencies to items normally obtained from manufacturers or suppliers nor to the performance of warranty work".

The material establishes that while performing routine maintenance on the bridge at mileage 40.2 Shuswap the No. 1 Road Gang of the Revelstoke Division Bridge and Building Department discovered a crack in one of the corners of the structure, at the top of a steel vertical tension member. Although this was first reported to the Divisional Engineer at Revelstoke on August 1, 1985, it was not inspected by the Company's engineering staff until August 13th. The problem was immediately diagnosed as a fatigue failure, more serious than had at first been supposed. The crack opened perceptibly when a train crossed the span, apparently to a width of one millimetre.

Concern over the possibility of similar problems in other bridges caused the Company to issue a directive for the inspection of all truss bridges for fatigue failure. As a result, similar problems were found in two other bridges in the area, and still more cracking was found in the bridge at mileage 40.2.

The Company immediately imposed a train slow order on two of the bridges which were on its main traffic line. The third bridge was on a siding, and verbal instructions issued to restrict its use to light tonnage merchandise trains. These directives caused substantial problems for the Company's service. While the normal running speed for the bridge was 45 miles per hour for freight and 50 miles per hour for passenger trains, trains, sometimes a mile in length, were required to cross the bridge at mileage 40.2 at no more than 10 miles per hour and at mileage 43.5 at 15 miles per hour. With a single track operation and 14 trains operating daily in each direction, the slow train order had a substantial impact on operations. Moreover, the stress failure detected in the three bridges represented a safety concern of some urgency, requiring immediate remedial measures.

The Arbitrator is satisfied that the circumstances disclose an emergency situation within the meaning of Appendix B-15 of the collective agreement. That conclusion is supported, moreover, by the actions of the Company in response to the stress failure problems. On the day following the initial inspection, August 14, 1985, the Company's Building and Bridges Master attended at the mileage 40.2 bridge with the Dominion Bridge Design Engineer from Vancouver, and plans for corrective action were begun immediately. An emergency one-day steel patch was placed on that bridge, using Company employees, before the more substantial overhaul was begun by Dominion Bridge. It is common ground that the contractor's work was begun on August 19th and was completed on all three bridges within 13 days.

The Arbitrator agrees with the submission of the Union that the discovery of a serious problem will not in every case constitute an emergency. The nature of the problem, the degree and immediacy of risk it creates and the consequences that could flow from not correcting it are factors to be carefully assessed in determining whether an emergency is disclosed. When those elements are considered in the instant case, the Arbitrator must agree with the submission of the Company that it was faced with an emergency situation in the condition of the three bridges in the Shuswap subdivision in August of 1985. The fact that more unfortunate emergencies, such as derailments, may have been experienced at other times does not diminish the urgency of the facts disclosed.

The foregoing conclusion would dispose of the grievance. If it were necessary to rule on the alternative submissions of the parties respecting the exceptions permitting contracting out, I must also conclude that the Company had insufficient technical engineering resources available to it at the time, as well as a shortage of manpower, including qualified welders, who could be made available to deal with the defective bridges within a reasonable time.

For these reasons the grievance must be dismissed.

**(signed) MICHEL G. PICHER**  
**ARBITRATOR**