# CANADIAN RAILWAY OFFICE OF ARBITRATION

# CASE NO. 1957

Heard at Montreal, Wednesday, 11 October 1989

Concerning

## CANADIAN PACIFIC LIMITED

And

## BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

## EX PARTE

### DISPUTE:

Contracting out of floor repairs in the One Spot Repair Shop, Calgary, Alberta to High Tech Industries.

### BROTHERHOOD'S STATEMENT OF ISSUE:

The Union contents that: **1.)** The employer violated the Letter of Understanding concerning the contracting out of work, Appendix B-15, by **a)** failing to provide the required notice of 30 days; and **b)** by failing to establish that the work contracted out properly meets one of the exceptions to contract out work. **2.)** The grievors were adversely affected by the employer contracting out work on a day which was not part of the grievors' regular assignment.

The Union requests that: **1.)** The B&B employees who normally perform the work be paid the applicable hours of work which was done by the contractor.

### FOR THE BROTHERHOOD:

**(SGD) M. L. MCINNES**
**SYSTEM FEDERATION GENERAL CHAIRMAN**

There appeared on behalf of the Company:

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| M. E. Keiran | – Assistant Supervisor, Labour Relations, Vancouver |
| L. G. Winslow | – Labour Relations Officer, Montreal |
| L. Guenther | – Assistant Supervisor, Labour Relations, Vancouver |

And on behalf of the Brotherhood:

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| G. Kennedy | – General Chairman, Vancouver |
| R. Dellaserra | – General Chairman, Montreal |
| D. Lacey | – General Chairman, Ottawa |
| K. Deptuck | – General Chairman, Winnipeg |

# AWARD OF THE ARBITRATOR

The material discloses that early in 1988 the Company decided to resurface the floor of a washroom on the One Spot Repair Shop at Alyth, in Calgary. The work in question involved removing an existing, damaged linoleum floor and refinishing the underlying concrete surface. Because of the traffic and degree of abuse to which the floor is subjected it was determined not to renew the linoleum surface. As an alternative, the Company decided, apparently for the first time in its operations, to try using an epoxy-based acrylic floor resurfacing process for the washroom floor area. It became aware of such a floor finishing process being available through a private company, High Tech Structural Materials (1983) Ltd. of Calgary. The job was contracted out to High Tech which performed the work on or about February 24, 1988.

The issue is whether the Company's actions constitute a contracting out in violation of the Letter of Understanding contained in Appendix B-15 of the Collective Agreement. That document provides, in part, that "... work presently and normally performed by employees ... will not be contracted out except:

> **(2)** where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; ...

It does not appear substantially disputed that it is not uncommon for employees in the Building and Bridge department to do cement finishing work, including the construction and repair of floor areas. The position of the Company, however, is that it had never before utilized the new technology of applying the epoxy-acrylic finish which it was attempting for the first time to use on the washroom floor in the One Spot Repair Shop at Alyth. In addition to stripping and cleaning the surface, the process in question involves applying a repair mortar mixture of quartz, silica sands and epoxy resins. That part of the process is designed both to seal the matrix and to provide a suitable bonding surface. After curing and testing the surface was then scored, following which it was further cleansed and coated with the final acrylic finish.

The uncontradicted submission of the Company is that it attempted to have a supervisor from the bargaining unit observe the new process, with a view to having it done by Company employees in the future. It appears, however, that the supervisor in question did not make timely arrangements to be present. Perhaps most significantly, it is not asserted that the employees of the B&B Department at Calgary had any direct knowledge or experience of the particular process of resurfacing and expoxy-acrylic coating which was used for the job in question.

In the Arbitrator's view the circumstances of the instant case fall squarely within the exception contained in sub-paragraph (2) of the Letter of Understanding. I am satisfied, on the balance of probabilities, that there were no active or laid off employees within the ranks of the bargaining unit qualified to perform the work, given the new technological process which was chosen. There is nothing before the Arbitrator to suggest, nor is it contended by the Brotherhood, that the Company was not at liberty to experiment with a new epoxy-acrylic finish. It is, moreover, common ground that no employees were displaced from their jobs as a result of the Company's actions. In the circumstances, therefore, the Arbitrator can see no justification for the Brotherhood's argument that the Company was under an obligation to give a prior notice to it in respect of the contract, although prudence and sound industrial relations policy might suggest that it would have been wise to do so.

On the whole the material before me discloses no violation of the Collective Agreement, and the grievance must therefore be dismissed.

October 12, 1989

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