CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2134

Heard at Montreal, Wednesday, 10 April 1991

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

The contracting out of the work involved in fueling locomotives, watering locomotives and removing garbage at Moncton Station, New Brunswick.

JOINT STATEMENT OF ISSUE:

Effective January 15, 1990, the Corporation contracted with Majenski for garbage removal for its trains operating through Moncton, N.B. The Corporation also contracted-out the fueling of locomotives on Trains 14 and 15 with Irving Oil, effective that same day. Locomotive engineers operating Trains 11, 12, 14 and 15 at Moncton were assigned the responsibility of watering the locomotive consists and steam generator units on their trains, beginning that day as well.

The Brotherhood contends that the Corporation violated Appendix C of Collective Agreement No. 1 since "there is a sufficient number of employees and equipment available to perform those duties", and also that the Corporation further violated the same Appendix C since the Corporation must advise the Brotherhood of its intention to contract-out work which would have a material and adverse effect on employees.

The Corporation denies any violation of Appendix C and contends that it was justified to contract-out the garbage collection and fueling and to reassign the watering of locomotives at Moncton.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) T. MCGRATH	(SGD.) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DEPARTMENT DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock – Senior Officer, Labour Relations, Montreal
M. St-Jules -Senior Negotiator & Advisor, Labour Relations, Montreal
D. Fisher -Senior Officer, Labour Relations, Montreal

And on behalf of the Brotherhood:

T. Barron -Representative, Moncton
R. Dennis – Representative, Moncton

AWARD OF THE ARBITRATOR

The first branch of this grievance is the allegation that the Corporation has violated the prohibition against contracting out by having garbage removal and refueling functions performed by independent contractors. The second aspect, which does not strictly relate to contracting out, is the Brotherhood's claim that the Corporation was not entitled to assign the watering of locomotives to locomotive engineers from another bargaining unit. The record discloses that Moncton saw a substantial reduction in passenger train service effective January 15, 1990. Prior to that time four trains originated in Moncton each day, with an additional train on Monday, Wednesday and Friday.

Additionally, two other trains stopped enroute at Moncton for watering on a daily basis and eight trains were scheduled for daily garbage pick-up either enroute or when terminating their run at Moncton. At that time the work relating to garbage removal and the watering of trains were part of the assignment of two full-time positions at the Moncton Coach Yard in the classifications of Chauffeur and Labourer/Chauffeur. As of January 15, 1990, no trains originate or terminate in Moncton. That location now has only two trains per day, five days per week and only one train daily on Tuesday and Wednesday.

In the result there has been a substantial change to the volume of the Corporation's operations at Moncton. The Corporation closed the maintenance facility adjacent to the station at Moncton as of January 15, 1990, and disposed of related equipment such as fuel trucks and other vehicles. As the flow of passenger train traffic went from some fifteen trains daily originating, stopping or terminating in Moncton to an average of only two trains stopping at Moncton daily the Corporation's need for staff and equipment changed dramatically.

Appendix C of the Collective Agreement permits the Corporation to resort to contracting out in certain exceptional circumstances, including the following:

> **(4)** where the nature or volume of work is such that it does not justify the capital or operating expenditure involved;

The material before the Arbitrator establishes beyond doubt that there would be grave inefficiencies visited upon the Corporation should it be required to employ part-time employees under the terms of the Collective Agreement, and purchase equipment such as a fueling vehicle, to perform the very limited daily functions that these tasks involve. The employer's estimate, which is not substantially disputed before me, is that the combined activities would involve less than one hour per train for a maximum of two hours per day. However all of the work could not be accomplished by the establishing of a single part-time position as one person could not do the work required during a single, thirty-minute station stop. Servicing two of the trains in question, Trains 14 and 15, would require four part-time positions for a total of three hours per week, while servicing Trains 11 and 12 would require an additional position involving a half-hour's work three days a week and an additional half-hour on alternate days. As Article 4.26 of the agreement would require the Corporation to pay the part-time employees a minimum of four hours' pay for each time they were required to commence work, and to guarantee them a minimum of twenty hours per week, the Corporation would face a wage expenditure entirely out of proportion to the amount of work involved. In my view the cost so characterized is prohibitive, and it must be found that the nature or volume of the work involved does not justify the capital or operating expenditure involved, insofar as the refueling and garbage disposal functions are concerned. Additionally, the fuelling of locomotive equipment at points where there is insufficient work of that nature to justify a full-time employee may be assigned "at the discretion of the company" as contemplated by Article 27.16(2).

In my view the same could be said of the watering function, although it does not involve contracting out. The material before me, however, establishes that the watering of locomotives and steam generators is not work which belongs exclusively to the members of this bargaining unit. At a number of locations in its operations the Corporation has traditionally assigned that work to members of the Brotherhood of Locomotive Engineers. In the circumstances it cannot be said that the work is exclusively that of the bargaining unit, or that the performance of the watering function by locomotive engineers is in violation of the Collective Agreement.

The Corporation admits that it did not formally advise the Brotherhood of its intent to contract out the work in question. The record reveals, however, that the decision of the Corporation was contemporaneous with the closing of the Moncton Coach Yard and the substantial reduction of its operations which gave rise to an Article J Notice in October of 1989. Even if it is found that there has been a technical violation of the notice provisions of Appendix C, the Brotherhood has not established that those requirements are mandatory, or that a failure to apply them must result in a nullifying of the Corporation's substantive right to contract out the work in question. In the circumstances, therefore, the claim for relief made by the Brotherhood cannot be sustained.

For the foregoing reasons the grievance must be dismissed.

12 April 1991

(Sgd.) MICHEL G. PICHER
ARBITRATOR