CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2749

Heard in Montreal, Wednesday, 12 June 1996

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

The Company's intention to contract out the operation of the Montreal CargoFlo facility.

JOINT STATEMENT OF ISSUE:

On April 9, 1996, the Company served notice of its intention to contract out the operation of the CargoFlo facility in Montreal effective August 6, 1996. The parties subsequently met to discuss the matter.

At that meeting, the Union took the position that the Company's intention, if carried through, would be in contravention of paragraph 20.1 of article 20; paragraphs 1.1 and 1.4 of article 1 of the supplemental collective agreement governing the services of employees employed in the CargoFlo operation.

The Company disagrees.

FOR THE UNION:	FOR THE COMPANY:
(SGD.) A. S. WEPRUK	(SGD.) J. B. BART
NATIONAL CO-ORDINATOR	MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

J. B. Bart	– Manager, Labour Relations – Marketing, Montreal
D. L. Bingeman	– National Manager, CargoFlo, Mississauga
R. F. Faucher	– Labour Relations Officer – Marketing, Montreal

And on behalf of the Union:

A. S. Wepruk	– National Coordinator, Montreal
R. Storness-Bliss	– Regional Coordinator, Vancouver
D. Olshewski	– Regional Coordinator, Winnipeg
D. Boiteau	– Local Chairperson, Local 4334, Montreal
J. Savard	– President, Local 4334, Montreal

AWARD OF THE ARBITRATOR

In the Arbitrator's view the issue presented in this grievance is relatively straightforward. Specifically, it concerns the application and interpretation of article 20.1 of the supplemental collective agreement, a provision which, it is acknowledged, is relatively unique in the railway industry. It provides as follows:

> **20.1** The Company may, from time to time, sub-contract work to other parties as required. There shall be no permanent reduction in the number of full time employees as a result of sub-contracting work.

The Company seeks to contract out the operation of the CargoFlo facility in Montreal. CargoFlo operations involve the transfer of bulk commodities from rail cars to trucks and *vice-versa*.

The Company seeks to contract out the CargoFlo function in Montreal for a number of business reasons which, from its perspective, are understandable. It sees the CargoFlo operations as peripheral to its main line-haul function, and sees advantages to the efficiency and profitability of its principal business if a specialized contractor is utilized for CargoFlo operations.

While the Company acknowledges that the language of article 20.1 of the supplemental collective agreement represents a limitation on its ability to sub-contract, it offers an interpretation of the article which it maintains can be dovetailed with its business objectives. Specifically, it argues that there is no violation of the provision if, in the result, employees in CargoFlo operations at Montreal are not in fact laid off as a result of the contracting out. This it proposes to achieve by offering retirement package incentives to employees in its Intermodal operations, thereby freeing up positions for CargoFlo employees. In the result, it argues, the eleven employees who would be affected by the contracting out would either accept a voluntary buy-out or, alternatively, would be absorbed into Intermodal positions vacated by other employees taking advantage of the retirement incentives.

The Arbitrator appreciates the legitimacy of the business motivations which underlie the Company's position. As a privatized employer it has every reason to seek to rationalize its operations, minimize its costs and maximize its profitability. It must, however, do those things within the limitations of the law. In this context, the law includes federal and provincial statutes and regulations and, significantly, the private law of contract, in the form of the collective agreement, to which the Company has bound itself. The issue in this case is whether the private law fashioned in article 20.1 of the supplemental collective agreement allows the Company to sub-contract in the circumstances described.

After careful consideration of the issue, the Arbitrator is unable to agree with the Company. The parties before the Arbitrator are sophisticated and experienced in collective bargaining. If it had been their intention to limit the Company's ability to sub-contract where, for example, employees could not be laid off by reason of such action, they could easily have formulated language to that effect, such as is commonly found in other collective agreements. The language of article 20.1, however, is different. It does not speak to or address the consequences of contracting out on individual employees. Rather, it prohibits any permanent reduction "in the number of full time employees" by reason of sub-contracting work. That would suggest an undertaking not to disturb the *status quo* as to the number of employees in the bargaining unit by sub-contracting.

In the instant case the Arbitrator is not persuaded that the above prohibition is avoided by the Company's proposal to reduce its complement of employees by offering early retirement incentives in numbers equal to the number of employees in the CargoFlo operations, thereby absorbing any remaining CargoFlo employees into Intermodal operations, as part of an overall reduced complement of employees. Very simply, as the result would be a reduction in full time employees, for the Company to do that would be to achieve indirectly that which, by the clear language of article 20.1, it cannot do directly.

The foregoing analysis is not to suggest that the Company is without legitimate options. It can, as it has elsewhere, sell its CargoFlo operation outright. Also, it might arguably, in another circumstance, be able to transfer the CargoFlo employees into Intermodal operations, increasing the complement of Intermodal employees, thereby maintaining the number of full time employees, notwithstanding that the CargoFlo operation is contracted out. In the instant case, however, it is pursuing neither of those alternatives. The approach which it proposes clearly will result in a reduction in the number of full time employees who fall under the supplemental collective agreement. That is precisely what the language of article 20.1 of that agreement prohibits.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the notice of intention given by the Company on April 9, 1996, with respect to the contracting out of the operation of the CargoFlo facility in Montreal, effective August 6, 1996, is in direct violation of article 20.1 of the supplemental collective agreement, as it will result in a reduction of the number of full time employees. The Arbitrator retains jurisdiction should this matter need to be spoken to further.

June 14, 1996

(signed) MICHEL G. PICHER
ARBITRATOR