

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 3210

Heard in Calgary, Tuesday, 13 November 2001

concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Appeal of dismantling and re-assembling Steel Garage from Collins, Ontario to Sioux Lookout, Ontario, by the contracting firm Graham Enterprises.

JOINT STATEMENT OF ISSUE:

During the latter part of September and October, 1996, the Company contracted out the dismantling and re-assembling of a Steel Garage from Collins, Ontario to Sioux Lookout, Ontario, with Graham Enterprises.

The Brotherhood contends that: (1.) The contracting out of this work is in violation of article 33 of agreement 10.1, and all other applicable rules. (2.) The work in question is work which normally and historically is performed by CN, BMWE, B&B work forces. (3.) The work in question was not emergency work. (4.) That there were approximately 53 Trades Persons who were laid off at the time who were available and qualified to perform the work of dismantling and re-assembling the Steel Garage. (5.) Had the Company planned their work properly, this project could have been completed with the BMWE bargaining unit employees.

The Brotherhood requests the Arbitrator to: (1.) Fully compensate the senior laid off employee for all straight time hours Graham Enterprises worked on the dismantling and re-assembling of the Steel Garage. (2.) Fully compensate the regular employees for all overtime the contractors worked above normal hours on dismantling and re-assembling the Steel Garage. (3.) Fully compensate all employees *per diem* expenses for all days the contractor, Graham Enterprises, was utilized in dismantling and reassembling Steel Garage.

The Company denies the Union's contentions.

FOR THE BROTHERHOOD:

(SGD.) R. F. LIBERTY
SYSTEM FEDERATION GENERAL CHAIRMAN

FOR THE COMPANY:

(SGD.) B. LAIDLAW
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

B. Laidlaw	– Human Resources Associate, Winnipeg
D. Woodbeck	– Facility Maintenance Supervisor, Winnipeg
G. Katcher	– B&S Operations Officer, Winnipeg
D. VanCauwenbergh	– Human Resources Associate, Winnipeg

And on behalf of the Brotherhood:

P. Davidson	– Counsel, Ottawa
R. F. Liberty	– System Federation General Chairman, Winnipeg
D. Brown	– General Counsel, Ottawa

J. Dutra
S. Crawford

– Federation General Chairman, Edmonton
– General Chairman,

AWARD OF THE ARBITRATOR

The evidence establishes that the Company has, for some years, purchased large metal buildings which have been installed by specialized contractors. Those buildings are in the nature of large garages or shop facilities, the most recent apparently being a sizeable shop building installed in Symington Yard, in Winnipeg in the summer of 2001.

The building which is the subject of this grievance is a prefabricated steel garage which was originally erected at Collins, Ontario by a private contractor, Graham Enterprises. In 1996, when the Company found that it had greater need of the building at Sioux Lookout, it re-enlisted the services of Graham Enterprises to dismantle the building and move it to the Sioux Lookout location.

The Brotherhood alleges a violation of the prohibition against contracting out in article 33 of the collective agreement which provides, in part, as follows:

33.1 Effective February 3, 1988, work presently and normally performed by employees who are subject to the provisions of this collective agreement will not be contracted out except:

- (1) when technical or managerial skills are not available from within the Railway; or
- (2) where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
- (3) when essential equipment or facilities are not available and cannot be made available at the time and place required (a) from the Railway-owned property, or (b) which may be *bona fide* leased from other sources at a reasonable cost without the operator; or
- (4) where the nature or volume of the work is such that it does not justify the capital or operating expenditure involved; or
- (5) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
- (6) where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

The conditions set forth above will not apply in emergencies, to items normally obtained from manufacturers or suppliers nor to the performance of warranty work.

The Brotherhood contends that its members have “presently and normally” performed work of the kind which was contracted out to Graham Enterprises. Its representatives submit that the work in question should have been assigned to available tradespersons, including a number of whom who were laid off at the time of the work which was performed in September and October of 1996.

Upon a review of the evidence the Arbitrator is left in substantial doubt with respect to the Brotherhood’s claim. Its representative submits that the work in question was simple erector-set style labour which could be easily learned and performed by members of the bargaining unit. The test under the collective agreement, however, is not whether the work could be learned and performed through on-the-job training by members of the bargaining unit. The issue is whether the tasks involved can be characterized as, “... work presently and normally performed by employees who are subject to the provisions of this collective agreement...”. That is the work which the Company is prohibited from contracting out.

The material before the Arbitrator does not demonstrate that bargaining unit employees have been involved in the erection, dismantling or moving of large prefabricated steel buildings. What the evidence discloses is that smaller scale metal buildings, generally utilizing standard carpentry and framing, have been erected by bargaining unit members. On the contrary, the large prefabricated steel structures of the type that this grievance concerns have never been assigned to the bargaining unit for construction or disassembly. The evidence tendered by the Company confirms that the assembly of the building frame, including steel beams, perlines and girts, as well as the metal cladding and insulation, must be done in a systematic way, with careful attention to the sequence of the work and

appropriate shoring. For that reason when such buildings are purchased, part of the arrangement is to also purchase the erection and effective guaranteeing of the structure by a specialized contractor, such as Graham Enterprise. Indeed, the evidence of the Company to the effect that such work has never been grieved by the Brotherhood, notwithstanding a number of examples of large metallic buildings having been so purchased, is effectively un rebutted by the Brotherhood. On balance, the building in question is of a type “normally obtained from manufacturers or suppliers”, within the meaning of article 33 of the collective agreement.

In the circumstances, bearing in mind that the Brotherhood does bear the burden of proof, the Arbitrator cannot find that the work which is the subject of this grievance, the moving of a substantial metallic garage from Collins to Sioux Lookout, Ontario, qualifies as work presently and normally performed by bargaining unit employees. It is of a type related to items normally obtained from suppliers. There is therefore no violation of article 33 established. For these reasons the grievance must be dismissed.

November 16, 2001

(signed) MICHEL G. PICHER
ARBITRATOR