CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION
CASE NO. 3685

Heard in Montreal, Thursday, 10 July 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

DISPUTE:

Contracting out of the transportation of seven Company vehicles.

JOINT STATEMENT OF ISSUE:

During the first or second week of April 2008, contractors were engaged to operate CN vehicles for the use by the Prairie Region employees working off region.

The Union contends the Company violated provisions of Articles 16, 33, 38, and Appendix XXIII of Agreement 10.1 when it contracted out the work of transporting seven Company vehicles to Smithers, B.C.

The Union filed grievances on behalf of seven employees claiming full redress for these members for the period during which the contractor performed the work. The Union also claims deduction of Union Dues from the contractors who drove the CN vehicles.

The Company disagrees and has declined the Union's grievance.

FOR THE UNION:
(SGD.) M. PICHÉ
STAFF REPRESENTATIVE

FOR THE COMPANY:
(SGD.) D. BRODIE
FOR: VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:
D. Brodie – Manager, Labour Relations, Edmonton
A. deMontigny – Sr. Manager, Labour Relations, Montreal
K. Luke – Program Supervisor, Winnipeg

And on behalf of the Union:
M. G. Piché – Staff Representative, Toronto

AWARD OF THE ARBITRATOR

The facts in relation to this grievance are not in substantial dispute. In the spring of 2008 the Company required the services of Prairie Region employees to work off-region in Smithers, British Columbia. Before their arrival the Company moved seven of the vehicles they normally used to Prince George, by the use of contract drivers on April 8, 2007. There does not appear to be any dispute that six of the seven grievors worked a full day on April 8, 2007 while one was on a scheduled vacation. On that day the services contractor drivers drove three vehicles from Winnipeg, and enroute, one truck from Saskatoon to the location of Prince George, British Columbia where they were to become available to service the work being performed at or near Smithers. It appears that the four vehicles went into use in the service of the Mountain Region tie gang as of April 10th. They were used to move material and equipment, to transport gang members involved in loading local work equipment machines onto flat cars in Prince George and also for driving to Houston, B.C. They were used by the Mountain Region Gang until approximately April 17th, when they were left at the hotel where the Prairie Region employees were to arrive on April 21st. On that date the seven grievors travelled to the B.C. work site by charter flight from Winnipeg to Smithers, via Saskatoon.

To succeed in this grievance the Union must establish that the long distance transhipment of vehicles, as occurred in the case at hand, is work "presently and normally performed by employees …" of the bargaining unit. The claim is made under the provisions of article 33.1 of the collective agreement which provides 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 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 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."

On a careful review of the evidence the Arbitrator cannot sustain the Union's position that the work in question is work presently and normally performed by bargaining unit employees. It is common ground that the cab pick up trucks which are the subject of this dispute are operated by bargaining unit employees as essential equipment in their day-to-day work in track maintenance. Such work might involve them driving the vehicles from one work site to another within their region, or more commonly between a given work site and nearby housing accommodations or tool depots.

The unchallenged representations of the Company are that the long range transportation of vehicles is done in a number of ways. For example, vehicles have been onto to flat bed rail cars for transhipment from Western Canada to Cornwall, Ontario when employees from Western Canada were specially assigned to work on

repairs on the Kingston subdivision. Other transhipment of vehicles and heavy equipment has been done by Company tractor trailers pulling flatbeds as well as by similar tractor trailers operated by independent contractors. Resort has also been had to contract auto carriers and to contract driving/courier services. According to the Company's materials, external providers were contracted to move equipment on at least 700 occasions through 2007, up to the end of May 2008. By comparison, local Company Engineering Departments used their own staff department vehicles on some 233 occasions during the same period, albeit none involved the transhipment of vehicles over the kind of extended distances found in the case at hand.

On a review of the evidence the Arbitrator is compelled to conclude that the Union has not succeeded in demonstrating exclusive jurisdiction in the transhipment of passenger cab pick up trucks being moved from one region to another, over a considerable distance, when track maintenance crews or gangs are assigned out of their own region. Indeed, the preponderant practice would appear to be to have that transportation performed by persons other than bargaining unit employees. The most that the Union could claim, based on the figures established in evidence by the Company, would be a mixed practice in which a minor fraction of such work has been done by members of the bargaining unit.

In the alternative, if the Arbitrator should be incorrect in determining that the work in question is not work protected by the provisions of article 33.1 of the collective agreement, the inevitable conclusion would nevertheless be that the employees who would otherwise perform the work were not available. As indicated above, six of the seven grievors were working on the day that transhipment was made and the seventh

was on vacation. On that separate basis, therefore, the grievance could not, in any event, succeed.

For all of the foregoing reasons the grievance must be dismissed.

July 14, 2008

(signed) MICHEL G. PICHER
ARBITRATOR