CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3713

Heard in Montreal, Wednesday, 10 December 2008

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

UNITED STEELWORKERS OF AMERICA (LOCAL 2004)

DISPUTE:

Contracting out to Villeneuve Construction June 4-15, 2007, to man water pumps for high water at Mile 113 on the Caramat Subdivision. The Union is grieving on behalf of B&S Plumbers Ken Fraser and Cliff Collins.

JOINT STATEMENT OF ISSUE:

Between June 4, 2007 and June 15, 2007, Villeneuve Construction was contracted to bring high volume water pumps to Mile 113.1 on the Caramat Sub. to pump water due to a culvert collapse. The Contractor on the site was there to operate and monitor the pumps.

The Company had CN employees attend the work site and required further culverts installed to prevent a future occurrence.

The Union contends that this work performed by the contractor should have been given to Mr. Ken Fraser and Mr. Cliff Collins who were both available and qualified to perform the work and therefore are requesting to be compensated for all hours worked by the Contractor.

The Union has met with the Company regarding this matter citing violations of Articles 33 and 8.8 (a), (b), (c).

The Company denies the Union's position and declines the Union's request.

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) M. PICHÉ	**(SGD.) S. M. BLACKMORE**
GENERAL CHAIRMAN	**MANAGER, LABOUR RELATIONS**

There appeared on behalf of the Company:

S. Blackmore – Manager, Labour Relations, Edmonton

A. De Montigny – Sr. Manager, Labour Relations, Montreal
R. Haggart – Assistant Regional Chief Engineer, Toronto
L. Smolska – Manager, General Claims, Montreal

And on behalf of the Union:
M. G. Piché – Staff Representative, Toronto
K. Fraser – Grievor
J. Dinnery – President, Local 2004, Saskatoon
B. Bickford – Observer
M. Lacroix – Observer
M. Pindus – Observer

AWARD OF THE ARBITRATOR

It is not disputed that by reason of flooding along the roadbed near mile 113 on the Caramat Subdivision in June of 2007 the Company undertook a pumping operation to drain the area adjacent to its track. To that end it engaged a contractor, Villeneuve Construction, which obtained and utilized heavy drainage pumps for the period between June 4 and June 15, 2007. The Union alleges that that action on the part of the Company was in violation of the prohibition against contracting out contained in article 33 of the collective agreement. That article provides, in part, as follows:

Article 33 – Contracting Out

33.1 Effective February 13, 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 form 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) when 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.

33.2 The conditions set forth above will not apply in emergencies, to items normally obtained from manufacturers or suppliers not to the performance of warranty work.

The Union submits that in the past the grievors, who hold qualifications as plumbers, were assigned to operate pumps and effect drainage operations in various circumstances. The Company does not dispute that they may have been so assigned, on occasion. The thrust of its position, however, is that for many years the Company has utilized outside contractors, and rented heavy pumping equipment, to deal with problems such as the flooding adjacent to the Caramat Subdivision which presented itself in June of 2007. On that basis its representative argues that the work in question cannot be said to be work "presently and normally performed by employees …" as contemplated within article 33.1 of the collective agreement.

The Arbitrator accepts the evidence of the Company as presented through its supervisor who was present at the hearing, Assistant Regional Chief Engineer Rick Haggart. According to his evidence it has been common, over a substantial period of years, for the Company to use contractors to rent and operate heavy pumping equipment, both in Northern Ontario and in other parts of the Company's operations within that province, when circumstances require it. In the Arbitrator's view what the evidence discloses, at best, is that the Union cannot assert exclusive work jurisdiction in

respect of the leasing and operation of heavy pumps, and that that work has been one of shared jurisdiction over the years.

Given the foregoing conclusion the Arbitrator finds it unnecessary to consider whether it could fairly be said that the grievors were available, if in fact they would have performed the work in question on an overtime basis, or whether as the Company argues, the situation involved an emergency which would fall within the exception of article 33.2 of the collective agreement. For the reasons noted, I am satisfied that by reason of the extensive practice of many years, both in Northern Ontario and elsewhere, the rental and operation of heavy pumps for drainage adjacent to the Company's road bed cannot be said to be the exclusive work of the bargaining unit such as to constitute "work presently and normally performed by employees" within the meaning of article 33.1 of the collective agreement. For these reasons the grievance must be dismissed.

December 15, 2008

(signed) MICHEL G. PICHER
ARBITRATOR