# CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

# CASE NO. 3829

Heard in Calgary, Thursday, 12 November 2009

Concerning

**CANADIAN PACIFIC RAILWAY COMPANY**

and

**TEAMSTERS CANADA RAIL CONFERENCE**
**MAINTENANCE OF WAY EMPLOYEES DIVISION**

**DISPUTE:**

Contracting out of the installation of switch heaters and associated propane tanks.

**JOINT STATEMENT OF ISSUE:**

During the summer and fall of 2008, the Company used a contractor(s) to install switch heaters and propane tanks at various locations on the Revelstoke Division. The Union took the position that the contracting out was in violation of the collective agreement. Two grievances were filed which, with the concurrence of the Company, are here combined into one.

The Union contends that **(1.)** The installation of switch heaters and associated propane tanks is work presently and normally performed by members of the bargaining unit. **(2.)** Messrs D. Wood, D. Riguedell, M. Schrader and B. Keats, all members of the Revelstoke B&S Department, were available and fully qualified to do the work. **(3.)** The Company's actions were in violation of section 13.2 of Agreement No. 41.

The Union requests that Messrs. Wood, Riguedell, Schrader and Keates be compensated for all hours worked by the contractor(s) while installing switch heaters and propane tanks on the Revelstoke Division during the summer and fall of 2008.

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

**FOR THE UNION:**

**(SGD.) WM. BREHL**
PRESIDENT

**FOR THE COMPANY:**

**(SGD) K. HEIN**
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

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| K. Hein | – Labour Relations Officer, Calgary |
| D. Freeborn | – Manager, Labour Relations, Calgary |
| B. Szafron | – General Manager, Engineering West, Calgary |
| V. White | – Labour Relations Officer, Calgary |

And on behalf of the Union:

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| Wm. Brehl | – President, Ottawa |
| D. W. Brown | – Counsel, Ottawa |
| S. Brighton | – Local Chairman, Revelstoke |
| A. R. Terry | – Local Chairman, Lethbridge |

## AWARD OF THE ARBITRATOR

At issue in this grievance is the application of section 13.2 of the collective agreement which reads as follows:

> **13.2** Work presently and normally performed by employees who are subject to the provisions of this wage agreement will not be contracted out except;
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> **(a)** When technical or managerial skills are not available from within the Railway; or
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> **(b)** Where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees, and such work cannot be delayed until such employees are available; or
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> **(c)** When essential equipment or facilities are not available and cannot be made available at the time and place required (i) from Railway-owned property, or (ii) which may be bona fide leased from other sources at a reasonable cost without the operator; or
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> **(d)** Where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; or
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> **(e)** The required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
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> **(f)** Where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

There is little, if any, dispute with respect to the material facts in relation to this grievance. in 2005 the Company engaged in a substantial expansion project to increase freight capacity in the corridor between the Prairies and the Port of Vancouver. That resulted in what the Company describes, without contradiction, as a 12% increase in freight capacity. In 2008 the Company embarked on a further expansion which involved the construction of new track and realigning existing track, which included the installation of switch heaters for new crossovers, in addition to refurbishing existing switch heaters. The dispute at hand concerns the work on new and existing switch heaters on the Revelstoke Division.

To some degree the work in question was time sensitive, as the switch heaters, whose function is to ensure that ice and snow do not impede the operation of switches, needed to be securely installed and operational before the advent of the winter season. The work in question was projected to begin on September 29th, to be completed in early November of 2008. In fact, the work extended to December 2, 2008, even with the use of a contractor.

It is common ground that the Company did give to the Union notice of its intention to contract out the switch heater installation work. The notice was in fact sent to the Union on or about July 29, 2008. Although the first indication was that the work would commence August 29th, in fact actual work on the ground commenced on September 29, 2008.

The Company does not dispute that the grievors were qualified to perform the work in question, and that such work had been performed by them on a regular basis in the past. Essentially the Company's position is that the sheer volume of work, including the installation of up to twelve new switch heaters, was simply in excess of what could be performed utilizing the bargaining unit members who, it does not appear disputed, were fully occupied on other assignments. It also does not appear disputed that the Company was, in any event, compelled to contract out the electrical work as well as backhoe and excavator operations for the project.

It appears that when the Union received the notification it indicated its objections to the Company. As a result of that the parties engaged in some discussion which led to a decision that the contractors would be given the installation of switch heaters at newly constructed sites while bargaining unit employees would be assigned to the upgrading work at existing sites. In the Company's view it was simply not possible to have the B&S employees perform the whole of the project work without compromising other work priorities which needed to be completed in advance of the approaching winter season. As a result, the contractor became responsible for the installation of twelve heaters and twenty-four propane tanks, which involved the installation of four switch heaters at each of three separate locations. The evidence discloses that in fact bargaining unit switch heater maintainers were also involved in some aspects of the work at these sites. However they also continued to perform other vital work and, it is not disputed, were absent for various reasons over considerable periods of time. As related by the Company during the period of the contract work, between September 29 and December

2, 2008 the grievors were fully engaged in switch heater inspections, testing, maintaining and repairing existing switch heater equipment, replacing ducts and refuelling the propane tanks.

Upon a close examination of the work performed by the grievors, as well as by the contractor, the Arbitrator is compelled to conclude that the Company is correct in its assessment that it did not have the manpower available to complete the work in a timely fashion without resort to the contractor. Firstly, in the preparatory period, between July and September, the grievors were absent from work for vacation and other reasons for a total of some eighteen weeks. During the time of project in September and October Mr. Wood was off work for some three weeks on account of injury.

According to the Company's records the contractor billed a total of 1,250 hours for the work performed. By the Company's reckoning, dividing the total hours between the three switch heater maintainers would have occasioned some 416 hours of work to each of them over a seven week period, which amounts to some 59 hours of work per week.

On the whole, the Arbitrator is satisfied that the facts in the case at hand do suggest the same conclusion which was drawn in **CROA 2005** where the Arbitrator concluded that sufficient employees and equipment were not available to perform the work which was the subject of that dispute. As does not appear disputed before me, during the whole of the period under review, the grievors were fully engaged, suffered

no loss of earnings and in fact earned significant amounts of overtime in what is obviously a busy time of year.

For all of the foregoing reasons the Arbitrator cannot sustain the position of the Union that the exceptions to the rule against contracting out found under section 13.2 of the collective agreement did not apply. The grievance must therefore be dismissed.

November 24, 2009

**(signed) MICHEL G. PICHER**
**ARBITRATOR**