CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3848

Heard in Montreal, Thursday 14 January 2010

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

The Company's refusal to provide information or to meet pursuant to Section 13.7 of the collective agreement.

JOINT STATEMENT OF ISSUE:

On July 17, 2009 a grievance was filed that dealt primarily with the Company's alleged refusal to meet pursuant to section 13.7 of agreement no. 41 and alleged refusal to provide the Union with information concerning a contracting out that had not been covered by notice of intent. The alleged contracting out in question involves the so called "Material Delivery and Inventory Reduction Initiative" that the Company is in the process of implementing and "Material Handling" is work that is presently and normally performed by bargaining unit members.

The Union contends that the Company is (1) improperly interfering with the Union's ability to fully represent its members in violation of both the word and spirit of the *Canada Labour Code* and (2) is in violation of section 13.7 of the collective agreement.

The Union requests that the Company immediately arrange face-to-face meetings with the Unions' Directors and that, at those meetings, any and all information requested or needed by the Union to permit it to fully understand the "Material Delivery and Inventory Initiative" and its impact, both sort term and long term, on bargaining unit members be provided. The Union further requests that it be ordered that henceforth the Company be required, on an ongoing basis, to comply fully with section 13.7 of the collective agreement and to keep the Union informed about all matters of concern or possible concern to bargaining unit employees.

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

FOR THE UNION:
(SGD.) WM. BREHL
PRESIDENT

FOR THE COMPANY:
(SGD.) D. FREEBORN
MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

K. E. Bilson	– Counsel, Calgary
S. Seeney	– Director, Labour Relations, Calgary
J. Moreash	– General Manager, Toronto
D. Gillis	– Director, Stategic Sourcing, Calgary
M. Thompson	– Labour Relations Officer, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa

AWARD OF THE ARBITRATOR

The Union alleges that the Company has violated the provisions of section 13.7 of the collective agreement, and has undermined its bargaining rights, by failing to give notice of a contracting out as required by the collective agreement. The language of section in question reads as follows:

> **13.7** Should a TCRC MWED Director, or equivalent, request information respecting contracting out which has not been covered by a notice of intent, it will be supplied to the employee promptly. If they request a meeting to discuss such contracting out, it will be arranged at a mutually acceptable time and place.

It is not disputed that the Company did develop a new strategy with respect to material distribution. Simply put, the Company planned to move away from the pre-existing system whereby materials used in track maintenance operations were delivered to the locations of Track Maintenance Supervisors (TMS) in the field. Such materials

were frequently delivered by third party carriers or sometimes arrived on the Company's own freight cars. From the field location of the TMS the material would then be transported to work sites by members of the bargaining unit.

The plan conceived by the Company, and first put into effect as a pilot project in Southern Ontario between September 11, 2008 and May 21, 2009, involved an adjustment in how materials would in fact be delivered from manufacturers and suppliers to the TMS location. Under its new plan, the Company hired a third party contractor, RCL Burco Services. The contractor's obligation would be to gather the materials directly from the manufacturers and suppliers and to warehouse them at a central point from which the contractor would then deliver them to the TMS location. Thereafter, as before, the materials would be taken to work locations by members of the bargaining unit.

The central issued in this dispute, as recognized by the Union's own representatives, is whether section 13.7 of the collective agreement placed upon the Company an obligation to supply information to the Union's representative upon the request to do so concerning the contract in the instant case and to meet to discuss the contract.

The Arbitrator must confess to considerable difficulty with the Union's position. In two separate instances the language of section 13.7 of the collective agreement uses

the term “contracting out”. While it may not be necessary for the purposes of this award to give an exhaustive definition of that phrase, its meaning for the purposes of section 13.7 is significant for the resolution of this grievance.

Section 13 deals extensively with contracting out. The heading of the section reads:

> Performance of Maintenance of Way Work by Employees Outside of Department

Section 13.2, which includes the qualified prohibition against contracting out, subject to listed exceptions, speaks in terms of “… Work presently and normally performed by employees who are subject to the provisions of the wage agreement …”. By the parties’ own definition, it is bargaining unit work which is the necessary subject of contracting out.

In the instant grievance the Company takes the position that there has been no contracting out in the sense contemplated by section 13.7 of the collective agreement. The Arbitrator is compelled to agree. There is no meaningful evidence before me to establish that the transportation and delivery of materials from manufacturers and equipment suppliers to the Company is work which has, other than very occasionally, ever been performed in normal and regular way by members of the bargaining unit. While bargaining unit employees might occasionally be involved in off-loading a third party delivery vehicle or a rail car and might be exceptionally dispatched to augment the

material supply, there is no suggestion that they have had any role to play in the overall delivery of materials from suppliers or manufacturers to the Company itself.

So understood, how can it be said that there has been a contracting out in the case at hand? In the Arbitrator's view no contracting out has been proven. While the Arbitrator can appreciate a certain degree of frustration on the part of the Union, it cannot be said that it was provided no information whatsoever by the Company. On the contrary there appears to have been some extensive communication between the parties with respect to the nature of the Company's initiative. It would appear that the Union, understandably, would prefer to have a sit-down session to fully explore the Company's initiative and possibly consider alternatives, or at least to ensure that no adverse effect is visited upon its members. As laudable as that wish may be, it must be grounded in the collective agreement before it can be directed in the Arbitrator, and that requires the condition precedent of contracting out.

For the reasons touched upon above, I cannot find in the language of section 13.7 of the collective agreement any obligation on the part of the Company to meet with the Union to discuss what, to the Arbitrator's satisfaction, is confirmed as an initiative which does not in fact involve the contracting out of any bargaining unit work.

Section 13.5 of the collective agreement does contemplate the Company having an obligation to advise Union representatives in advance of its intention to contract out

work which would adversely effect employees. Section 13.6 then contemplates the possibility of a meeting taking place to discuss such contracting out.

Section 13.7 addresses the entirely different situation of contracting out which is not covered by a notice of intent. That would presumably include contracting out of bargaining unit in such a way as to bring no adverse consequences upon employees. Understandably that process would also involve a possible meeting, to ensure that the Union is able to protect the interests of its members. However, as stressed above, there is no provision of which the Arbitrator is aware whereby the Union can insist upon the holding of a meeting with the Company simply because the Company has entered into a contract in respect of work which has never been performed by the bargaining unit. That, in essence, is the case at hand.

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

January 18, 2010

(signed) MICHEL G. PICHER
ARBITRATOR