CANADIAN RAILWAY OFFICE OF ARBITRATION & DISPUTE RESOLUTION

CASE NO. 3874

Heard in Montreal, Thursday, 11 February 2010

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TEAMSTERS CANADA RAIL CONFERENCE
MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Contracting out of renovation work on the former motel at Hardisty, Alberta.

JOINT STATEMENT OF ISSUE:

In September 2006, the Union learned that the Company was using a contractor to perform renovation work on a former motel in Hardisty, Alberta that had been purchased by the Company to use as a bunkhouse. The grievors were the B&S employees on the Saskatoon BST.

The Union contends that: **(1)** The work involved was work presently and normally performed by members of the bargaining unit. **(2)** The Company's actions violated Article 13.2 of Agreement No. 41.

The Union requests that the senior affected employees be compensated at the overtime rate for all hours worked by the contractor while renovating the Hardisty motel/bunkhouse.

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

FOR THE UNION:	**FOR THE COMPANY:**
(SGD.) WM. BREHL	**(SGD.) B. LOCKERBY**
PRESIDENT	FOR: MANAGER, LABOUR RELATIONS

There appeared on behalf of the Company:

B. Lockerby	– Labour Relations Officer, Calgary
D. Freeborn	– Manager, Labour Relations, Calgary
K. Hein	– Labour Relations Officer, Calgary
M. Goldsmith	– Labour Research Specialist, Calgary
B. Szafron	– General Manager, Engineering Services, Calgary

And on behalf of the Union:

Wm. Brehl	– President, Ottawa
D. W. Brown	– Counsel, Ottawa
G. Doherty	– Director, Brandon
W. Phillips	– Local Chairman, Belleville

AWARD OF THE ARBITRATOR

The first issue to be resolved is whether the modifications to the motel building at Hardisty, Alberta, converting it into a bunkhouse for running trades employees, constitutes "… work presently and normally performed by employees who are subject to the provisions of this wage agreement …", so that contracting out would be presumptively prohibited in relation to such work by article 13.2 of the collective agreement.

The Company expressed the view that as members of the bargaining unit had never worked at the location of the motel, formerly privately owned and serving as a rental bunkhouse facility by a private contract arrangement with the owner of the motel, it is not a location at which bargaining unit employees ever performed work. With respect, the Arbitrator cannot find that factor to be pertinent in determining whether the work performed by the contractor on the motel, after it became the property of the Company, is work of a type which has previously been performed by members of the bargaining unit. The fact that such work, or indeed any work, may not have been performed at that precise location is neither here nor there for the purposes of understanding the protections of the contracting out provisions of the collective agreement. What is protected is work, regardless of its location, so long as the work is

work which can be said to be performed “presently and normally” by bargaining unit employees.

The material before the Arbitrator confirms that in many instances members of the bargaining unit from the B&S Department have performed repairs and renovations of the kind which were performed in the motel at Hardisty, Alberta. That includes such tasks installing dry wall and erecting walls and dividers, as well as repairing and installing bathrooms, doors, windows and similar tasks inherent in the modification of a building, including buildings used for bunkhouse purposes. The Arbitrator is therefore compelled to find and declare that the work in question is of a type normally done by the Union’s members and is subject to the contracting out provisions of article 13.2 of the collective agreement.

The issue then becomes whether the exceptions to the rule against contracting out found within the provisions of article 13.2 have application. The Company submits that the employees who have grieved were fully occupied at the time of the contracting out and cannot be said to have been adversely affected. Its representative points in particular to the provisions of articles 3.2(b) and (e) which provide an exception to the prohibition against contracting out in two circumstances:

> **Contracting Out**
>
> **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:
>
> …

> **(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
>
> …
>
> **(d)** Where the nature or volume of work is such that it does not justify the capital or operating expenditure involved;

The Union submits that the Company could, by proper planning, have arranged for the grieving employees to have some involvement in the construction of the bunkhouse. The Arbitrator is compelled to agree. While the evidence does indicate that the grievors were assigned to perform tasks during the period of the renovation to the motel building, it is far from clear that their tasks could not have been rescheduled so as to allow for the employees to perform work which, as noted above, plainly falls within their protected work jurisdiction for the purposes of article 13 of the collective agreement. However, it is less than clear that the grievors could have, within a reasonable time, performed all of the work which was performed by the contractor. Among other things, the evidence before the Arbitrator raises doubts as to whether bargaining unit employees could have performed either the electrical work on the motel renovation or the work in relation to the installation of heating and air conditioning equipment. In my view it is most fair to conclude that in fact the services of the contractor would have been required for those aspects of the work, at a minimum.

While it is impossible to be precise, it would appear to the Arbitrator that at least one half of the tasks in relation to the construction of the bunkhouse at Hardisty, Alberta could and should have been performed using bargaining unit employees. In the result, the Arbitrator finds and declares that there was a violation of article 13 of the collective

agreement by the Company and directs the Company to compensate the grievors on the basis of a payment in an amount equal to one half of all regular and overtime hours worked by the contractor at the Hardisty bunkhouse.

February 19, 2010

(signed) MICHEL G. PICHER
ARBITRATOR