

**CANADIAN RAILWAY OFFICE OF ARBITRATION
& DISPUTE RESOLUTION**

CASE NO. 4011

Heard in Montreal, Thursday, 12 May 2011

Concerning

CANADIAN PACIFIC RAILWAY COMPANY

And

TEAMSTERS CANADA RAIL CONFERENCE

MAINTENANCE OF WAY EMPLOYEES DIVISION

DISPUTE:

Claim on behalf of B&S employees.

JOINT STATEMENT OF ISSUE:

In or about April 2010, the Company informed the Union of its intention to utilize a contractor to perform renovation work at the bunkhouse and station in Field, B.C. A grievance was filed that took the position that Revelstoke B&S employees could, and should, have performed the work in question.

The Union contends that: **(1)** the work involved was work presently and normally performed by members of the bargaining unit and **(2)** The company's actions were in violation of sections 13.2 and 13.6 of the collective agreement.

The Union requests that the senior affected employees be compensated at the overtime rate for all hours worked by the contractor while renovating the Field bunkhouse and station.

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

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

FOR THE COMPANY:
(SGD.) M. CHERNENKOFF
ASSISTANT LABOUR RELATIONS OFFICER

There appeared on behalf of the Company:

M. Chernenkoff
M. Goldsmith

– Assistant Labour Relations Officer, Calgary
– Labour Relations Officer, Calgary

S. Smith – Labour Relations Officer. Calgary

There appeared on behalf of the Union:

Wm. Brehl – President, Ottawa
D. W. Brown – Counsel, Ottawa
A. R. Terry – Vice-President, Ottawa
A. Della Porta – Director, Lachute

AWARD OF THE ARBITRATOR

The Union challenges the Company's resort to contracting out to perform extensive renovations to its employee bunkhouse at Field, B.C.

Prior to June of 2010 had two buildings in Field, the station and the bunkhouse. It is common ground that the train crew booking in room was located in the station. Commencing in 2008 concern arose with respect to mould and asbestos in the station building, a concern which culminated in its eventual closure, with the decision being made to move the booking in room into the bunkhouse by late 2009. Because the bunkhouse is obviously a place of rest, it became problematic for the Company to contemplate housing running trades employees in it while the renovation construction was under way. It therefore became necessary to vacate the bunkhouse while the renovations were being performed. Additionally, at the same time it was decided to perform additional renovations, including the changes to the locker room and bedrooms, painting the interior and exterior walls, re-carpeting the entire building and removing and replacing concrete sidewalks outside the building. It appears that the Union was advised of the Company's intention to contract out the bunkhouse renovations in January of 2010 in a general sense, gave a specific contracting out notice to the Union's Director, Pacific Region, Mr. Henry Helfenbein on April 7, 2010 and commenced the work two

months later, on June 7, 2010. It appears that the Union's concerns were voiced on or about June 9, 2010, as the work commenced. However, the grievance before the Arbitrator was not submitted until August 5, 2010, some two months after the commencement of the work. The Company takes the position that the grievance fell outside the time limits under the collective agreement, although it does not take the position me that the matter is inarbitrable.

The work here in dispute was performed between June 7 and June 28, 2010. The Company does not deny the Union's claim that a considerable amount of the renovation work performed is work "presently and normally performed by employees" in the bargaining unit" within the meaning of section 13.2 of the collective agreement which prohibits contracting out, save under certain exceptions.

The Arbitrator is satisfied, on the basis of the unchallenged submissions of the Company, that time was of the essence in performing the work in question. As the bunkhouse could not be used, it became necessary to transport running trades employees to Lake Louise to stay at either the Lake Louise Inn or the Lake Louise bunkhouse. It became necessary to negotiate a contract with the Lake Louise Inn for the rental of thirty-two rooms over a period slightly in excess of three weeks at a cost approaching \$130,000. It appears that the month of June was also selected as it is the commencement of a slowing of train traffic, a period during which there is a reduced number of running trades employees working through Field. The arrangement for the housing of employees in Lake Louise also involved incurring transportation costs said to

have totalled in excess of \$44,000. Given these expenses the Company did not consider that it had the leisure to perform the bunkhouse renovations over a more casual or extended period of time and that, in any event, they must be completed well in advance of September when train traffic could be expected to return to higher volumes.

The position of the Company is that the B&S employees who have performed work of the kind involved in the renovation, who are based at Revelstoke, were fully engaged in their own scheduled duties over the spring and summer months and could not be freed to perform the bunkhouse renovation on the tight schedule which was contemplated. In the employer's view their regular tasks, involving culvert work, bridge maintenance, building maintenance, fuel stand maintenance and switch heater maintenance kept them fully occupied and unavailable to perform the work which was contracted out in relation to the renovations of the bunkhouse at Field, B.C. The Company also notes that the complement of the B&S department in that location was short of two employees, one of whom was a lead hand bench carpenter whose position was not filled until September of 2010. Apart from their spring and summer duties, all fourteen Revelstoke B&S employees were absent for close to 1,000 hours between May and August of 2010 for annual vacation. The Company also notes that the bargaining unit could not have performed the electrical work which was done by an electrician on a contract basis.

In the circumstances the Company pleads the exceptions found on section 13.2 (a), (b), (c) and (e) of the collective agreement which allow contracting out in the following circumstances:

- 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:
- (a)** When technical or managerial skills are not available from within the Railway; or
 - (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
 - (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
 - ...
 - (e)** The required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or

The Union disputes the Company's claim that the work in question could not have been scheduled so as to be performed by bargaining unit members. Its representative submits that the ability to have the work performed by the bargaining unit was a matter of better planning on the part of the Company and that with some flexibility the work in question could have been done by bargaining unit members. The Company denies the suggestion that the project is an example of poor scheduling, stressing that it would have incurred substantially more cost take a longer time to perform the work at the bunkhouse if, as the Union suggests, a broader window of scheduling could have been used. The Company also questions the timing of the grievance, suggesting that the Union waited close to two months after the commencement of the work in question

before filing its grievance. It submits that of itself is contrary to the Union's obligation of due diligence in pursuing its grievance in keeping with the decision of this Office in **CROA 2571**.

In the Union's view the instant case is at all fours with the decision of this Office in **CROA&DR 3874** which involved the contracting out of work on a motel converted into a bunkhouse at Hardisty, Alberta. Its representatives suggest that the success of that grievance should indicate the merit of the instant case, where work close to identical to that which was found to be improperly contracted out in that case has again been contracted out in relation to the Field bunkhouse.

In the Arbitrator's view the case is not as cut and dried as the Union would have it, although there is a degree of merit to the Union's case. The vacating of the bunkhouse at Field and the transportation and housing of running trades employees at Lake Louise obviously involved a substantial extraordinary cost to the Company. It have every legitimate business interest, in my view, in limiting the period during which that cost would need to be incurred. In other words, the Company could properly invoke the conditions of section 13.2(b) to say that it could not delay the work until bargaining unit employees might be fully available or in sub-paragraph (e) of the same article, as the time of completion of the work could not be met solely by using available bargaining unit employees.

On a close examination of the evidence, I am satisfied that there obviously was an urgency to the project, particularly as regards the completion of the interior of the bunkhouse to restore it an inhabitable space. I consider it noteworthy that the Company did alter its plan and ultimately has indicated to the Union that it will assign to bargaining unit members the painting of the exterior of the bunkhouse and the construction of an exterior walkway. It would appear that work has still not yet been done.

With respect to the balance of the work, the Union's position is tantamount to saying that the Company is compelled by the terms of the collective agreement to have scheduled the renovation work on the bunkhouse at Field so that much of its construction would depend on overtime hours worked by bargaining unit members. With respect, I find that submission less that compelling. While there may be some projects which can be properly and reasonably be done by employees on a reasonable overtime basis, given that virtually all of the Revelstoke B&S employees were fully engaged at the time of the work which is here under consideration, engaged in tasks critical to the maintenance of the railway's vital operations in the mountains of Alberta and British Columbia, I find it difficult to conclude that the exceptions to the contracting out provisions of section 13 of the collective agreement can be said to have no application, as the Union suggests. The case at hand is not, in my view, directly comparable to that found in **CROA&DR 3874** involving the bunkhouse at Hardisty, Alberta.

It weighing the application of the exceptions to the contracting out prohibitions in section 13 it is trite to say that each case must turn on its own particular facts. Of

paramount significance in the case at hand is that the Company was compelled to vacate the bunkhouse and incur the extraordinary costs of transporting and housing running trades employees in Lake Louise for the time that it would take to complete the renovations to the bunkhouse. In that circumstance it had every legitimate business reason to schedule the work over as short a period as possible. I am satisfied that it could not do that without recourse to contracting out and that the work would have been unduly delayed or that other essential of bargaining unit employees would have been compromised if it had resorted entirely to members of the bargaining unit to perform the work in question. In my view the evidence before me amply makes out the application of the exceptions found in sub-paragraphs (c) and (e) of section 13.2 of the collective agreement. For these reasons the grievance must be dismissed.

May _____, 2011

MICHEL G. PICHER
ARBITRATOR