CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 151

Heard at Montreal, Tuesday, June 10th, 1969

Concerning

CANADIAN PACIFIC RAILWAY COMPANY (CP TRANSPORT)

and

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

DISPUTE:

Claim of Warehouseman-Driver W.J Hansen, Yorkton, Saskatchewan, for highway trip Yorkton to Saskatoon and return, September 26th, 1967.

JOINT STATEMENT OF ISSUE:

On September 26th, 1967, the Terminal Manager at Yorkton, Saskatchewan, engaged Symons Transport of Yorkton to supply a tractor and driver to continue the haul of a trailer of ice cream, out of Winnipeg, Manitoba, destined for Saskatoon, Saskatchewan. On the return trip, Saskatoon to Yorkton the Symons tractor hauled an empty CP Transport trailer.

The Union contends that Articles 2.1 and 6.4 of the Collective Agreement were violated as a result of the Company engaging Symons Transport of Yorkton to perform this highway trip. The Company contends that Articles 2 1 and 6.4 were not violated as they do not stipulate that highway trips must be performed by employees of the Company.

Articles 2.1 and 6.4 read as follows:

2.1 Employees in the following positions are covered by this Agreement:

Warehouseman	Warehouseman-Driver
Warehouseman-Driver Tractor	Clerk
Mechanic	Mechanic Helper
Serviceman	Mileage-rated Driver

6.4 Where work is required by the Company to be performed on a day which is not part of any assignment, it may be performed by an available extra or unassigned employee, who will not otherwise have forty hours of work that week; in all other cases work shall be performed by the regular employee.

The Company contends that the Agreement was not violated in that the Agreement does not stipulate that all work must be performed by employees of the Company.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(SGD.) L. M. PETERSON	**(SGD.) W. H. McDONALD**
GENERAL CHAIRMAN	**GENERAL MANAGER – CP TRANSPORT**

There appeared on behalf of the Company:

D. Cardi	– Labour Relations Assistant, Montreal
C. C. Baker	– Assistant to General Manager, Merchandise Services, Vancouver
V. A. Birney	– Superintendent of Operations, Winnipeg

And on behalf of the Brotherhood:

L. M. Peterson – General Chairman, Toronto
G. Moore – Vice-General Chairman, Moose Jaw, Sask.
F. C. Sowery – Vice-General Chairman, Montreal

AWARD OF THE ARBITRATOR

The grievor was not a mileage-rated employee, but was classified as a warehouseman-driver. He was, however, qualified to work as a mileage-rated employee, and had the Company assigned him to do the work in question, he would have been paid as a warehouseman driver with respect to that work. The essence of the Union's argument is that the company violated the collective agreement in contracting out the work.

Article 2.1 of the collective agreement sets out the classes of employees covered by the agreement. This provision neither expressly nor implicitly prohibits the Company from contracting out work. If the Company, through its own employees, carries out work coming within these categories, then of course the work is performed subject to the provisions of the collective agreement. These provisions are not binding on the employees of others, and the recognition clause in itself does not restrict the company from ceasing to carry out any work through its own employees, or from arranging its performance by outside contractors. The overwhelming trend of arbitration decisions on this subject is against the Union's submission in this regard; the most recent discussion of the matter may be found in Canadian Railway Office of Arbitration **Case No. 138**.

The Union makes the further argument, however, that the situation is expressly dealt with by Article 6.4, set out in the joint statement of issue. In my view, this argument is not well founded. It is a fundamental principle of contract interpretation that the meaning of any provision is to be determined on a reading of that provision in the context in which it appears. Clause 6.4, of course occurs within Article 6 of the collective agreement, which deals generally with "Assigned Rest Days (excluding mileage-rated employees)". The basic provision of the article is that employees are to be assigned two consecutive rest days in each seven days, and the detailed provisions of the article relate to that, setting out details and making provision for special cases. This provision does not apply at all to mileage-rated employees. While the grievor is not a mileage-rated employee, and would thus be subject to Article 6 in the usual course, he would have been working as a mileage-rated employee had he been assigned to the work in question.

In any event, it is clear that Clause 6.4 is permissive, rather than restrictive. Thus, if the work in question, even though performed by mileage-rated employees, be considered as subject to Clause 6.4 by virtue of its being work performed on "a day which is not part of any assignments", then such work "may" be performed by an available extra or unassigned employee who could not otherwise have forty hours of work that week. Obviously the effect of this provision is to fit such assignments into the general pattern of five-day work weeks contemplated by Article 6 as a whole. In my view, Clause 6 is quite unrelated to the matter of contracting-out. Certainly it can fairly be said here that if the parties had meant to include such an important and widely debated provision in the collective agreement, they would have done so in clear terms. Neither of the provisions relied on by the Union has this effect.

Accordingly, the grievance must be dismissed.

(signed) J. F. W. WEATHERILL
ARBITRATOR