CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 535

Heard at Montreal, Tuesday, February 10th, 1976

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Claims on behalf of ten employees of the vessel M.V. Seatrader for snow removal work.

JOINT STATEMENT OF ISSUE:

On February 7, 1975, following a severe snowfall, there was a heavy covering of snow over the upper deck of the M.V. Seatrader. To minimize delay to the sailing of the vessel, an outside contractor with a "payloader" machine was taken aboard to clear the snow from the upper deck. The job took approximately one hour.

Ten of the crewmen of the Seatrader claimed various overtime payments ranging from one to four hours. The Brotherhood has contended that the crewmen should have been called for the snow removal work, and that to have employed the contractor was in violation of Articles 1.1, 8, 9.1 and 9.2 of Agreement 5.25. The Company declined to pay the claims.

FOR THE EMPLOYEES:	FOR THE COMPANY:
(Sgd.) J. A. PELLETIER	**(Sgd.) S. T. COOKE**
NATIONAL VICE-PRESIDENT	**ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS**

There appeared on behalf of the Company:

A. D. Andrew	– System Labour Relations Officer, Montreal
G. J. James	– Labour Relations Officer, Moncton
N. K. Hatcher	– Supervisor, Personnel & Labour Relations, North Sydney
Capt. E. J. Mulrooney	– Assistant Operations Manager – Vessels, St. John's

And on behalf of the Brotherhood:

L. K. Abbott	– Regional Vice President, Moncton
W. C. Vance	– Representative, Moncton
J. A. Pelletier	– National Vice President, Montreal

AWARD OF THE ARBITRATOR

The work of removing snow from the deck of the Seatrader was performed by an outside contractor, although members of the ship's crew did participate as well in the snow clearing operations. It is the fact that certain work was performed by an outside contractor, and not the method of doing the work, that is in question. If the payloader had been operated by an employee of the Company, then, there might have been no complaint.

The question to be determined here is whether the Company was in violation of the collective agreement in this case. Article 1.1, to which the Union refers, sets out the classifications of employees covered by the collective agreement. The grievors are employees in one of the classifications there listed. The work was performed by a person who was not an employee. If that person had been an employee, then he would have to be treated as subject to the provisions of the collective agreement, but it is common ground here that he was not an employee. There is no ground for concluding that the Company did not apply the provisions of the collective agreement to its employees in the classifications listed in Article 1.1, and in the circumstances of this case there has been no violation of that article.

Article 8 of the collective agreement deals with hours of service. It could be material to the question whether or not overtime would be payable to the employees who would have done the work, but that question would only arise following a determination that they were entitled to do the work. Article 8 is not relevant to a determination of that fundamental question. The same is true of Article 9, which deals with overtime.

In fact the collective agreement contains no prohibition against the contracting out of work which has been performed by members of the bargaining unit. The Company has, however, undertaken, outside of the collective agreement, not to contract out work which is normally performed by employees, except in certain circumstances, and to give notice to the Union as far in advance as practicable, of any intended contracting out. The contracting out in the instant case was not, in my view, in violation of those undertakings. It came within exception (3) and (5) to the undertaking in that it required equipment not available from Railway-owned property at the time and place required; it was work which would not otherwise be completed within the required time; and it was not a situation in which advance notice was practicable.

The situation was of a non-recurring nature, and the Company arranged for an outside contractor in order to meet its schedules in the face of unexpected circumstances. No employees were laid off; and the seasonal layoff of employees which subsequently occurred was not affected in any way by what was done on February 7. The only adverse effect on employee was that some of them lost a certain overtime opportunity on that day. Having regard to all the circumstances, it must be concluded that the contracting out which took place did not constitute a violation of the collective agreement. Accordingly the grievance must be dismissed.

(Sgd.) J.F. W. WEATHERILL
ARBITRATOR