CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1966

Heard at Montreal, Tuesday, 14 November 1989

Concerning

CANADIAN PACIFIC LIMITED

And

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Contracting out of roadway snow clearing and salting duties at St. Luc and Outremont Yard, December 15 and 16, 1988.

JOINT STATEMENT OF ISSUE:

The Union contends that the employer violated Article IV of the Master Agreement dated July 29, 1988 by contracting out work presently and normally performed by the bargaining unit and the employer violated Article IV of the Master Agreement dated July 29, 1988 by contracting out work that cannot be considered an exception to the aforementioned Article, and requests that Messrs. G. Cloutier and J.P. Menard be compensated for all hours worked by the contractor while clearing and salting roadways.

The Company denied the Union's contention and declines payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) M. L. MCINNES	(SGD) E. S. CAVANAUGH
SYSTEM FEDERATION GENERAL CHAIRMAN	GENERAL MANAGER, OPERATION & MAINTENANCE, IFS

There appeared on behalf of the Company:

P. O'Donoghue	– Assistant Supervisor, Labour Relations, IFS, Toronto
L. G. Winslow	– Labour Relations Officer, Montreal
B. Butterworth	– Assistant Supervisor, Labour Relations, IFS Toronto
G. McBurney	– Supervisor, Labour Relations, IFS Toronto
J. Favreau	– Division Engineer, Quebec Division

And on behalf of the Brotherhood:

R. Della Serra	– General Chairman, Boisbriand
L. DiMassimo	– Secretary/Treasurer & Federation General Chairman, Ottawa
D. Lacey	– General Chairman, Ottawa

AWARD OF THE ARBITRATOR

The material establishes beyond dispute that for a period of over twenty years the Company has assigned the salting of roads and parking lots in St. Luc Yard and Outremont Yard in Montreal to members of the bargaining unit. This was done most recently by the use of Company owned five-ton trucks equipped with salt spreaders. For many years the salt was contained in bags which employees opened as part of their work.

For the 1988-89 winter season the Company made an alternate arrangement. It contracted out the salting of the yards to an independent contractor, as it had previously done with certain snow removal operations. In the result, machine operators who previously would have been assigned to salt spreading, much of which was done on overtime, were reassigned to other duties.

The resolution of this dispute is governed by the provisions of the Master Agreement, Article IV, dated July 29, 1988 which provides, in part, as follows:

> Effective February 3, 1988, work presently and normally performed by employees who are subject to the provisions of this collective agreement will not be contracted out except:
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> 1. when technical or managerial skills are not available from within the Railway; or
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> 2. where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or
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> 3. when essential equipment or facilities are not available and cannot be made available at the time and place required **(a)** from Railway-owned property, or **(b)** which may be bona fide leased from other sources at a reasonable cost without the operator; or
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> 4. where the nature or volume of work is such that it does not justify the capital or operating expenditure involved; or
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> 5. the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; or
>
> 6. where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.
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> The conditions set forth above will not apply in emergencies, to items normally obtained from manufacturers or suppliers nor to the performance of warranty work.

The Company seeks to justify its action on the basis of paragraphs (3) and (4) of the foregoing provision. The Arbitrator has substantial difficulty with that argument. In my view there can be little doubt that the salt spreading was, at all material times, "work presently and normally performed by employees who are subject to the provisions of this collective agreement". In other words, it is work which, subject to the application of the exceptions, is not to be contracted out.

It is not disputed that trucks equipped for salt spreading, as well as a front-end loader, have been and are equipment owned by the Company and have been regularly utilized in salt spreading operations at the two yards. The Arbitrator cannot accept, in these circumstances, that the Company can rely on the assertion that the equipment and facilities were not available at the time and place required. The record discloses that salt spreading on an in-house basis was a continuing operation. While admittedly it could be streamlined and made more efficient by reverting to the use of bulk salt, it was always assumed as part of the Company's operating burden. This is not a circumstance where the Company faces a one time undertaking for which it would be unreasonable to expect it to purchase and maintain equipment. As the equipment is already in the possession of the Company, including the salt spreaders, there is no capital expenditure of any significance to contemplate. The operating expenditure, on the other hand, is one which the Company has borne for a number of years. The fact that the same services might be obtained more cheaply from an outside contractor (a proposition which is not proved before the Arbitrator) would not, of itself, be sufficient to invoke the extraordinary provisions of sub-paragraph 4.

For all of the foregoing reasons the grievance must be allowed. The Arbitrator finds and declares that the Company has violated the Collective Agreement by subcontracting salt spreading operations at St. Luc Yard and Outremont Yard in Montreal for the 1988-89 winter season. The Arbitrator orders that the grievors be compensated

for all hours of work of which they were deprived by virtue of the contracting out. In the event of any dispute, the parties may speak to the issue of compensation.

November 17, 1989

(Sgd.) MICHEL G. PICHER
ARBITRATOR