CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2042

Heard at Montreal, Wednesday, 11 July 1990

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

DISPUTE:

Contracting out of work at the Steel Distribution Facility in MacMillan Yard at Toronto.

JOINT STATEMENT OF ISSUE:

A Steel Distribution Facility was constructed in MacMillan Yard and went into operation for inbound cars on July 30, 1986, and for outbound cars on August 26, 1986. The work performed at this Facility includes the transshipment of commodities from trucks to railcars, coordinating trucks to shipper's premises maximizing truck payloads, verifying truck payments, preparing rail bills of lading, ensuring proper rail rates are assessed ordering appropriate railcars to maximize payload weights and advising customers of any problems associated with the transshipments.

The Brotherhood contends that the work performed at the Steel Distribution Facility is the same as that presently and normally performed by employees represented by the Brotherhood on Track AO45 in MacMillan Yard at Toronto, in violation of Appendix VIII of Agreement 5.1.

The Company disagrees.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD) TOM MCGRATH	(SGD) W. W. WILSON
NATIONAL VICE-PRESIDENT	for: ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

M. M. Boyle – Manager, Labour Relations, Montreal
W. Gallagher – Marketing Officer, Toronto

And on behalf of the Brotherhood:

R. S. Stevens – Regional Vice-President, Toronto
R. Chapman – Local Chairman, Toronto

AWARD OF THE ARBITRATOR

The material establishes that the members of the Brotherhood have performed and continue to perform the transshipment of steel on Track AO45 in MacMillan Yard in Toronto. The Steel Distribution Facility which was constructed by the Company and put into operation in July and August of 1986 on a contracted out basis also involves the transshipment of steel. The services of the facility, however, are considerd more extensive, in that they include the full range of transportation services, including hiring truck companies to carry products to and from shippers' and consignees' premises as well as extensive services in relation to inventories, maintenance of shipped products and the completion and forwarding of documentation, including bills of lading and customs forms.

The Steel Distribution Facility employs a manager, a clerk and two groundsmen, all of whom are employees of Terminal Distribution Services, a subsidiary of Niagara Distribution Services, the company which was awarded the contract to open the Steel Distribution Facility. The issue is whether the letting of that work to the outside company constitutes contracting out in violation of Appendix VIII of the Collective Agreement. That part of the Collective Agreement provides, in part, as follows:

> This has reference to the award of the Arbitrator, The Honourable Emmett M. Hall, dated December 9, 1974, concerning the contracting out of work.
>
> In accordance with the provisions as set out on page 49 of the above-mentioned award, it is agreed that work presently and normally performed by employees represented by the Associated Non-Operating Railway Unions signatory to the Memorandum of Settlement dated May 3, 1985, will not be contracted out except:
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> **(1)** when technical or managerial skills are not available from within the Railway; or
>
> **(2)** where sufficient employees, qualified to perform the work, are not available from the active or laid-off employees; or

The first question is whether the transshipment of steel at MacMillan Yard, as performed in the Steel Distribution Facility, is work "... presently and normally performed by employees represented by [the Brotherhood]". In the Arbitrator's view it is difficult to conclude other than it is, at least insofar as the work of the groundsmen is concerned. It is not disputed that until the establishment of the Steel Distribution Facility loading and off-loading of steel products at MacMillan Yard were normally and regularly performed by members of the Brotherhood. The fact that a more sophisticated plant was constructed to perform the same kind of work, or that the same work is now in conjunction with a more extensive range of services does in my view, derogate from the essential fact that the loading and off-loading of steel at MacMillan Yard has traditionally been bargaining unit work, performed by three transshipmen and a lead hand transshipman, working in conjunction with a carman operating a mobile twenty ton crane. In the Arbitrator's view the alteration of the location of steel transshipment within yard, and the introduction of a more sophisticated facility involving a heavier overhead crane, does not change the essential nature of the work, at least insofar as the work of the newly established groundsmen's positions is concerned.

The issue then becomes whether the contracting out which has taken place falls within the exceptions enumerated within Appendix VIII. On the evidence before me I am compelled to conclude that it does. The Company asserts that the first exception applies, to the extent that it did not have within its own operations the technical or managerial skills to provide door-to-door transshipment service for steel shippers and consignees. In my view it is unnecessary to decide the issue on that basis. The material before me discloses, without substantial contradiction, firstly, that none of the employees working in the transshipment of steel at Track AO45 in MacMillan Yard have been adversely affected. They continue to load and off-load shipments of steel, chiefly for the same three principal customers, as they have in the past. In other words the work of that location has not been moved out of the hands of bargaining unit employees and into the contracted out facility. In that sense, no adverse impact in respect of employees at MacMillan Yard is disclosed.

Secondly, and most significantly for the purposes of the exceptions of Appendix VIII, the evidence further establishes that there were no employees represented by the bargaining agent who were on active duty or on layoff available to perform the contracted out transshipment work in the new Steel Distribution Facility. Extensive employee records presented at the hearing the Company disclose that there were, at all material times, no laid off employees in the Metropolitan Toronto area. Secondly, that all of the individual employees who were on layoff in regions, who could elect to accept recall to a vacancy in Toronto, had without exception communicated to the Company they would not accept work which would involve a move to Toronto. In these circumstances the Arbitrator

is satisfied the conditions of the second exception listed under Appendix VIII are made out. While it may be said that the work of the groundsmen employed by the contracting company in the Steel Distribution Facility is work presently and normally performed by bargaining unit employees within the meaning of Appendix VIII, there were not sufficient employees qualified to perform the work available from the active or laid off list of employees at the time the facility was established. In that case, the intent of Appendix VIII would clearly allow the Company to contract out the work as it did.

The only remaining issue is whether the Company failed to give notice to the Brotherhood in accordance with the requirements of Appendix VIII. The memorandum provides, in part, that not later than January 31 of each year the Brotherhood and Company are to meet to discuss plans with respect to contracting out. It does not appear disputed that the Company did not give the Brotherhood notice of its intention to contract out the of the Steel Distribution Facility within the purview of that requirement. It justifies its position on the basis that the operation of the Steel Distribution Facility was not covered by Appendix VIII.

With that position the Arbitrator cannot agree. The general requirement to discuss planned contracting out does not operate only in respect of plans which would have a material and adverse effect on employees, a matter which is dealt with separately within the memorandum, and requires specific notice of not less than thirty days. The more general requirement for an annual discussion of contracting out plans would, in my view, include all contracting out of work presently and normally performed by employees within the bargaining unit, whether or not it falls under the exceptions contained in Appendix VIII. The Arbitrator therefore finds and declares that the Company did fail in its obligation to give the Brotherhood appropriate advance notice of its intention to contract out the work of the Steel Distribution Facility.

For the reasons elaborated above, however, no further violation of the terms of the Collective Agreement or of Appendix VIII is established in this case. Specifically, I must find and declare that the Company was entitled to contract out the work of the Steel Distribution Facility, as sufficient employees qualified to perform the work were not available from the active or laid off list of employees at the time. To this extent, therefore, subject to the above findings as to the failure of proper notice, the grievance must be dismissed.

July 13, 1990

(Sgd.) MICHEL G. PICHER
ARBITRATOR