

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

CASE NO. 4703

Heard in Montreal, October 10, 2019

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

And

UNIFOR COUNCIL 4000

DISPUTE:

Violation of Articles 35.1, 35.2 and 35.3 as a result of CN hiring contractors to clean the cabs of locomotives in the North Yard (Bypass Yard) in Prince George.

JOINT STATEMENT OF ISSUE:

In support the Union provides that this is work normally performed by 5.1 employees and as a result should have provided the Union an opportunity to mitigate these actions.

The Company disagrees with the Union's allegations. It is the Company's position that the work performed is not presently and normally work done by 5.1 employees and as a result there can be no violation of the collective agreement. And if it was determined that such work is presently and normally performed by bargaining unit members, the Company would argue that the exceptions in Article 35 would apply.

FOR THE UNION:
(SGD.) B. W. Kennedy
National Representative

FOR THE COMPANY:
(SGD.) R. Campbell
Labour Relations

There appeared on behalf of the Company:

S. Blackmore	– Senior Manager Labour Relations, Montreal
F. Daignault	– Manager Labour Relations, Montreal
K. Engler	– Senior Manager Mechanical, Prince George
S. P. Paquette	– Director, Dispute Resolution and Labour Standards, Montreal
V. Paquet	– Manager Labour Relations, Toronto

And on behalf of the Union:

B. Kennedy	– National Representative, Edmonton
R. Shore	– Regional Representative, Langley

AWARD OF THE ARBITRATOR

Article 35.1 of the collective agreement reads, in its opening paragraph, 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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It is not in dispute that work has been contracted out at the North Yard in Prince George. If this work is work presently and normally performed by bargaining unit employees, then Article 35.1 applies, and the work may not be contracted out unless one or more of the exceptions which follow the opening paragraph set out above applies. Where work is contracted out, the onus is on the union to show that such work is presently and normally performed by bargaining unit members. If that is shown, then the onus shifts to the employer to bring the matter within one or another of the exceptions, or the contracting out will be in violation of the collective agreement.

Articles 35.2, 35.3 and 35.4 have to do with notice to the Union of intent to contract out, and the provision of information to the Union. The requirement of notice in Article 35.2 only arises with respect to a contracting-out which would have a material and adverse effect on the employees. In general, it may be said that these articles are only of importance where there is to be a contracting out of "bargaining unit work" as it may be called, that is, in this case, work "presently and normally performed" by employees in the bargaining unit. The question to be determined at the outset, then, is whether or not the work contracted out in the North Yard at Prince George is work "presently and normally performed" by bargaining unit employees.

There are two yards at Prince George Terminal. They are distinct, and at some distance apart. The North Yard is designed for through traffic, with minimum dwell time. There are no buildings or structures, no sanitation dump or sand towers for servicing locomotives. There is a crew office, lunchroom and storage lockers for running trades crews. The Yard staff are shopcraft Rail Car Mechanics and transportation employees. There is just one employee covered by collective agreement 5.1 located in the North Yard.

The South Yard has a Locomotive Reliability Centre; there are sand towers and three sanitation dumps. This yard is for local trains and manifest trains. The South Yard is staffed with Rail Car Mechanics and other shopcraft employees, as well as the employees covered by collective agreement 5.1, namely Hostlers/Labourers. These are the employees who it is alleged are performing the work which is contracted out. The question is whether or not these employees are “presently and normally” performing such work in the North Yard.

The work in question is the performing of locomotive servicing work such as cab cleaning, toilets, and general labouring work in the North Yard. There is no doubt that members of the bargaining unit presently and normally perform such work in many locations across the country including, of course, the South Yard at Prince George. The onus is on the Union to show that they also perform it in the North Yard.

It is the Union’s submission that the work in question was performed at the North Yard until sometime in 2017, although nothing was done about it at the time. Later that year, an employee was sent from the South Yard to the North Yard to perform similar

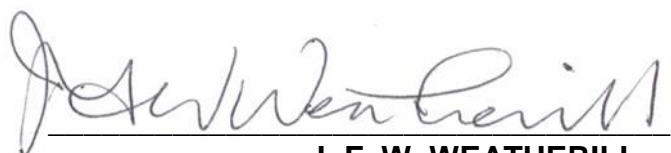
work. On arrival at the North Yard he found that the work had been done, and on another occasion a contractor's employee was observed changing the toilet chemical on a locomotive. Full performance of the procedure requires the use of a Locomotive Service Truck. Such a truck is maintained at the South Yard, but there is no such truck at the North Yard – the contractor brings its own. The Company states that the truck has never been used at the North Yard, while the Union states that there have been occasions when it has.

The parties are in direct conflict as to the facts. While it was stated by the Company at one point that such work was “never” done by bargaining unit employees (which would mean, in this case, employees from South Yard), there was also a direct statement by the Union relating to an occasion when the truck was taken to North Yard for such work. It is my view, however, on the balance of probabilities, that while the work was probably done by employees from South Yard on occasion, it was not presently and normally done by them.

It may be noted that the contracting out has not affected the number of bargaining unit employees at South Yard – rather, it appears to have increased.

For all of the foregoing reasons, the grievance is dismissed

November 1, 2019



**J. F. W. WEATHERILL
ARBITRATOR**