SHP 733

IN THE MATTER OF AN ARBITRATION

BETWEEN

CANADIAN PACIFIC
(the “Company”)

-and-

UNIFOR, LOCAL 101
(the “Union”)

Concerning the Contracting-Out of Work
To CAD Rail in the Overhaul of Locomotives

Arbitrator:
Richard I. Hornung, Q.C.

For the Union

Jim Wiens	President, Local 101R
Joel Kennedy	National Representative
Bruce Snow	National Rail Director

For the Company

Sharney Oliver	Manager, Labour Relations

Hearing
July 28, 2020
Calgary, Alberta

I

UNION'S EX PA*RTE STATEMENT OF ISSUE*

DISPUTE:

Grievance concerning the contracting–out of overhaul work on four (4) locomotives to Canadian Allied Diesel (CAD) and the adequacy of the prior disclosure and discussions.

UNION STATEMENT OF FACTS:

On June 06, 2019, the Union received a contracting-out notice outlining the Company's (CP) intention to contract-out mechanical work of positive train control system (PTC) installation, engine and alternator replacement, and subsequent out-bound testing to four (4) CP locomotives (9693/9561/9353/9355) to third party contractor Canadian Allied Diesel (CAD) commencing July 07, 2019.

On June 13, 2019, the Union wrote the Company requesting full disclosure, including the answers to ten (10) specific questions, and requesting a meeting to discuss options for performing all or part of the work in-house. The Union requested a reply by June 21, 2019.

On July 02, 2019, having received no response, the Union wrote again to request a response.

On July 03, 2019, four (4) days prior to the scheduled start of the contracting-out, the Company responded, providing replies to some of the Union's questions. There was no reply to the Union's request for a meeting or discussion.

UNION POSITION:

The Union contends that the Company has contracted-out work presently and normally performed by the Unifor Local 101 R bargaining Unit, without such contracting-out being saved by any of the exceptions set out in Rules 53.1 and 53.2. It is therefore submitted that the Company has violated Rule 53.1.

In addition, and in the alternative, the Union contends that the timing of the initial notice and the non-responsiveness to the Union's requests for information and discussion constituted a violation of the mandatory provisions of Rule 53.5. Thus making it impossible for the Union to put forward opportunities to perform the work in-house, even in the event that any of the exceptions set out in Rules 53.1 were deemed to apply. By way of remedy, the Union respectfully seeks:

1) A declaration that the Company violated Rules 53.1 and 53.5; and 3

2) Compensatory damages for the loss of regular or overtime work by bargaining unit members.

II

COMPANY'S EX PARTE STATEMENT OF ISSUE

DISPUTE:

The Union's grievance concerning the contracting–out of overhaul work on four (4) locomotives to Canadian Allied Diesel (CAD) and the adequacy of the prior disclosure and discussions.

STATEMENT OF FACTS:
On June 6, 2019, the Union received a contracting-out notice stating the following:
In accordance with Rule 53 this contracting out notice if for the following outsourcing locomotive overhaul work involving four (4) CP locomotives starting July 7, 2019.

The locomotives in scope are CP 9363, CP 9561, CP 9353 and CP 9355.

This work will be contracted out due to the following factors as listed in Rule 53.1, including:

> *(v) required time of completion of the work cannot be met with skills, personnel or equipment available on the property.*

There are no anticipated adverse effects to employees as overtime has been available at Winnipeg, Toronto and Montreal Locomotive Maintenance facilities that are historically tasked with performing this type of work, and no qualified and an insufficient number of laid off employees are available to complete this work.

Work is going to CAD Rail in Montreal effective July 7 2019. Work will include overhaul scope works to cover PTC installations, engine and alternator replacement in kind and running test work on outbound, it is estimated to be in the range of 150 – 250 lbr hours per locomotive.

COMPANY POSITION:
***Preliminary Objection**:*
The Company cannot agree with the Union's expanded relief requested. As per Rule 53.8 regarding Contracting Out grievances: "the Union officer shall submit the facts on which the Union relies to support its contention." The Company submits that any request outside the grievance submitted, is not appropriately before the arbitrator.

The Union bears the burden of proof in a case such as this; the request lacks specificity and the Union has failed to substantiate their claim for compensatory damages for the loss of regular or overtime work.

The Company denies the Union's allegations, claims and requests.

The Company provided appropriate notice to the Union citing the following exemption from Rule 53.1 as the reason for contracting out:

> *(v) the required time of completion of the work cannot be met with skills, personnel or equipment available on the property.*

*The Company maintains there has been no violation of the Collective Agreement and that **all** obligations under Rule 53 were met—including that, the Company was transparent in its answers to the Union regarding the contracting out.*

The Company requests that the Arbitrator dismiss the Union's grievance.

III

Facts

1. On August 15, 2019, the Union filed a Step 2 grievance alleging a violation of: "… *Rules 53.5, 5.13 Appendix 57 and all other related Rules, Appendices and Articles of the Collective Agreement…*" relative to the Contracting Out Notice served by the Company regarding the contracting out of locomotive overhaul work involving four CP locomotives. As a remedy, it requested – *inter alia* – that the Company "*pay a lump sum of 2000 hours (to) be distributed to the DM's for Montreal, Toronto and Winnipeg at the applicable overtime rate"*

2. The facts leading to the grievance are largely not in dispute:

- On **June 06, 2019**, the Company provided a letter to the Union regarding "… *Contracting Out of Four (4) Locomotive Overhauls*" (Company Book of Exhibits, Tab 1) stating in part:

> *In accordance with Rule 53 this contracting out notice if [sic] for the following outsourcing locomotive overhaul work involving four (4) CP locomotives starting* ***July 7, 2019.***

- The letter cites the following *exception* in Rule 53.1 as the justification for contracting-out of the bargaining-unit work:

> *This work is will be contracted out due to the following factors as listed in Rule 53.1, including:*
>
> *(v) the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property.*

- The letter also states:

> *There are no anticipated adverse effects to employees as overtime has been available at Winnipeg, Toronto and Montreal Locomotive Maintenance facilities that are historically tasked with performing this type of work, and no qualified and an insufficient number of laid off employees are available to complete this work.*

- On **June 13, 2019**, the Union responded to the Company's Notice with a letter headed: "*Meeting and Disclosure request – Cad Rail Contracting Out*" [Union Book of Exhibits, Tab 6] stating that:

  > *In accordance with Rule 53.5. The Union requests the Company to hold discussions with the Union as soon as possible in advance of the date contemplated in the company's contracting out notice.*

- The letter also requests full disclosure of all documentation relating to the decision to contract out and asks – in preparation of the discussion envisaged in Rule 53.5 - ten specific questions while noting its belief that *"some part or maybe all of the work can be performed internally*" and that there may be an opportunity to keep the work in-house.

- The letter repeats the request for a meeting, asks the Company when it will be available, and requests an overall response no later than **June 21, 2019.** The email sent to the Company attaching the letter reiterates that it is sent pursuant to Rules 53.5 and 53.6.

- On **July 02, 2019**, having received no reply to its June 13th letter, the Union wrote to the Company as follows [Union, Tab 7]:

  > *On June 13, 2019, The Union has requested a Meeting Call concerning-Cad Rail Contracting out Notice dated on June 6, 2019. Unfortunately, the Union has never receiving [sic] a reply. Please can you respond to us?*

- On **July 03, 2019**, four days prior to the scheduled start of the contracting-out, the Company responded, providing replies to some of the Union's questions [Company, Tab 9].

- The responding email did not address the Union's requests for a meeting, a call, or discussions.

- On **July 07, 2019**, the contracting-out work to CAD Rail commenced as announced.

- On **August 15, 2019** – pursuant to an agreement to extend the time - the Union filed a Step Two grievance [Union, Tab 4].

IV

Collective Agreement

3. The relevant provisions of the Collective Agreement read as follows:

> ***53.1*** *Work presently and normally performed by employees who are subject to the provisions of this collective agreement will not be contracted out except:*
>
> > ***(v)*** *the required time of completion of the work cannot be met with the skills, personnel or equipment available on the property; …*
>
> ***53.5*** *Except in cases where time constraints and circumstances prevent it, the Company will hold discussions with representatives of the Union in advance of the date contracting out is contemplated. The Company will provide the Union a description of the work to be contracted out; the anticipated duration; the reasons for contracting out and, if possible, the date the contract is to commence, and any other details as may be pertinent to the Company's decision to contract out. During such discussions, the Company will give due opportunity and consideration to the Union's comments on the Company's plan to contract out and review in good faith such comments or alternatives put forth by the Union. If the Union can demonstrate that the work can be performed internally in a timely fashion as efficiently, as economically, and with the same quality as by contract, the work will be brought back in or will not be contracted out, as the case may be.*
>
> ***53.6*** *Should a Regional Union Representative, or equivalent, request information respecting contracting out which has not been covered by a notice of intent, it will be supplied to him promptly. If he requests a meeting to discuss such contracting out, it will be arranged at a mutually acceptable time and place.*
>
> ***53.7*** *In the event Union representatives are unavailable for any meetings, such unavailability will not delay implementation of Company plans with respect to contracting out of work for that year.*

> ***53.8*** *Where the Union contends that the Company has contracted out work contrary to the provisions of this Rule, the Union may progress a grievance commencing at the last step of the grievance procedure. The Union officer shall submit the facts on which the Union relies to support its contention. Any such grievance must be submitted within 30 days from the alleged non-compliance.*

V

Company Preliminary Objection

4. The Company raised the preliminary objection that the remedy requested in the Union's *Ex Parte* Statement – *"Compensatory damages for the loss of regular or overtime work by bargaining unit members"* - expands the request for relief beyond that contained in its Step 2 grievance. It asserts that the remedy sought is an essential issue in the dispute and completes the rationale for the present arbitration.

5. It submits that any request for a remedy, outside of that requested in the Step 2 grievance, is therefore not appropriately before the arbitrator; and, that the Union is now proscribed from raising a remedy other than that which was raised in the grievance procedure.

6. Relying on **CROA 3265** and **SHP 634**, the Company argues that parties are required, at the final step of the grievance procedure, to: "*be on the same page with respect to any issue which might ultimately be pleaded at arbitration*."

7. It points out that the salutary effect of complying with the principle expressed in **SHP 634** is that it compels the Union:

> *To engage with the Company at an early stage on the basis of its objection to the Company's action. The parties must have a substantive opportunity to discuss and seek to reach agreement through compromise if necessary on the challenge the Union makes to the Employer's decision. The substantive basis of the challenge must be before the parties when the issue is discussed in the steps of the grievance procedure.*

8. At the risk of oversimplifying, the Union argues that the request for a remedy does not constitute a “fact” upon which it relies in order to establish its case.

9. I understand the Company’s concern that the Union be compelled to focus on the relief which it seeks early into the grievance process so as to facilitate the substantive opportunity to discuss and reach agreement (through compromise if necessary) on the Union’s challenge of the Employer’s decision. The benefit of doing so is apparent.

10. However, in the circumstances here, the Union points out that its request for 2000 hours of overtime, in the Step 2 Grievance, was *“unmistakeably a claim for compensatory relief for lost work opportunities”* which amounts to the same request, in a more general form, made in its *Ex Parte* Statement. Further, it argues that it was impossible for it to particularize the extent of its compensatory claim in that the Company did not – to the date of the hearing – disclose the number of hours it took to complete the contested work.

11. It points out that, in any event, the lack of information disclosed by the Company (as discussed) realistically made the substantive opportunity to discuss and reach agreement on a particularized remedy unlikely if not impossible.

12. In the present circumstances, although somewhat convoluted, the Union’s Step 2 Grievance: addresses the rules which it alleges are violated; recites the relevant facts; and requests a remedy. Irrespective of its imperfections, the grievance discloses sufficient information to glean the “*substantive basis of the [Union’s] challeng*e” so as to leave the parties “*on the same page with respect to any issue which might ultimately be pleaded at arbitration*” relative to the Company’s exercise of its contracting out rights in the Collective Agreement.

13. Additionally, Rule 53.8 only requires the Union, in its Step 2 Grievance, to “*submit* ***the facts*** *on which the Union relies to support its contention”*. Given the

circumstances here, and phrased as it is, Rule 53.8 cannot be said to require a delineation of a specific remedy as opposed to a substantive fact upon which the Union relies to support its contention that the Employer breached Rule 53.

14. In the circumstances here the request for a remedy - which does not correspond to that made by the Union in its Step 2 Grievance - is a consideration better left addressed when granting the remedy at the conclusion of the hearing.

15. In all events, it does not result in the grievance being either dismissed or otherwise hampering the board's jurisdiction to grant an appropriate remedy.

16. The preliminary objection is denied

VI

Submissions

Union

17. According to the Union, the Company's contracting out of the work in question here is not saved by the provisions of Rule 53.1(v) or any of the other exceptions set out in Rules 53.1 and 53.2.

18. It contends that the Company violated the mandatory substantive provisions of Rules 53.5 & 53.6 by:
    - Committing to contract out the work prior to serving the notice;
    - Failing to advise of the anticipated duration of the contracting out;
    - Failing to respond to the union's requests for disclosure/meetings/discussions in advance of the date the contracting out was contemplated;
    - Making it impossible for the Union to demonstrate that the work, or some of it, could be performed internally in a timely fashion as efficiently, economically and with the same quality as by contract.

Company

19. For its part, the Company says that the provisions of Rule 53.1(v) were met both through the Notice itself as well as the information subsequently provided to the Union in its email of July 3, 2019 (Company Tab 9) - which reflected the fact that it was untenable to attempt to do the required work on the locomotives with the Company's existing work force at the available locations.

20. It asserts that, taken together, it provided the Union with: a description of the work to be contracted-out; the reasons for contracting-out; the date the contract was to commence; and, the pertinent information that there were no anticipated adverse effects to the employees. While it concedes that the initial Notice failed to include any reference to the "*anticipated duration*" of the contracting out, the Company asserts that it provided that information in its email of July 3, 2019.

21. Accordingly, it argues that its Notice met all the requirements of Rule 53.1 and complied with Rule 53.5.

22. Further, it asserts that the exchange of information provided through the emails of July 2nd and 3rd, constituted the "*discussions"*, as envisioned by Rule 53.5, in advance of the date that the contracting out was intended to commence. Specifically, it contends that its response to Union's question: "*can we use the Appendix 64 for completed this work* [sic]?" (Union, Tab 4), in its email of July 3, 2019 (Company Tab 9) fulfilled that obligation.

VII

Decision

23. In that the parties argued the issue of the burden of proof, I refer to – and adopt as applicable to this case - the following quote from *BC Rail v. Council of Trade* Unions (1999 B.C.C.A.A.A. No. 411) :

> ***The basic rule is that the burden of proving particular facts is upon the party who must rely on those facts in order to succeed in the dispute****. Where the Railway asserts that a particular contracting out of*

> *work falls within one of the exceptions, it bears the onus of proving facts that support that assertion. … Here, the Railway cannot claim the benefit of one of the exceptions unless it is able to plead and prove facts that bring the circumstances within the terms of the exception. However, the issue in the first instance is whether the disputed work is bargaining unit work. Proof of the facts necessary to support that assertion lies on the Council.* ***On that basis I conclude that the onus is upon the Union in the first instance to establish that the work in question is bargaining unit work. Thereafter the evidentiary burden of proof falls to the Railway to prove facts which would bring the circumstances within one or more of the enumerated exceptions.***

24. There is no dispute that the work in issue was work that was presently and normally performed by employees who were subject to the provisions of the Collective Agreement.

25. The burden is on the Company to prove that the work contracted out falls within one of the enumerated exceptions contained in Rule 53.1 (**SHP 578**).

26. Where, as here, the work contracted out falls within the exceptions set out in Rule 53.1, the onus falls to the Union to demonstrate that the work could be done internally - including through utilizing a reasonable amount of overtime.

27. While the Company may have reasonably concluded that the work could be contracted out – on the basis of the exception cited in Rule 53.1(v) – that fact alone does not satisfy the issue of whether or not Rule 53 was complied with. The mere assertion that any of the exceptions apply will not be sufficient (**SHP 381**). The Company cannot meet its responsibilities under the provisions of Rule 53 by segregating the assertion of an enumerated exception, in Rule 53.1, from its obligations as set out in Rule 53.5.

28. As discussed below, in this case the Company did not comply with the conditions set out in Rule 53.5 and 53.6 and, thereby, impugned the validity of its Contracting Out Notice.

Breach of Rule 53.5 / 53.6

29. On June 13, 2019, the Union wrote to the Company (Union, Tab 6), pursuant to Rule 53.5, requesting that the: *"Company hold discussions with the Union as soon as possible in advance of the date contemplated in the Company's contracting out notice*". In addition, it opined that *"some part or maybe all of the work can be performed internally in a timely fashion…*". In anticipation of that discussion, the Union asked 10 specific questions regarding the details associated with the contracted out work and requested that it be provided by June 21, 2019, along with an indication from the Company of its availability to discuss the same.

30. Viewed in the context of the provisions of Rule 53.5 and 53.6, those questions were relevant, and the information central, for the Union to attempt to: *"… demonstrate that the work can be performed internally in a timely fashion as efficiently, as economically, and with the same quality as by contract…"*.

31. Accordingly, given that it awarded the contract to commence on July, 2019, it was imperative that the Company provide responses to the questions - and arrange a meeting with the Union Representative - in a prompt and timely manner, as anticipated by both Rule 53.5 and 53.6.

32. However, the Company did not respond to the Union's request, either for information or to hold discussions, until July 3, 2019 - some 4 days before the awarded contract commenced.

33. The board was made aware, at the hearing, that the overhaul of locomotives is projected to occur regularly (approximately every 5 years). In those circumstances, scheduling the discussions ("*in advance of the date contracting out is contemplated")* and providing the information mandated by Rule 53 in a timely manner, would seem to be relatively achievable.

34. In the circumstances here, it cannot be said that the email exchange – as relied on by the Company - met its obligations for disclosure or a meeting as required by Rules 53.5 and 53.6.

35. In Q. 10 of its email of June 13, 2019, the Union asked: "*Can we use the Appendix 64 for completed this work [sic]?".* In its reply, on July 3, 2019, the Company responded that*:*

> *Appendix 64 is cost prohibitive; it is not feasible to move employees to Eastern Canada, especially since the business is approximately behind by hiring employees for the year, and employees in the west do not perform this work.*

36. The company asserts that, by virtue of the above exchange, it has complied with its obligations to *"hold discussions with representatives of the Union in advance of the date contracting out is contemplated*". I do not agree. The response, in an email, to a single item out of 10 requested, cannot be said to amount to the "*discussions*" contemplated by the parties in Rule 53.5.

37. Further, given that the Company did not respond to the Union's requests until 4 days prior to the contracting out commencing, it was near impossible for the Union to provide an informed response and therefore it cannot be reasonably said that the Company gave:

> *...due opportunity and consideration to the Union's comments on the Company's plan to contract out and review in good faith such comments or alternatives put forth by the Union.*

38. Nor, as is apparent on the facts, was the Union provided a good faith opportunity to:

> *…demonstrate that the work can be performed internally in a timely fashion as efficiently, as economically, and with the same quality as by contract…" **So that the work will be brought back in** or will not be contracted out, as the case may be.…*

39. The Company's failure to comply with the substantive requirements to provide the Union with the relevant information, hold discussions or provide a reasonable

opportunity for it to address the Contracting Out Notice, both eliminated the ability of the Union to make its case to bring back the work and compromised the validity of the Contracting Out Notice itself.

Union Delay?

40. The Company accentuated the fluid nature of its operations which demand planning, flexibility, and responsiveness. It underscored the fact: that Rule 53 does not provide precise timelines; nor does it specify the nature of the discussions which must ensue, in order to comply with Rules 53.5; and, that engaging in discussions and consultations, pursuant to Rule 53, does not equate with requiring agreement.

41. It asserts that, considering the above, the provisions of Rule 53 must be interpreted and applied in a manner to ensure that its operations cannot be "*held hostage*" by the Union's demands for either information, consultations or the crafting of a proposal(s) to bring back the work. In my view, for the reasons below, the language of Rule 53 already supports that position.

42. In his 1974 arbitration award, Justice Hall – in addressing the purpose behind the proposed contacting out provisions – refers to *Exhibit 139* which contained the following submissions of the Railways:

> *We believe that with goodwill on the part of both parties the suggested proposal will provide for the continued consultation which should lessen or eliminate any difficulties that might arise. Under the terms of reference as defined, it provides the latitude necessary in a Company for contracting-out but at the same time respects the rights of employees in the bargaining unit insofar as they can be protected*

43. After alluding to *Ex. 139* and the submissions of counsel, Justice Hall concluded:

> *While this appears to be a reaffirmation of what I described in the Award of January 16, 74 on page 50 as "a survival of a 19th-century idea no longer valid in this era", the categorical undertaking of the Railways that "the general policy of the Railways is not to contract out work that is presently and normally performed by the employees" and the statement that "it would be useful to build into our arrangements for consultation a meeting of management and union officers to be held early in each year to provide as much information as possible about*

> *intentions with respect to the year ahead", if honoured (and I cannot think of any reason why it would not be honoured) should provide a basis of agreement and satisfy the Unions in any event for the projected period to December 31, 1976.*
>
> *The terms of the suggested letter in Exhibit 139 should suffice and provide the basis for a mutually satisfactory operation in the period to December 31, 1976.*

44. Using Justice Hall's decision as a base, the parties – over time - negotiated the present terms of their Collective Agreement. The provisions of Rule 53.5 and 53.6, that mandate consultations, disclosure, due opportunity and consideration, good faith review, and the timeliness of a Union proposal are – by definition and design - all purposely broad. I say "purposely" since the parties are sophisticated in the art of collective bargaining negotiations and have a long history of the same.

45. Accordingly, it is fair to conclude that the language of Rule 53, as negotiated, is intended to encourage both the "*continued consultation*" and the "*latitude*" which was proposed before Justice Hall. It is equally fair to conclude – and makes both labour relations and practical sense – that the, agreed to, language was intended to strike a reasonable balance between: the preservation of the Union's right, on the one hand, to protect and preserve its jurisdiction over the work presently and normally performed by its members; and, on the other hand, to provide the latitude necessary for the Company to contract-out work while respecting the rights of employees in the bargaining unit.

46. A reading of the Award of Justice Hall and the consequent language of Rule 53, makes it apparent that the parties intended to work together to *"lessen or eliminate any difficulties that might arise*" in contracting out situations. As noted by Arbitrator Ready in **SHP 461**:

> *It is clear on the face of Rule 53.5 that the parties intended to hold meaningful discussions and allow for the Union to provide viable alternatives to the proposed contracting out. These are substantive rights that include an express consequence for compelling Union alternatives.*

47. Given the above - and without intending to expand or detract from the language of Rule 53 itself - the issue of the adequacy of the information provided by the Company, the timeliness of its responses to the same and/or the timeliness of its response to a request for discussions are all, in my view, purposely, left imprecise by the parties in order address the particular circumstances in each case. Those "*circumstances*" must be viewed through the prism of both the language in Rule 53 itself and the purposes/mischief that the Rule was intended to address. By virtue of the same, the parties clearly intended (see: **SHP 461,** *infra*) to provide a mechanism for meaningful, good faith, discussions and opportunities for the Union to address viable alternatives/options to the contracting out which the Company is contemplating.

48. Echoing the understanding arrived at before Justice Hall, and subsequently negotiated by the parties, where differences arise in the application of the contracting out provisions, Rule 53.8 provides for the same to be resolved *via* a third-party hearing.

49. Accordingly, by design, issues regarding: whether or not the Company has reasonably met its obligations under Rule 53; whether the Union has demonstrated that the work can be performed internally in a timely, efficient, economical fashion with equal quality; and, whether or not the Union's conduct amounts to a delay of the implementation of the Company's plans, are intended to be determined by a third party having regard to *all* of the circumstances.

50. The obligation to hold meaningful discussions and apply a good faith standard relative to the application of the contracting out Rules applies equally to the Union as well as the Company. While Rules 53.5 and 53.6 set the broad standards for the expectations of the Company to provide the information and the opportunity for consultations to facilitate a Union proposal to perform the work internally, Rule 53.7 underscores the parties' broad intention that the Union cannot – within the parameters of *"meaningful discussions … to provide viable alternatives"* –

unreasonably delay the implementation of the Company's plans/operations with respect to contracting out.

51. However, the present case does not call for an evaluation of whether there was a delay by the Union. Given the facts, the determinative issue relates to whether the Company complied with its obligations pursuant to Rule 53.5 and 53.6.

52. The Company's claimed *compliance* with its obligations was largely non-existent until it was simply too late. As such, it was no longer a matter of whether the Union's requests had been responded to on some relative or arguably reasonable degree. The Company's failure to advise the Union of the anticipated duration of the contract; its failure to arrange a discussion in advance of the date that contracting out was contemplated (the email exchange does qualify); and, its failure to answer the legitimate questions posed by the Union – until 4 days prior to the commencement of the contract - effectively made it impossible for the Union to provide its comments/alternatives (which could be reviewed by the Company in good faith) or to otherwise demonstrate that the work (or some of it) could be done internally.

53. For the reasons set out above, I conclude that the Company violated Rules 53.5, and 53.6 of the Collective Bargaining Agreement.

VIII

Conclusion

54. While there has been a violation of the Collective Agreement, the remedy to be granted, apart from the declarations below, is difficult to assess. Once all the information is available, it can be addressed further in the event the parties are unable to agree.

55. Accordingly, I declare / direct that:

i) The grievance is allowed;

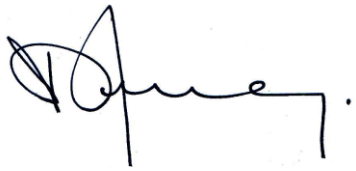
ii) The Company violated Rules 53.1; 53.5; and, 53.6 in the manner outlined above;

iii) The parties shall meet and discuss the matter of compensation for employees adversely affected; or, otherwise determine what reasonable remedy (including overtime) is appropriate in the circumstances; and

iv) In the event that the parties are unable to agree on an appropriate remedy, the matter shall be returned to me for final disposition.

56. I shall remain seized with respect to the application, interpretation and implementation of this award.

Dated at Calgary, Alberta this 16th day of November, 2020.



RICHARD I. HORNUNG, Q.C.
ARBITRATOR