

TEAMSTERS CANADA RAIL CONFERENCE MAINTENANCE OF WAY EMPLOYEES DIVISION

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Our File: 122725

James Connor

General Manger

Hudson Bay Railway

Sir,

This matter forwarded to your office in accordance with the procedural requirements of Section 7.1 and Section 4 of the TCRC-MWED Annex between the TCRC-MWED and Hudson Bay Railway at Step 1 of Wage Agreement.

According to the information received from the field the Company is utilizing approximately forty (40) Cando Rail Contracting employees to effect repairs on the Hercomer subdivision on several washed-out sections which occurred in May of 2017 which commenced on or about September 8, 2018. Additionally, information indicates the company is utilizing surfacing equipment from the KRC staffed with employees from that company, also information indicates there is an additional ten (10) employees from KRC performing work on the HBR.

The above is in contravention with Section 4 of the TCRC-MWED Annex which reads:

Work presently and normally performed by TCRC-MWED employees who are subject to the provisions of this agreement shall not be contracted out except under the following conditions:

- (a) When technical skills are not available from within HBR; or
- (b) **Where sufficient employees, qualified to perform the work are not available from the active or laid-off list of employees and such work cannot be delayed until such employees become available;** or
- (c) When essential equipment or facilities are not available and cannot be made available at the time and place required from either HBR owned property or bona fide leased from other sources at a reasonable cost without the operator; or
- (d) When the nature or volume of the work is such that it does not justify the capital or operating expenditure involved; or
- (e) The required time of the completion of the work cannot be met with the skills personal or equipment on the property; or
- (f) Where the nature or volume of the work is such that undesirable fluctuations in employment would automatically result.

In no event will contracting out result in the lay-off of bargaining unit employees. Notwithstanding the right of HBR to contract out under this section, HBR will endeavour to utilize seasonal gangs wherever feasible before contracting out that work.

At a mutually convenient time but no later than February 1st of each year, HBR will provide TCRC-MWED reasonable notice of its plan to utilize contractors. At a mutually convenient time, HBR and TCRC -MWED shall meet to discuss HBR's plans to contract out work. If TCRC-MWED is unavailable for such meeting, such unavailability shall not delay implementation of HBR's contracting out plan. If HBR is unavailable for such meeting it may not proceed with the contracting out until after the meeting is held.

If a contingency other than that covered by this section arises, causing HBR to need to contract out work pursuant to this section during the course of the calendar year, HBR shall notify TCRC-MWED of that need. Except in cases of emergency, notice of any contract will be given at least thirty (30) days in prior to the commencement of the work. If the TCRC-MWED requests a meeting to discuss the notice, the meeting will be held without undue delay.

In December of each year, HBR will provide the Regional Director of the Prairie Region of the TCRC-MWED of his authorized representative, on a confidential bases, a summary of the amount spent on contracted out projects.

Inasmuch as HBR failed in its contractual obligation to a) recall laid-off employees as per item b) of Section 4 of the TCRC-MWED annex of the Wage Agreement b) failed in its contractual obligation to provide notice of intent to contract out the work as per Section 4 of the TCRC-MWED annex.

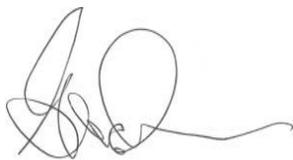
The Brotherhood contends that its members have "presently and normally" performed work of the kind which was contracted out to Cando Contracting and KRC Railway.

In the Union's view the work in question cannot fairly be characterized as being an emergency, given that the unrepaired track sat since May of 2017 before the work was awarded to the contractor. Nor can the Union accept the argument of the Company that sufficient employees were not available, by reason of the fact there was and still is employees on lay-off status.

It is the Unions understanding KRC is owned by the same company involved in the purchase of HBR (Mississippi Rail Limited Partnerships) and is somewhat perplexed by the decision to use employees from its own company and not return those on lay-off status (from their own company) to active duty.

For the reasons related, none of the above exceptions has been proved to apply in the case at hand.

The Union requires those employees on lay-off status be compensated for regular and overtime hours, and for all active employees be compensated at overtime rates, equal to the amount of time expended in labour by the contractor.

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a series of loops and a long horizontal stroke extending to the right.

