IN THE MATTER OF AN ARBITRATION

BETWEEN

COUNCIL OF NORTHERN INTERIOR
FOREST EMPLOYMENT RELATIONS

AND

IWA-CANADA

(Interpretation: Bereavement Leave:
Step-Grandparents and Step-Parents-In-Law)

Arbitrator	:	Donald R. Munroe, Q.C.
For C.O.N.I.F.E.R.	:	Gary Catherwood
For the union	:	Sandra Banister
Date and place of hearing	:	April 13, 2000 Williams Lake, B.C.

I

I was constituted by the parties as the Interpreter under their collective agreement to hear and decide an issue arising under Article IX, Section 6 (Bereavement Leave) of the agreement.

In its material parts, Article IX, Section 6 provides as follows:

> (a) When death occurs to a member of a regular full-time employee's immediate family, the employee will be granted an appropriate leave of absence for which he/she shall be compensated at his/her regular straight time hourly rate of pay for hours lost from his/her regular work schedule for a maximum of three (3) days...
>
> (c) Members of the employee's immediate family are defined as the employee's spouse, mother, father, brothers, sisters, sons, daughters, mother-in-law, father-in-law, sons-in-law, daughters-in-law, step-parents, grandparents, grandparents-in-law, grandchildren and step-children.

The above definition of "immediate family" does not specifically include step-grandparents or step-parents-in-law. Nevertheless, the union argues that where the death of an employee's step-grandparent or step-parent-in-law occurs, the employee is entitled under Article IX, Section 6 to three days' paid bereavement leave. That argument is not accepted by C.O.N.I.F.E.R. as an expression of mutual intent. It says that on a proper interpretation of Article IX, Section 6, an entitlement to paid bereavement leave does not arise upon the death of a step-grandparent or step-parent-in-law. The parties having thus joined issue, the matter was placed before me as Interpreter.

The question at hand may appear to have two parts (step-grandparents and step-parents-in-law), and in fact is the product of two different fact patterns. However, given the way the case was argued, the answer to both parts of the question is the same. Either step-grandparents and step-parents-in-law are both within the meaning of "the employee's immediate family" in Article IX, Section 6, or both are not.

It is worth noting at the outset that the list of relationships in the definition of "the employee's immediate family" in Article IX, Section 6 does include two "step" relationships: step-parents and step-children. No other "step" relationships are listed.

II

The two fact patterns giving rise to this dispute can be briefly stated as follows:

1. A father (Herbert Weatherby) and his son (Troy Weatherby) both work at the Lignum plant at Williams Lake. The father's step-mother (being Troy's step-grandmother) died. The company granted the father paid bereavement leave because "step-parents" is a relationship listed in the definition of "immediate family". However, the company denied paid bereavement leave to the son, Troy, because "step-grandparents" is not in the list.

2. Robert Klein is employed at a Slocan plant (Quesnel Forest Products). His wife's step-father, who would be Robert's step-father-in-law, died. The company denied Robert paid bereavement leave.

The union's argument began with a reference to the decision by Mr. Justice Mackoff, acting as the Interpreter under the Coast Master Agreement, dated January 23, 1983. The question before Mr. Justice Mackoff was whether the grandparent of an employee's spouse (i.e., the employee's grandparent-in-law) was a member of the employee's "immediate family" within the meaning of the Coast Master Agreement's bereavement leave provision. At the time of the decision, grandparents-in-law were not included in the list of relationships in that provision. Mr. Justice Mackoff's answer to the question was in the affirmative:

> Counsel for the Industry submits that since the words "grandparents-in-law" are not included in the definition above set out, that indicates that the parties did not intend this category to be covered by the section. I do not agree. The purpose of Bereavement Leave is to provide an employee with time off without loss of pay to gather together with relatives at a time of personal tragedy and to do and to assist in doing the multitude of matters required to be done arising from the death. It is to be observed that subsection (c) includes "mother-in-law" and "father-in-law", and thus it is recognized that the purpose of Bereavement Leave arises not only upon the death of the employee's own parents but also upon the death of the parents of the employee's spouse. Therefore, in my view, to give effect to the purpose of Bereavement Leave the work "grandparents" must refer to the grandparents of either the employee or the grandparents of the employee's spouse.
>
> The answer to this questions is "Yes".

The forest industry employers represented by the North Cariboo Forest Labour Relations Association, which has since been subsumed by C.O.N.I.F.E.R., did not accept Mr. Justice Mackoff's decision as being authoritative for their collective agreement, despite the indistinguishable wording of the bereavement leave provision. Accordingly, in 1985, the union took the "grandparents-in-law" issue before Mr. Hope, sitting as the Interpreter under the Northern Master

Agreement. The resulting award is *North Cariboo Forest Labour Relations Association* (1985) 19 L.A.C. (3d) 115.

Mr. Hope's conclusion was the same as the one reached by Mr. Justice Mackoff. While acknowledging that the matter was not free of doubt, Mr. Hope's view was that the disputed language was capable of sustaining the interpretation urged by the union; that deference should be accorded the award by Mr. Justice Mackoff as being by a distinguished arbitrator functioning as an industry interpreter under the Coast Master Agreement; that the emerging arbitral consensus was to the effect that bereavement leave provisions should be interpreted broadly unless the language of the provision clearly signaled the limitation in its application urged by the employer; and that the union's view that "grandparents" included the grandparents of the employee's spouse acknowledged the industrial relations purpose of the disputed bereavement leave provision more accurately than did the Association's view.

Given the decision by Mr. Hope, the parties to the Northern Master Agreement decided in the next round of collective bargaining to specifically include "grandparents-in-law" in the list of relationships in what is now Article IX, Section 6 of the collective agreement at hand.

The question of whether "grandparents" in a bereavement leave provision includes "spousal grandparents" — i.e., grandparents-in-law — also arose in *Dominion Colour Corp.* (1998) 75 L.A.C. (4th) 364 (MacLean). The arbitrator in that case followed and applied the "broad and purposeful approach" adopted by Mr. Justice Mackoff and Mr. Hope in the above-cited awards. At page 392, the arbitrator also said this:

> The word "grandparents" in the context of art.18 must, in my view, takes its colour and nuances of meaning not only from the word "the employee's immediate family" but from the predecessor named relationships, including that of "mother-in-law and father-in-law". When this is considered, it does not unequivocally follow that the term "grandparents" was only intended to refer to those of the employee.

Thus, one strand in the arbitrator's reasoning in that case, in line with the broad and purposeful approach to the interpretation of bereavement leave provisions, was to say, in effect, that because some "in-laws" were acknowledged by the language to be within "the employee's immediate family", it followed that other "in-law" relationships, although not specifically enumerated, could be found to be likewise included as a matter of mutual intention.

In my view, that particular strand of reasoning is not available to the union in this case. I say that because of what occurred between the parties at the bargaining table in 1988. In the negotiations leading to the 1988-91 collective agreement, the union sought the inclusion of "brother-in-law" and "sister-in-law" in the definition of "the employee's immediate family". That demand was rejected by the employers' association, and eventually dropped by the union. Thus, while the definition includes "brothers" and "sisters", and some "in-law" relationships, one could not conscientiously hold, by fusion of those two separate features of the definition, that "brothers-in-law" and "sisters-in-law" are to be treated as part of "the employee's immediate family" for purposes of paid bereavement leave.

It is important to appreciate the full significance of an acceptance of the union's position in the present case that the definition of "the employee's

immediate family" should be construed as including step-grandparents and step-parents-in-law, despite those two relationships not being listed in the definition. During the hearing, it occurred to me that the union's arguments for the inclusion of step-grandparents and step-parents-in-law, if accepted, would apply with equal force to all the other listed relationships in the definition of "immediate family". That is to say, "brothers" would be taken to include "step-brothers"; "sisters" would be taken to include "step-sisters"; etc. In response to a question from me, counsel for the union confirmed that such would indeed be the case. In fact, as counsel went on to say, that is the union's overall objective in this proceeding. That being so, I think I must observe that taking the broadest and most purposeful approach possible, no greater justification could be articulated for imputing into the definition of "immediate family" the unlisted categories of step-brother and step-sister, than could be claimed for adding the categories of brother-in-law and sister-in-law which the parties specifically addressed and agreed would not be added. Certainly, Mr. Justice Mackoff's purposive observations about bereavement leave generally would apply as much to brothers-in-law and sisters-in-law as to step-brothers and step-sisters.

III

That the language in question has some limits can be seen from an award by Mr. Berger dated December 13, 1995. Mr. Berger was sitting in that case as the Interpreter under the Southern Interior Master Agreement. There, the union sought an interpretation of "grandparents" which would have extended it to include great grandparents and great grandparents-in-law. At page 8 of his award, Mr. Berger commented that:

> The decision of Mr. Justice Mackoff in Forest Industrial Relations and I.W.A. extends the meaning of the work "grandparent" within the same generation, horizontally if you will, to cover in-laws. But what the Union proposes here extends it vertically, to an earlier generation. I think this is not permissible.
>
> The issue in the present case is whether, as Arbitrator Hope put it in Re North Cariboo, the purpose of bereavement leave "will dominate bereavement leave provisions where the scope of the benefit is not clearly defined."
>
> Here, in the present dispute, the scope of the benefit is, I think, clearly defined. It extends to the grandparents' generation. But no further.
>
> The answer to the questions is, "No".

That decision is by no means squarely on point. But if the union in that case was seeking the vertical addition of a new relational category, it is here seeking by arbitral gloss the wholesale addition of "step" relationships when only two such relationships are listed: step-parent and step-children.

The specific inclusion of those two "step" relationships is important. It shows that the parties turned their minds to the question of "step" relationships, and having done so, agreed in explicit terms that two such relationships would be part of the definition of "immediate family" for purposes of paid bereavement leave. I simply cannot presume that the parties' failure to explicitly include the other "step" relationships was unconscious or on the mutual understanding that it was unnecessary to do so. It strikes me that if the parties thought it necessary to specifically include "step-parent" as well as "mother" and "father", and to specifically include "step-children" as well as "sons" and "daughters", they would have thought it doubly necessary to specifically include other "step" relationships — i.e., if that was their true intention. I make that observation because I think

most people would presume "step-parent" and "step-child" to be the closest of the "step" relationships; or at the least, as a normative statement, that there are none closer. And thus, re-stating what I have already said: If it was thought necessary (as it apparently was) to specifically include those two particular "step" relationships in the definition of "immediate family", I think it would be an arbitral enlargement of the parties' own agreement to say that other "step" relationships are somehow included by implication.

IV

I agree entirely with those who say that bereavement leave provisions in collective agreements should be construed as broadly as necessary to achieve their likely purpose; more generally, that wherever a choice exists between two plausible interpretations of a provision of a collective agreement, the arbitral appraisal of the situation must include a consideration of the industrial relations sense of the alternative interpretations: *Times Colonist* (1997) 67 L.A.C. (4th) 340 (Germaine). But one cannot lose sight of the fundamental goal of an arbitrator in the interpretation of a collective agreement: which so far as possible is to discover the actual intention of the parties who created the agreement. In appropriate circumstances the parties' intention may be presumed to evolve, without alteration of language, as society itself evolves. However, the arbitral decision in any proceeding involving disputed interpretations must truly draw its essence from the language and structure of the collective agreement as the parties have formulated the agreement for themselves.

In that light, a number of factors stand out in the present case. First of all, the parties did not leave "immediate family" undefined. Quite to the contrary, they

agreed that it would be "defined as" the listed relationships. As the decisions by Mr. Justice Mackoff and Mr. Hope demonstrate, that does not preclude a finding of uncertainty of intention as issues of interpretation may arise from time to time. However, the parties' apparent effort at precision is a factor to be weighed in the balance. It shows that the definition of "immediate family" was intended to have contractual limits; that it was not intended to be a matter of arbitral intuition.

The union's unsuccessful attempt in 1988 to include "brother-in-law" and "sister-in-law" in the definition of "immediate family" is also instructive: fundamentally because it once again shows a mutual understanding of contractual limits; but more to the present point, if the parties decided at the bargaining table not to include those two relationships in the definition of "immediate family", the union's argument that they must nevertheless be presumed to have intended the inclusion of all manner of "step" relationships loses some of its force.

But tipping the balance, so to speak, is the explicit inclusion in the definition of "immediate family" of two "step" relationships, but no others. I am of course aware that some "step" relationships are as close as the corresponding blood relationships, and in some instances closer. But personal closeness is not the test. For example, an employee who has long been estranged from his or her deceased grandfather is equally entitled under the collective agreement to three days' paid bereavement leave as the employee whose deceased grandparent has been "like a parent". That is because the entitlement to the paid leave arises objectively by contract. If, as an objective fact, the employee and the deceased person were in a relationship included in the definition of "immediate family", that is the end of the matter; an assessment of the quality of the relationship is simply irrelevant to the contractual entitlement to paid bereavement leave. Conversely, if

the employee and the deceased person were in a relationship not included in the definition of "immediate family", that is also the end of the matter. No amount of evidence of "family closeness" could overcome the objective absence of one of the required relationships. Here, as I have said more than once, the parties have explicitly included "step-parent" and "step-child" in their definition of "immediate family" for bereavement leave purposes, but have not listed other "step" relationships. More specifically, they have not listed the relationships of "step-grandparent" or "step-parent-in-law". In the whole of the circumstances, I have concluded that by accepting the union's argument that those two "step" relationships are nevertheless included in "immediate family", I would be amending and not just interpreting the collective agreement.

V

My answer to the question posed for resolution is as follows: "No, step-grandparents and step-parents-in-law are not included in 'the employee's immediate family' for purposes of Article IX, Section 6 of the collective agreement."

DATED THE 3rd DAY OF MAY, 2000

Donald R. Munroe, Q.C.
Arbitrator