Cited as:

Canadian Forest Products Ltd. and Industrial, Wood & Allied Workers of Canada, Local 1-424

IN THE MATTER OF An Arbitration

Between
Canadian Forest Products Ltd. (Fort St. James Division)
(the "Employer"), and
Industrial, Wood & Allied Workers of Canada, Local 1 -424
(the "Union")

Re: Brown Shift Seniority and Emergency Clause

[1996] B.C.C.A.A.A. No. 51
54 L.A.C. (4th) 45
Award no. A-83/96

British Columbia
Collective Agreement Arbitration
R.B. Blasina, Arbitrator

Heard: February 29, 1996.
Award: March 14, 1996.
(7 pp.)

Appearances:

Peter F. Parsons, for the Employer.
Camran S. Chaichian, for the Union.

AWARD

¶ 1 The Employer operates a sawmill complex at Fort St. James, B.C which includes a dimension lumber sawmill and two planermills. #1 Planermill is ordinarily a two-shift operation; the day-shift runs from 7:00 a.m. to 3:30 p.m. and the afternoon shift runs from 4:00 p.m. to 12:30 a.m. The two crews alternate shifts on a regular schedule. #2 Planermill is ordinarily a one-shift operation; it has a steady day-shift which runs from 7:00 a.m. to 3:30 p.m. The various crews are differentiated by colour name, and this crew is known as "Brown Shift". There are approximately twelve employees per planermill shift. The Brown Shift would tend to have senior employees because it enjoys a steady day-shift. Not all Brown Shift employees would be senior to all #1 Planermill employees however because there are planermills jobs which require a high skill level and which would be held by senior employees.

¶ 2 On Thursday, September 21, 1995, at approximately 10:00 a.m. a switch at the #2 Planermill electrical substation began to malfunction. In sum, power could not be fed through the substation without triggering the switch to off. The #2 Planermill for all intents and purposes was non-operational.

This was an unexpected breakdown and nothing like it had occurred before, or, according to one witness, at least in his 24-years' experience. The Employer dispatched its electrical employees to investigate. It sent the crew home at 11:00 am., which was at the commencement of the lunch break.

¶ 3 The problem appeared to be beyond the expertise of the Employer's in-house electricians and so it contacted Westinghouse in Prince George for assistance. The Employer also made inquiries about obtaining a new switch in replacement and, at about 3:00 p.m., it ascertained that this could not be accomplished until the next day, Friday, September 22. Therefore the Employer notified a member of the Union Shop Committee at about 3:25 p.m. Thursday afternoon that it was invoking the "emergency clause" to suspend the application of seniority. Article VIII s. 3(c) of the collective agreement provides:

> ARTICLE VIII
>
> Section 3.. Reduction of Forces
>
> c) Where a reduction of forces is caused by emergency conditions, the application of seniority may be postponed for such period as may be necessary, but not exceeding five (5) working days. If the Company decides to exercise its rights under this provision it shall notify the Shop Committee as soon as possible.

¶ 4 Article VIII s. 3(c) enables the Employer to suspend, in an emergency situation, the ordinary application of seniority for as long as necessary, but not exceeding five working days. Otherwise, the collective agreement provides a system for employees to bump into other jobs. This can create a chain reaction of displacement, accompanied by administrative effort on the part of the Employer, and likely some temporary productivity diminishment as employees move into different jobs. Article VIII s. 3(b) provides:

> ARTICLE VIII
>
> Section 3: Reduction of Forces
>
> b) During a reduction of forces where an employee 's seniority is such that he will not be able to keep his regular job he may elect whether or not to apply his seniority to obtain another job or accept a lay-off until his regular job becomes available....

In sum, the ordinary rule is the application of seniority according to Article VIII 3(b), but, a temporary exception is made if the "reduction of forces is caused by emergency conditions".

¶ 5 Indeed, here is the nub of the case. The Union submits that the emergency clause did not apply when it was invoked, and, the Employer submits that it did.

¶ 6 As stated, the Employer notified the Shop Committee at about 3:25 p.m. Thursday that it was invoking the "emergency clause". The Employer set to the task of telephoning the Brown Shift employees to advise them not to report to work the next day. In effect, the Brown Shift was laid off for Friday, September 22, 1995. The Employer was unable to contact everyone that afternoon and evening however, and so some employees did arrive for work the next morning. They were given some work to do for four hours and were sent home.

¶ 7 On Thursday evening, a Westinghouse employee, or employees, came to the planermill to

determine if the planermill could be made operational pending the arrival of the new part. It was determined that this could not be done. On Friday late afternoon, the new switch arrived from Toronto. The planermill was operational by Sunday. On Monday, the Brown Shift reported for their regular shift. They had been laid off for one day and lost one-day's pay, except for those few whom the Employer had not been able to reach by phone and who had worked a half-day.

¶ 8 The Union has not claimed lost wages for the after-lunch hours of Thursday, September 21. The Union expressed some sympathy for the difficulty the Employer would have had were it to have permitted bumping in the middle of the production day. The Union submitted however that the Employer knew where it stood at 3:25 p.m., i.e. the Employer knew by that time that it would not receive the new part until well into the next day. According to the Union, the Employer still had plenty of time to apply seniority. According to the Union it was then reasonable to apply seniority, and the Employer could not with legitimacy invoke the emergency clause" which was intended as a recourse only when the application of seniority would be unreasonable. The Union argued that because the Brown Shift was a senior shift, it would have been easy for the Employer to switch it with a #1 Planermill crew.

¶ 9 The Union also raised a "floodgate" concern. If the Employer could invoke the emergency clause" in a breakdown situation, could it do so with any breakdown?

¶ 10 The Employer submitted that because the Union did not claim for Thursday afternoon, that it was admitting that an emergency existed. The Employer submitted that there was an emergency and that it could rely upon the emergency clause for as long as the emergency existed, up to five working days. The Employer submitted that it would have been unreasonable to apply seniority because of the time and effort that would have been required, and the complicated permeations that would have ensued because the Brown Shift employees could have exercised their seniority to bump into the #1 Planermill or into the Sawmill, and those displaced could have bumped further, and so forth. The Employer emphasized that it had not even been able to contact all the Brown Shift employees Thursday evening. The Employer submitted that the very purpose of Article VIII s. 3(c) was to provide the Employer with relief in circumstances of emergency.

¶ 11 The Employer provided two cases: Re Canadian Pacific Forest Products Ltd. (Tahsis Pacific Operations) and IWA-Canada, Local 1-85, Unreported: March 27, 1991 (S. Kelleher), and, Re Canadian Pacific Forest Products Ltd. (Tahsis Pacific Operations) and IWA-Canada, Local 1-85 (Supplementary Award), Unreported: July 17, 1991 (S. Kelleher). In the former decision, Arbitrator Kelleher adopted a definition of "emergency" from an earlier decision of Arbitrator McKee, at p. 13:

> The term "emergency" was considered in Canadian Forest products and International Woodworkers of America Local 1-367, unreported, October 9, 1981 (McKee):
>
> > I read "emergency" to mean a sudden unexpected occasion or combination of events calling for immediate action - in short, a situation where it is impossible for the Company to have foreseen an event or events which would necessitate it not being able to adhere to the collective agreement. The responsibility for such adherence in the area of scheduling, for example, falls on the Company: it must make the normal plans to so adhere during normal conditions of operation.

Canadian Pacific had argued that any breakdown would constitute an emergency. Arbitrator Kelleher did not accept that argument, and the Employer explicitly refrained from making such an argument here. Arbitrator Kelleher wrote at pp. 14-15 of the former decision:

Counsel for the Employer argued that any breakdown that brings production substantially to a halt is an emergency: it is "sudden" and "unexpected"; it "calls for immediate action". I do not accept that. While it is sudden and requires immediate action, it is simply not unexpected. One never knows when a breakdown will occur but one does know that there will be breakdowns. In Loomis Courier Services Ltd. and Canadian Brotherhood of Railway Transport & General Workers, Local 100, [1986] C.L.A.D. No. 7, February 17, 1986 (Kelleher), the issue was whether an emergency occurred thereby excusing the Company from complying with a provision of the Collective Agreement. The emergency alleged was that a chartered airplane was prevented by weather conditions from landing at Cassidy Airport near Nanaimo. That was held not to constitute an emergency:

> The term "emergency" connotes an unusual and sudden happening" see Electro Metallurgical Co. (1956) 2 L.A.C. 71 (Forsyth). The failure of the airplane to land is unforeseen in the sense that, particularly during the months of inclement weather, one cannot say in advance with certainty whether the airport will open. In that sense the event is sudden. But it is not unusual. One can say in advance that there will be days when the plane will not land; it is foreseeable that this will happen several times per year....
> It may not happen that often; it is an occurrence of a sudden nature; but arbitrators have held that such an event does not constitute an emergency: Electro Metallurgical Co. supra; Purity Cooperative Dairy (1965) 16 L.A.C. 349 (Hanrahan).

It is the nature of sawmilling that breakdowns occur: saws are damaged, mechanical and electrical problems happen. The do not constitute emergencies. The procedure implemented by the Company is not constitute with what the Industry describes as "past practice". (sic.)

¶ 12 Arbitrator Kelleher's penultimate statement above led to the Supplementary Award, supra, which was provided in clarification. He there stated at pp. 2-3:

> The concern of the Employer is a statement in the Award that breakdowns in production due to mechanical or electrical problems do not constitute emergencies....
> ...the Union itself considers that there may be circumstances where a breakdown constitutes an emergency. The Union and the Company may disagree on where that point is reached. Counsel for the Union suggested that it would only be in "catastrophic" or "extraordinary" circumstances. The Employer might choose to use other adjectives. But the original Award should not be read as stating a breakdown can never constitute an emergency.

Decision

¶ 13 While the Union did not claim for compensation for the working hours after 11:00 a.m. on Thursday, September 21, 1995, neither did the Employer invoke the "emergency clause" at that time. Article VIII s. 3(c) calls for a determination of fact.

¶ 14 Not every breakdown will constitute an emergency, but that does not mean that no breakdown will. The particular circumstances will be determinative. Article VIII s. 3(c) is not intended as an easy way out for avoiding seniority rights. Its patent intent is to permit the Employer to deal with an emergency with reasonable efficiency and without what would be a punitive application of seniority.

That is why "the application of seniority may be postponed for such period as may be necessary, but not exceeding five (5) working days."

¶ 15 The breakdown in the present case was a sudden and unexpected event. The manner of the breakdown was most unusual and not known to have had a prior occurrence. It was unforeseen, and indeed reasonably would have been unforeseen because of its extraordinary nature. The impact was the complete inoperation of the #2 Planermill. If some work was still available, this was only a de minimis circumstance. The breakdown resulted in what was more than "downtime"; it resulted in the termination of available productive work at the #2 Planermill until the switch was replaced.

¶ 16 It is not my intent to set a standard for what constitutes an emergency; however, I would think that the present circumstances were sufficient to permit invocation of the emergency clause.

¶ 17 Further, the emergency lasted until the substation was fixed. It cannot be said that an emergency is over at that point when one can estimate the time at which the problem should be fixed. It is the actual continuation of the problem that would describe the duration of the emergency; hence the allowance for a five day maximum in Article VIII s. 3(c). In other words, when the suddenness of an event is done, an emergency may still persist.

¶ 18 It should further be stated that the ease or the difficulty of applying seniority does not define where Article VIII s. 3(c) applies. Rather, it applies "where a reduction of forces is caused by emergency conditions." The reduction of forces in this case was caused by the malfunction of the substation switch. If this were not an emergency, Article VIII s. 3(c) would not have applied. Because it was an emergency, the Employer was entitled to the relief the provision allowed.

¶ 19 The grievance must therefore be dismissed.

QL Update: 980622
qp/s/jep/qlhcs