

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE *LABOUR RELATIONS CODE RSBC 1996 C.244*

BETWEEN:

CANADIAN FOREST PRODUCTS LTD.
(HOUSTON SAWMILL DIVISION)
[the “Employer or “Canfor”]

AND

UNITED STEELWORKERS, USW LOCAL 1-2017
[the “Union”]

(Steve Pitt Grievance)

Counsel for the Union:	Sarbjit Deepak
Counsel for the Employer:	Michael Wagner
Dates of Hearing:	November 27-28, 2019 June 10-11, 2020
Locations of Hearing:	Prince George, B.C. and Via Video Conferencing
Arbitrator:	Jessica Gregory
Date of Decision:	November 23, 2020

Introduction

1. The parties agree that I am properly constituted with jurisdiction to determine the issues in dispute.
2. In this matter the parties join issue on Canfor's right to require a certified carpenter for the Carpenter position at its Houston Division.
3. A red seal affixed to a provincial or territorial trade certificate indicates that the tradesperson has demonstrated the knowledge required to meet the national standard set by the Industry Training Authority ["ITA"]. A carpenter who has earned a Certificate of Qualification with Red Seal Endorsement from the Industry Training Authority ["ITA"] is referred to as a certified carpenter.
4. The Grievor, Mr. Steve Pitt, although highly qualified and experienced, is not a certified carpenter. He has been the incumbent Planer Sorter Feeder Attendant ["PSF Attendant"] since October 25, 2010 and was deemed qualified for that position on January 23, 2011. At all material times, he continued to hold the PSF Attendant position.
5. Over the years, the Grievor was relieved of his PSF Attendant duties and assigned to perform carpentry work. For example, he almost exclusively performed carpentry duties for the Employer from September 30, 2015 until October 12, 2018.
6. On October 12, 2018 the Grievor was assigned back to his PSF Attendant duties. Mr. Terry Lowe, the incumbent in the Carpenter position, continued to perform carpentry work. Lowe is junior to the Grievor but is a certified carpenter. The Union grieved the return of the Grievor to the PSF Attendant duties.

7. The parties proceeded by way of an Agreed Statement of Facts supplemented with *viva voce* evidence (heard during 2019 in Prince George, B.C.) followed by an adjournment for discussions and case management. The hearing continued in 2020 with closing arguments heard via Zoom conferencing due to the COVID-19 global pandemic.

Framework

8. The Union and the Employer are parties to a collective agreement with term June 1, 2018 to June 30, 2023. In *Article VIII Seniority Section 2 Principle of Seniority* of the Collective Agreement, the parties recognize the principle of seniority, competency considered.
9. The Grievor is senior to Lowe. His seniority date is April 12, 2000. Lowe's seniority date is April 14, 2014 (the date Lowe transferred to the Houston Division following the closure of Canfor's Quesnel Division).
10. The Union challenges Canfor's right to establish the certification qualification and argues that the Grievor is a fully competent carpenter so the certification is unnecessary. Canfor submits it is entitled to set qualifications and acted reasonably in requiring a certified carpenter.

Certification

11. Carpentry is a nationally designated trade. The Certificate of Qualification with Red Seal Endorsement under the Red Seal Program is earned via either an apprenticeship or a challenge through the ITA.
12. The Certificate of Qualification with Red Seal Endorsement is not a prerequisite to work as a carpenter in British Columbia. Uncertified carpenters are allowed to perform carpentry work in B.C.

13. Canfor Houston does not have a carpentry apprenticeship program. Challenges are intended for individuals with extensive experience working in the occupation. The *ITA Challenge Program Standards* requires at least 9,720 documented hours of directly related experience and a score of at least 70% on the *Interprovincial Red Seal Exam*.

14. In February 2014, the Grievor attempted to obtain his certification through a challenge. Confirmation of the requisite hours of work experience was provided on February 25, 2014 by Mr. Glen Gardiner, who was Canfor's Maintenance Superintendent at the time. The Grievor wrote the exam but did not achieve the 70% score required to pass.

15. The work experience requirements for the ITA challenge have increased in recent years. In order to challenge the certification at the time of the hearing, the Grievor would also be required to demonstrate the following additional work experience:
 - Documentation and Organizational Skills –to use construction drawings and specifications; to interpret building codes and bylaws; to plan and organize work; to perform trade math;
 - Tools and Equipment – to use site layout equipment;
 - Site Layout – to layout building locations; prepare building site; to apply excavation and shoring practices;
 - Concrete Framework – to select concrete forming systems; to build slab-on-grade forms and suspended slab forms; to build concrete stair forms; to install specialized formwork;
 - Wood Frame Construction – to build roof systems; to build specialized framing systems; to perform renovations and additions; to build timber and engineered wood construction; and,
 - Building Science – to control the forces acting on a building.

16. The Grievor has not yet attempted another challenge. On October 12, 2018, the date of his return to his PSF Attendant duties, the Grievor had not obtained his certification.

Prior Incumbents of the Carpenter Position

17. Since 1993, prior incumbents of the Carpenter position at Canfor have been certified carpenters: Mr. Phil Bueller (1993 – 2009), Mr. Rudy Goll (2009 – 2012) and Mr. Jeff Oevering (2012 – 2014).

18. In January 2009, the Employer advertised externally for a certified carpenter. A 2012 opportunity also required a certified carpenter qualification although the Union and Grievor deny seeing this posting.

19. As Oevering's March 29, 2014 retirement approached, Canfor management continued to require a certified carpenter for the position.

20. The Quesnel Division of Canfor was closing at that time. Lowe was a certified carpenter working in the Quesnel Division. Discussions ensued and Lowe transferred to the Houston Division on April 14, 2014. The Employer says that Lowe transferred to fill the vacancy for a certified carpenter left by Oevering. The Union does not agree with the characterization but was aware of Lowe's transfer. The fact that Lowe, a certified carpenter, has been working as a Carpenter in the Houston Division since April 14, 2014 is undisputed.

The Grievor's Work History

21. A great deal of the Grievor's work history at Canfor is undisputed. He performed carpentry work of various types from time to time over the years and performed carpentry work almost exclusively between September 30, 2015 and October 12, 2018.

22. In addition, for the purposes of this hearing, the parties agree that the Grievor has performed the following specific carpentry tasks:

Tools and Equipment – use hand tools, portable power tools and stationary power tools; use oxy-fuel equipment; use levelling instruments and equipment; use ladders, scaffolds and access equipment; use rigging and hoisting equipment;

Concrete Framework – use concrete types, materials, additives and treatments; building footing and vertical formwork; install reinforcement and embedded items; place and finish concrete;

Wood Frame Construction – select framing materials; build floor systems; build wall systems; build stair systems; build decks and exterior structures;

Finishing Materials – install doors and hardware; install windows and hardware; install exterior finishes; install interior finishes; install cabinets; describe roofing materials; install interior floor, ceiling and walls;

Build Science – control heat and sound transmission; control air and moisture movement in buildings.

23. In addition, the evidence established that the Grievor has performed project carpentry work on an *ad hoc* basis for some members of Canfor management and other Canfor employees. The fact that he remained in demand for such projects speaks to the quality of his work.

24. On October 12, 2018, the Grievor had been working alongside Lowe performing carpentry work. Through its evidence Canfor demonstrated that management was selective in the types of carpentry jobs provided to the Grievor but there were no concerns with the Grievor's work quality.

25. In 2018 Canfor determined that budgets and work demands would require reductions in many departments. As part of those changes, the Grievor was returned to his PSF Attendant duties in production.

Positions of the Parties

Positions of the Union

26. The Union argues that the Grievor is senior and *prima facie* competent to work as a carpenter. The Union further submits that certification is not required for carpentry work in B.C. and the Grievor is a skilled carpenter who has performed quality work over the years. Counsel submits that, once an employee establishes seniority and *prima facie* competency, an employer must establish a valid reason that seniority did not prevail [*Fraser Lake Sawmills, A Division of West Fraser Mills Ltd. and I.W.A. Local 1-424 (Sims Grievance)*, [1996] BCCAAA No. 447 (*Blasina*)(B.C.)] and Canfor has not established any valid reason for removing him from the carpentry duties in October 2018 or denying his right to the position.
27. The Union points to the seminal case of *Tung-Sol of Canada Ltd., supra*, for its well-known acknowledgement of the importance of seniority and the need for very clear collective agreement language, strictly construed, when an employer seeks to forfeit, abridge or truncate seniority rights. In the Union's submission, Canfor cannot point to any such language.
28. The Union further relies on *Good Samaritan Nursing Home and CUPE Local 2250*, [1992] OLAA No. 539 (*Teplitsky, Switzman, Duncan*) (Ont.) for its conclusion that the requirement for a certificate in a job posting cannot operate to modify the contractual obligations of an employer. The Union argues that Article VIII of the Collective Agreement required the employer to award the position to the Grievor because he was the senior employee able to do the job and the evidence further demonstrates that he had demonstrated the required skills and abilities.
29. Counsel further points to *Newfoundland and Labrador Assn. of Public and Private Employees v. Newfoundland and Labrador (Department of*

Justice)(Tucker Grievance), [2004] NLLAA No. 49 (Oakley)(Nfld.) in which the requirement for a journeyman carpenter certificate was deemed to be arbitrary and unreasonable such that the employer was forced to reassess its decision and consider an employee's previous experience. The Union submits that Canfor arbitrarily and unreasonably elevated the requirement of the position to require a certified carpenter.

30. The Union further submits that the continuing presence of the wage rate for a non-certified carpenter in the Collective Agreement demonstrates a joint agreement that non-certified carpenters will be performing carpentry work [see: *Weyerheuser Co. (c.o.b. Princeton Sawmill) v. United Steelworkers, Local 1-423 (Sherwood Grievance), [2018] BCCAAA No. 40 (Kinzie)(B.C .)*]. Counsel points to Arbitrator Kinzie's distinction based on the purpose of the work and submits that the Grievor was not performing the carpentry work for training purposes but instead was fully engaged in the manner equal to the certified carpenter, Lowe.

31. The Union argues that since 2015 there have been two Carpenter positions and points to the evidence of Ms. Rhonda Armstrong. Armstrong, who had been Plant Chair since 2006, testified that, to her knowledge Lowe's 2014 Carpenter position had never been posted. Therefore, like Lowe the Union submits that the Grievor was also filling an unposted position.

32. The Union also points to Armstrong's evidence that, in 2015, she and the Grievor approached Gardiner (who was the Maintenance Superintendent at the time). Armstrong testified that she explained to Gardiner that the Grievor's work was "identical to a certified carpenter" and Gardiner agreed to pay the non-certified carpenter rate to the Grievor for his carpentry work and continued to do so at all relevant times.

33. The Union further relies on Armstrong's recollection that, when it was discovered that the Grievor had been performing carpentry work for more than 6 months, the Union pushed the Employer to post the PSF Attendant position, but Canfor failed to do so.

34. In summary, the Union submits that there were two Carpenter positions and the Grievor is improperly being denied his right to exercise his seniority to stay in the sole remaining position. The Union argues that if Canfor chooses to reduce the number of employees performing carpentry work, the Grievor – as a senior and competent employee - is entitled to remain in the Carpenter role ahead of Lowe.

Positions of the Employer

35. Canfor argues that *Article III Management Section 1 Direction of Work* vests the management of the operation including the direction and promotion of employees exclusively in management provided it is not used to discriminate against employees. Furthermore, Canfor submits that the largely unfettered right of an employer to fix qualifications for a job has been well-established in law [see; *United Brewery Workers, Local 173 and Carling Breweries Ltd. (1968), 19 LAC 110 (Christie); Tribune Division of Cariboo Press Ltd. and Communications Workers of America, Local 226 (1984), 4 LAC (4th) 390 (Chertkow)(B.C.); and, Workers Compensation Board of B.C. and Workers Compensation Board Employees' Union (Scorgie Arbitration) ((unreported) February 1, 1984 (Hope) (B.C.)* as cited in *Valley Rite Mix Ltd. and Teamsters, Local Union 213 (Steward Grievance), 1999 BCCAAA No. 291 (McDonald) (B.C.)*].

36. As a result, Canfor submits that it has the right to establish the number of Carpenter positions and the right to set qualifications for the sole Carpenter position. In particular, it was entitled to expect its Carpenter to be certified in order to ensure a level of trade qualification that met an

objective standard which is set and accepted by the entire industry.

37. Turning to the qualifications of the Grievor, Canfor submits that an employee who is seeking to fill a position must be qualified and reasonably capable of performing the work immediately [*Valley Rite, supra*] and the Grievor is not qualified to occupy the Carpenter position because he has not yet obtained his certification.
38. In terms of the Grievor's ability to perform carpentry work, Canfor argues that the current evidence demonstrates that the Grievor was not working at the level of a journeyman carpenter because he did not perform all of the tasks of the Carpenter position and any tasks he performed were under the oversight of a certified carpenter (i.e. Oevering or Lowe). Counsel submits that, as a result, this matter can be distinguished from *Weyerhaeuser, supra*, where it was concluded that the employee had effectively replaced the journeyman carpenter.
39. In Canfor's submission, since the evidence has established that the Grievor cannot meet the criteria for the Carpenter position and is not performing all of the journeyman work of the position, it would be inappropriate and unsafe to remove the sole certified carpenter to leave the Grievor to work on his own; particularly when the evidence demonstrates that despite attempts, the Grievor cannot meet the ITA challenge requirements and therefore, is not competent for the position.
40. Canfor relies on its management right pursuant to Article III Section 1 *Direction of Work* which permits it to establish job qualifications. Counsel argues nothing in the Collective Agreement prevents Canfor from requiring a certified carpenter for its single Carpenter position.

41. Canfor points to the undisputed evidence that the successful candidates for the Carpenter position have always been certified carpenters (including the prior incumbent, Oevering); the qualifications for the Carpenter position have consistently included the certified carpenter requirement; and, there has not been any evidence of either discrimination or bad faith in establishing that qualification.

42. Canfor further submits that in the past, the Union challenged Canfor to refrain from hiring uncertified trades and sought Canfor's agreement to refrain from hiring uncertified trades. Canfor relies on Gardiner's testimony that Canfor agreed with the Union not to use non-certified trades and the evidence that Canfor stuck to the deal unless certified tradespeople were not available.

43. Canfor additionally argues that its decision to require a certified carpenter was reasonable because a certified carpenter is qualified to perform a broad range of required duties beyond the hands-on carpentry work such as the skills outlined in the new ITA challenge requirements: reviewing and following construction drawings and specifications; work planning and organizing; trade math; preparing building sites; interpreting and applying building codes and by-laws; applying excavation and shoring practices; advanced concrete work; understanding building science and controlling forces acting on a building. Canfor submits that while the Grievor may believe he is capable of performing some of these tasks, he had not demonstrated his ability to perform them at the relevant time.

44. Canfor further highlights the Grievor's evidence confirming that he performed very little carpentry work for Canfor between 2000 and 2012. Counsel contends that the evidence demonstrates any such work performed was so incidental that it did not have come to the attention of

the office (i.e. for payroll purposes). Although not challenging the documentation submitted by the Grievor to the ITA as part of previous challenge applications, counsel submits that the Grievor did not perform many or all of the listed tasks during his employment with Canfor. Moreover, Canfor relies on the testimony demonstrating that not all carpentry duties were assigned to the Grievor during the absences of the certified carpenters.

45. While Canfor recognizes that the Grievor has performed carpentry work at the site in the past including some prolonged periods of work on specific projects (recently, from September 30, 2015 – October 12, 2018) and daily carpentry work (i.e. under Oevering from 2012 – 2014), counsel argues that any such work was supernumerary in nature and was performed under the direction of the incumbent certified carpenter (Oevering and lately, Lowe). Canfor agrees that the Grievor's work included floor repairs, door installation, building of lockers and shingling and for his recent carpentry work, payroll records reveal that the Grievor was paid at the non-certified carpenter rate.

46. Canfor submits the fact that the Grievor assisted with carpentry work from time to time (for which he was paid at the non-certified carpenter rate) does not, on its own, create a new Carpenter position. Therefore, in October 2018, when the economic downturn in the forest industry required changes, the Grievor's supernumerary work alongside Lowe ended, the Grievor was appropriately returned to his own PSF Attendant position; a decision made in good faith and for non-discriminatory reasons. Canfor argues that since Lowe was the incumbent in the Carpenter position and the Grievor was the incumbent in the PSF Attendant position, each employee remained in his regular position and no bumping occurred.

47. Counsel for Canfor further submits that the Grievor was aware of the requirement for certification and as a result, did not apply for past postings for the position. On the sole occasion, he did apply, Canfor submits that he chose not to grieve when he was denied the position because he knew he did not have the certified carpenter qualification.
48. In support of its evidence that there is a qualitative difference between the skills of certified and non-certified carpenters, Canfor relies on the evidence of Mr. Brad Turner, Maintenance Manager and Mr. Don Kenzle, Maintenance Planner. In particular, Canfor highlights Kenzle's evidence that since his arrival in February 2012, the certified carpenter (Lowe and previously, Oevering) has been the primary point of contact for planning purposes and is responsible for organizing the work to ensure it is properly completed.
49. Canfor further highlights Kenzle's testimony about the direct involvement of the certified carpenter in the planning of work. In particular, his testimony that as the need for work arises he creates work orders and schedules on the computer, provides print outs to Lowe for Lowe's planning purposes, then meets with Lowe on Tuesday mornings to review the status of the existing work orders and discuss the scheduling for any new work. Canfor particularly points to Kenzle's testimony that prior to Lowe's vacation, he and Lowe met to "scope out the work orders for the next weeks" and would determine whether there was upcoming work within the Grievor's capabilities. If new work requests came in during Lowe's absence, Kenzle testified that he assessed the job and assigned the duties to the Grievor only if he thought the Grievor was capable of performing them. Otherwise, the work was held until the certified carpenter returned.

50. Canfor argues that placing the Grievor in the single Carpenter position would create serious safety concerns. Counsel points to Turner's evidence that complex carpentry tasks were assigned to Lowe, as the certified carpenter, to ensure safety so Turner could "sleep at night".
51. Canfor further submits that the cases relied on by the Union are distinguishable. Counsel notes in particular that the current matter is not a bumping case because the Grievor was not laid off but was simply reassigned to the duties of his PSF Attendant position.
52. In summary, Canfor maintains that it has the right to set the qualifications for the Carpenter position, it was reasonable to require a certified carpenter, and, as a result, the Grievor's October 12, 2018 return to his PSF Attendant position was appropriate. Canfor submits that the grievance must be dismissed.

Decision

53. The vast majority of the facts in this matter are not in dispute. A number of witnesses testified in these proceedings and did so to the best of their ability, despite being faced with memory challenges in some instances due to the passage of time, and I have no hesitation in concluding witnesses used their best efforts and were consistently forthright.
54. The Union challenges Canfor's entitlement to establish a certified carpenter qualification for the Carpenter position at its Houston Division and contests Canfor's October 12, 2018 decision to return the Grievor to his PSF Attendant duties while Lowe, a junior employee, remained in the Carpenter position. The Union acknowledges that Lowe is a certified carpenter who had occupied the Carpenter position since April 14, 2014, but argues that the Grievor was competent to perform the work.

55. The Grievor was honest and candid in his testimony. His evidence, supported by the testimony of other witnesses, demonstrates that he is a hard-working and capable employee who frequently performed carpentry work at the request of Canfor over the years. Based on his work on projects at the worksite and around town, he had the reputation of being a reliable and experienced carpenter.
56. Gardiner's summation was consistent with the theme of the evidence in these proceedings. Gardiner testified that: "apart from having the certification, he was a good, competent carpenter".
57. Seniority remains one of the most important rights that the trade union movement has secured for its members [*Tung-Sol of Canada Ltd., supra*] and the Grievor's seniority rights must be respected. *Article VIII Seniority Section 2 Principles* of the Collective Agreement requires Canfor to recognize the principle of seniority, competency considered.
58. An employer is not permitted to ignore seniority to put together the most efficient crew. The threshold is whether the senior employee is competent to perform the work [*Doman, supra*]. Exemptions from seniority must be on a standard of competence not relative competence [*Fraser Lake, supra*]. The Grievor is either competent or he is not.
59. In other words, if Canfor is permitted to require a certified carpenter and if the Grievor and Lowe were both certified carpenters, Lowe could not be retained out of line of seniority simply on the basis that Canfor management believed Lowe was more efficient or better at his duties.
60. However, the Grievor is not a certified carpenter and, unlike *Crestbrook Forest Industries, supra*, this matter does not involve a training position or, as in *Newfoundland and Labrador, supra*, a posting that accepts

relative or comparable experience. Canfor accepts only the ITA designation. Therefore, it is necessary to turn to the question of Canfor's right to establish the certified carpenter qualification.

The Right to Determine the Qualifications for the Carpenter Position

61. Non-certified carpenters are permitted to perform carpentry work in B.C. and the evidence demonstrates the Grievor's ability to perform many aspects of the carpentry work required by Canfor.

62. The law with respect to the determination of qualifications for a position is well-established. Management has the *prima facie* right to determine the extent and composition of its working force and its decision will not be disturbed by an arbitrator unless it is made in bad faith or is unreasonable [*Doman Forest Products Limited, Nanaimo Sawmill Division, Duke Point, unreported: October 11, 1961 (as cited in Fraser Lake, supra)*]. I agree with counsel for Canfor that there is no evidence of bad faith in the current circumstances.

63. In addition, I agree that the *prima facie* management right to establish the certified carpenter qualification is echoed in the parties' own Collective Agreement language. *Article III Management Section I Direction of Work* vests Canfor with the management of the operation including the direction and promotion of employees. Therefore, unlike *Good Samaritan Nursing Home, supra*, Canfor's requirement for a certified carpenter qualification did not modify the parties' contractual language.

64. Furthermore, the evidence in the current matter establishes that Canfor's decision to require a certified carpenter in the Carpenter position is consistent with its longstanding practice. Unlike *Newfoundland and Labrador Assn., supra*, where the employer had merely expressed a preference for a certificate but agreed to consider

similar courses and experience, Canfor has been unwavering in its requirement for a certified carpenter since 1993. Both its external job advertisement and its job postings have sought certified carpenters.

65. The Union claimed that Canfor acted unreasonably and points to the fact that Turner, who had been at the worksite about one year at the time the Grievor was returned to production, made no effort to inquire into the Grievor's experience and skills prior to deciding (with Kenzle) to send the Grievor back to production. However, there is no serious suggestion that the Grievor was targeted *per se* and I accept that Turner's failure in that regard was not material in impacting the practice or the outcome. Canfor has been consistent in requiring the certification qualification for the Carpenter position and there was no evidence to suggest that Canfor's decision to require a certified carpenter for the Carpenter role had previously been challenged.

66. Moreover, Turner was not alone in his assessment. Both Kenzle and Gardiner also testified as to the importance of the certification requirement. Gardiner, an informed and objective witness who consistently testified in favour of the Grievor's potential, acknowledged the Grievor's experience and abilities. He candidly testified that getting the Grievor into a Carpenter position was not about the Grievor's capabilities *per se* but, "it was always about getting his certification".

67. Turner acknowledged that he had only been at the worksite since October 2017 and dealt with carpentry work (and work orders) primarily through Kenzle. In conveying his strong belief that it is safer to have a certified carpenter in the Carpenter position, Turner acknowledged that he had little direct knowledge of the day-to-day work or the prior situations. He testified truthfully by giving his limited observations of the work performed by the Grievor and implicitly conveying his belief

that safety was best assured by a requiring a certification that confirmed an objectively-recognized level of carpentry abilities.

68. Kenzle was also a forthright witness. He testified that the certified carpenter is ultimately responsible for all of the carpentry work in the Maintenance Department. In his evidence, Kenzle explained that he had a weekly meeting with the certified carpenter (Oevering and then Lowe) for planning and review purposes. At this meeting and at other times, the certified carpenter received work orders, planned the work and signed most work orders.

69. In cross examination, Kenzle acknowledged that the Grievor signed some work orders and at times, both Lowe and the Grievor signed work orders. Also during cross examination, Kenzle agreed that he could not determine whether the Grievor or Lowe performed the work based solely on the work order signatures and Lowe was collaborative so he may have sought input from others including the Grievor. Kenzle testified that, as the Maintenance Planner since 2012, he left decisions about the assignment of carpentry work to the certified carpenter although he would receive updates, at least weekly, on the progress of the work on the work orders.

70. I found Kenzle to be fair and balanced in his evidence. He testified that he had observed carpentry work being performed by the Grievor over the years and provided a lengthy list of that work. Kenzle confirmed that he was not aware of any issues with the quality of the Grievor's work. Indeed, all of the evidence before me about the Grievor's work at Canfor supports the conclusion that there was never any issue with it.

71. In cross examination, Kenzle also agreed with Union counsel that the Grievor handled carpentry work when Lowe was absent such as over

Lowe's 5-6 weeks of annual vacation. However, Kenzle explained that prior to Lowe's vacation he and Lowe engaged in pre-planning where they "scope out the work orders" and if he and Lowe believe that the Grievor "is capable [of the work] he gets the work order". Otherwise the work order is held until Lowe returns. A similar assessment process is followed by Kenzle for work orders that arise during Lowe's absence.

72. Having reviewed the evidence of Kenzle and Turner, I accept that they both viewed the role of the Carpenter as one with enhanced responsibilities and a broader range of duties that required the skills of a certified carpenter; a carpenter with skills at a threshold that has been objectively confirmed by the ITA. Canfor requires the Carpenter to engage in planning (manpower and materials) and troubleshooting of work orders and remains responsible for delivering the end result. In my view, Canfor has demonstrated that the overall role performed by Lowe was qualitatively different from the role performed by the Grievor during the times they both worked in the Maintenance Department.
73. The evidence demonstrated that the Grievor, a skilled carpenter, was relied on to complete his assigned work successfully and this assignment included work on major projects. However, the evidence also clearly indicated that the ultimate responsibility for the carpentry work in the Maintenance Department remains with the Carpenter position.
74. Although he is a capable carpenter, the Grievor has not been able to meet all of the past or present ITA challenge criteria in order to be comparable to Oevering or Lowe in the depth or breadth of his skills and abilities from an industry standard.

75. The undisputed evidence demonstrates that not only has Canfor been consistent in its demand for the incumbent Carpenter to be certified but the Grievor was aware of the requirement and encouraged to attain his certification by Gardiner. In February 2014, Gardiner signed the Grievor's ITA *Employer Declaration of Work Experience*. In his evidence, which supported the Grievor in many respects, Gardiner recalled that during their discussions when the Grievor indicated a desire to progress into the Carpenter role, "it always boiled down to, well, you need a ticket".
76. In addition, the fact that non-certified carpenters can perform carpentry work in B.C. and the presence of a non-certified carpenter rate in the Collective Agreement [as described in *Weyerheuser Co., supra*] do not impose an obligation on an employer to hire an uncertified carpenter for any or all carpentry roles. Otherwise the presence of a certified rate would be meaningless. The presence of a separate wage rate denotes an acknowledgement that there is a difference between an uncertified carpenter and a certified carpenter.
77. Therefore, based on the evidence before me, I have concluded that Canfor's decision to require that the successful candidate for the Carpenter position be a certified carpenter was not unreasonable or purposely designed to exclude the Grievor but was instead was consistent with a long-standing and accepted practice and must be upheld.
78. In reaching this conclusion, I am also cognizant of the fact that all prior incumbents of the Carpenter position since 1993 have been certified carpenters and I recognize the ongoing efforts of the parties to refrain from use of uncertified trades wherever possible.

Competency

79. Competency is not based on relative competency; the Grievor is either competent or he is not. In the current matter, the Grievor requires an ITA certification in order to be competent for the Carpenter position and the undisputed fact that he is not a certified carpenter would normally place this matter at an end. However, the Union has strongly asserted that the Grievor's background renders him competent because he has knowledge and experience equal to a certified carpenter; he spent years doing regular [as opposed to trainee or apprentice] carpentry work; and, he is a more experienced carpenter than Lowe.
80. The evidence reveals that the Grievor performed carpentry work almost exclusively for Canfor between September 20, 2015 and October 12, 2018. He worked with Lowe, a certified carpenter, for much of that time and from time to time in the past, the Grievor had also performed carpentry work with other certified carpenters particularly Oevering.
81. The evidence reveals that the Grievor was reliable and when he was reassigned from his PSF Attendant duties to carpentry duties over the years, he was relied upon to complete regular day-to-day carpentry jobs and projects. For this reason, and in response to a request from the Union, Gardiner agreed to pay the Grievor the non-certified carpentry rate when he performed such work, an assessment that was consistent with Arbitrator Kinzie's decision *Weyerheuser, supra*, and respected the fact that the Grievor was fully engaged in performing carpentry work. Gardiner candidly testified that he would have checked first with Canfor's Human Resources Department but paying the non-certified rate for the carpentry work "would have been the right thing to do".

82. The fact that the Grievor was paid the non-certified carpenter rate during the relevant times following the agreement with Gardiner is not disputed. However, it is trite to observe that the presence of the non-certified carpenter rate did not endow the Grievor with the right to claim all of the qualifications of a certification; that qualification can only be earned through the ITA challenge process or an apprenticeship.
83. Moreover, the evidence highlights areas of work or skill where the Grievor requires upgrades or instruction in order to meet the ITA certification requirements. Despite a general perception in the testimony that the Grievor possessed much of the hands-on abilities for a carpentry certification in 2014 when he unsuccessfully challenged the exam, the evidence revealed that the Grievor must still clear some remaining hurdles (i.e. documentation, planning and mathematical requirements) in order to obtain his certification. Not only do those hurdles remain, but the evidence also demonstrates that the ITA work experience requirements are now even more onerous.
84. In summary, the evidence clearly demonstrates that the Grievor was a hard-working and reliable senior employee who brought 40 years of carpentry and related experience to his work duties. For those reasons, Canfor management recognized the Grievor's skills and potential and encouraged him to challenge the certification if he wanted the Carpenter role in the future. Gardiner concisely summed up the situation facing the Grievor in his testimony. He recalled that when the Grievor "expressed that he wanted more" (in terms of a carpentry role) he was told "you need a ticket".
85. As a result, the Grievor was on notice that the pathway to the Carpenter position was always clear.

86. The evidence before me demonstrates that, to date, despite considerable efforts and laudable perseverance, the Grievor has not established equivalent skills under the ITA challenge criteria which is the objective national threshold and, although he performs some carpentry duties, he does not perform the full scope of duties assigned to the certified carpenter or assume all of the responsibilities of the certified carpenter.

The Number of Carpenter Positions

87. Ancillary to this dispute is the question of the number of Carpenter positions. The Union argues a second Carpenter position was created and was occupied by the Grievor. Canfor argues there is only a single Carpenter position (Lowe's) and relies on the undisputed evidence that the Grievor remained the incumbent for the PSF Attendant position.

88. Armstrong, who was fair and honest in her testimony, explained that a position must be re-posted if an expected absence is greater than six months. She explained that as time progressed and the Grievor was removed from his regular PSF Attendant position for more than six months and was primarily doing carpentry work, she asked Canfor to re-post the PSF Attendant position. Armstrong acknowledged that the PSF Attendant position was never re-posted and a second Carpenter position was never posted.

89. Furthermore, the evidence demonstrates that in the past when a Carpenter position was vacant it was posted, advertised and/or filled through discussion with the Union. There is no evidence to suggest that any of the individuals or parties involved in the arrangement between September 30, 2015 and October 12, 2018 (a period patently longer than six months) took steps to formalize the assignment beyond

the Union's successful negotiation of the temporary wage rate.

90. The negotiated wage rate is insufficient to create a new Carpenter position and moreover, serves to emphasize the existence of the distinction between a certified and uncertified carpenter.

91. I accept that the assignment of carpentry work at the non-certified rate was a unique and innovative arrangement for the mutual benefit of the parties and, based on the particular circumstances in evidence before me, it did not serve to create a second Carpenter position.

Summary

92. Following a thorough review of all evidence and argument before me, I have concluded that:

- a) Canfor acted within its legal rights when it established the certified carpenter qualification for its sole Carpenter position at the Houston Division;
- b) the Grievor was not competent to fill the sole Carpenter position at Canfor's Houston Division because he is not a certified carpenter; and,
- c) despite the Union's best efforts to lead significant work experience evidence, much of which was undisputed, the Grievor could not establish a basis for *prima facie* equivalency because the evidence demonstrates that he has not fulfilled all of the key duties and responsibilities of the Carpenter position to date and, in addition, despite his determined efforts, he has been unable to meet some key components of the past or current ITA challenge criteria.

93. Therefore, despite the Grievor's indisputable experience and strong perseverance and with acknowledgement that he is a capable carpenter for the purpose of performing general uncertified carpentry work in B.C. within his proven capabilities, I have concluded that he was not competent to fill the Carpenter position at Canfor Houston and Canfor did not act inappropriately when it reassigned him to the duties of his PSF Attendant position on October 12, 2018.

94. The grievance is dismissed.
It is so ordered.



Jessica Gregory
Arbitrator