IN THE MATTER OF THE LABOUR CODE OF BRITISH COLUMBIA

AND

IN THE MATTER OF AN ARBITRATION

BETWEEN:

DOMAN FOREST PRODUCTS LTD., LADYSMITH SAWMILL DIVISION

(the "Company")

AND:

PULP, PAPER & WOODWORKERS OF CANADA, LOCAL 8

(the "Union")

HEARING HELD:	DECEMBER 13, 1982
ARBITRATOR:	ROD GERMAINE
COUNSEL FOR COMPANY:	J. RON PARROTT
COUNSEL FOR UNION:	GERALD F. OWEN

(Cosmacini/Jury Duty Grievance)

A W A R D

This matter concerns the effect of the jury duty provision in the collective agreement. The issue is whether an employee whose jury duty obligations are completed early is required to report for work on that day.

The grievor, Bruno Cosmacini, is an equipment operator with considerable seniority. In October of 1981 he served as a juror in the County Court Criminal Assize in Nanaimo. The language of the Summons required the grievor's attendance at 9:45 a.m., October 5, 1981 "...and the following days, upon the trial of the several causes to be then and there tried by Juries". The grievor was among 60 people who comprised the panel from which juries were selected at the commencement of each of the many criminal trials heard in that assize.

The very nature of the process meant that the grievor's attendance at the Nanaimo Court House was erratic and unpredictable. Selection to a jury would, of course, require the grievor's presence at the court house each day for the duration of that trial. If, on the other hand, the grievor was not selected, he would be told when to return for the selection of a jury for the next trial. Since it is not always possible to estimate the length of a trial and because guilty pleas sometimes obviate the necessity of any trial, the instructions given the grievor were often changed. On occasion, the grievor attended at the court house but was dismissed with further instructions. Sometimes the instructions were changed by a telephone call.

The grievor's attendance record indicates that he served as a juror for four days commencing October 5, 1981 and that he subsequently attended at the court house on three other occasions, October 13, 19 and 28. Apparently, he was not selected to a jury on any of these occasions.

During this period, the grievor attempted to give the Company as much notice as he could of his availability for work. In addition, the Company contacted him. On one occasion when he was home for lunch but was required to return to the court house in the afternoon, he was telephoned by Shirley Allen who works in the office at the mill. She asked whether he was required to perform jury duty that afternoon. The grievor replied that he was and that he would let her know "in plenty of time" when he could work.

On October 19 the grievor attended at the court house but was not selected for a jury. He was excused for the day and arrived at his house a few minutes after 12:00 noon. Shirley Allen again called to enquire whether he was finished for the day.

When he informed her that he was, she advised him that he was required to report to work. The grievor felt that this was unfair because he was not aware of any of the other members of the jury panel being treated in this manner by their employer. Upon reflection, however, he changed his mind and called the mill office to say that he would be reporting. Because he had to drive from Nanaimo to Ladysmith, he changed and left for the mill without eating his lunch. He arrived at 12:50, about 20 minutes after the conclusion of the lunch break.

Shirley Allen had told the grievor that he was required to report to work by the terms of the collective agreement. When he arrived at the mill, the grievor's foreman gave him a two-page document entitled "Subject: Leave of Absence" on which there was a passage concerning jury duty. The following sentence in that passage was underlined:

> If an employee is present in court for only a part of the morning and could easily have returned home, changed his clothes and reported for the last half of his shift, it would be reasonable to expect him to do so.

The grievor contacted his shop steward, Fred Hamre. Hamre determined that the language of the document given to the grievor was not the language of the jury duty provision in the collective agreement. The grievor's foreman explained that he had been told that the document was an extract from the collective agreement. Hamre contacted Stan Allen, the Mill Manager. Allen explained that the grievor had been given a copy of the interpretation of the jury duty language prepared by the Company's bargaining agent, Forest Industrial Relations.

Hamre informed Allen that a grievance would be filed and there was a discussion about whether the grievor should remain at work for the balance of the shift. Upon Allen's suggestion that the Company would be obliged to pay the grievor an additional four hours' pay in the event that the grievance succeeded, the

grievor completed his shift.

The relevant provision of the collective agreement is Article XVII - Leave of Absence, Section 6: Jury Duty. Clause (a) of that provision reads as follows:

> Any regular full-time employee who is required to perform jury duty, including Coroner's jury duty, or who is required to appear as a Crown witness or Coroner's witness on a day on which he would normally have worked will be reimbursed by the Company for the difference between the pay received for the said jury or witness duty and his regularly scheduled hours of work. It is understood that such reimbursement shall not be for hours in excess of eight (8) per day of forty (40) per week, less pay received for the said jury or witness duty. The employee will be required to furnish proof of jury or witness service and jury or witness duty pay received.

It is the position of the Union that the interpretation relied upon by the Company when it required the grievor to work on October 19 is incorrect. Counsel for the Union submits that the clause in the collective agreement provides for a day's pay for any day on which the employee is obliged to perform jury duty. Counsel contrasts this language with the language before the arbitration board in Re United Automobile Workers Local 397, and Norton Co. of Canada Ltd. (1968), 20 LAC 11 (D.J.M. Brown). According to the reported summary of that award, the relevant provision of the collective agreement required the employer to pay the employee the difference between his jury fee and his regular rate for each hour lost from his shift "provided he returns to work if excused in time to do so". Counsel argues that it would be wrong to imply any similar limitation in the absence of such express language. Counsel submits that it is a reasonable inference that the parties would wish to provide an employee who is required to perform jury duty complete freedom from any work-related considerations while the employee discharges this most important civic responsibility.

The Union contends that the Company's interpretation is so unworkable that it confirms the correctness of the Union's interpretation. But, the Union also contends that even if the Company's interpretation were correct, the grievance should nevertheless succeed. In the submission of the Union, the fact that the grievor missed his lunch demonstrates that he was not able to "easily" return to work on the day in question.

The Company relies upon the interpretation contained in the document which it concedes was erroneously identified as an extract from the collective agreement. It is Counsel's submission that the purpose of the jury duty clause in the collective agreement is simply to replace income which is lost by the employee because of jury duty. From the point of view of the Company, Counsel emphasizes that jury duty translates into unproductive hours. Counsel also submits that if the Company had known of the haste with which the grievor was required to report for work on the day in question, it may not have required his attendance. However, Counsel requests the board to confirm the Company's entitlement to require an employee to report for work when it is reasonable to do so.

The standard of reasonableness urged by the Company is extremely difficult to apply in this context. It invites a number of intriguing questions with respect to employees who are required to perform jury duty and who are scheduled to work on the afternoon or graveyard shift. Those questions are partially answered elsewhere in the Company's interpretation document by a statement which exempts an employee who has spent the "entire day" in court from any obligation to work the afternoon or graveyard shift. It is not clear how that qualification emerges from the language of the collective agreement and it does not explain the position of an employee who spends only two or three hours in court.

It is also not clear how the necessity to work for "the last half" of a shift emerges from the language of the collective

agreement provision. Why not the first half if the obligation to perform jury duty is confined to the afternoon? And if there is a requirement for the employee to report for work when jury duty is finished for the day, why should it not apply for two hours or even one hour of work?

These hypothetical examples of jury duty, and the questions prompted by them, illustrate one weakness inherent in the Company's interpretation. But there are other, more significant problems with that interpretation. As the Union submits, there is no language in the collective agreement which would suggest that an employee is required to work for any portion of the day he or she is not actually performing jury duty. Whether because the parties sought to give an employee complete freedom to discharge an important civic responsibility or because they sought to avoid the difficulties inherent in the kind of approach suggested by the Company's interpretation, they did not express any intention that an employee be required to work for a portion of a day spent on jury duty when they negotiated the collective agreement. I accept the Union's submission that, in the absence of any express language to that effect, I should not imply such an obligation.

Closer scrutiny of the language of the jury duty provision in Section 6 of Article XVIII confirms this interpretation. The Company's obligations under that provision are triggered when an employee is required to perform jury duty or appear as a witness "on a day on which he would normally have worked", not for any portion of such a day. In addition, the nature of the obligation is to ensure that the employee receives his regular pay "for his regularly scheduled hours of work", not for those regularly scheduled hours of work which are actually spent performing jury duty or giving evidence.

I conclude, therefore, that the clause contemplates that an employee will not be required to return to work for any portion of a day for which the employee is entitled to compensation from the Company because of jury duty or the

necessity to give evidence as a witness. Indeed, I am satisfied that any other interpretation is inconsistent with the language of the collective agreement. As a result, the grievance succeeds.

The Union asserts a claim for an additional four hours' pay for the grievor. Counsel for the Company acknowledged that this remedy would be reasonable if the grievance succeeded. Therefore, the Company shall pay Bruno Cosmacini for four hours at Cosmacini's regular straight-time hourly rate.

It is so awarded.

Dated at Vancouver, British Columbia, this 31st day of January, 1983.

Rod Germaine