

2001 CarswellBC 3694
British Columbia Arbitration

Donohue Forest Products Ltd. and IWA-Canada, Local 1-424, Re

2001 CarswellBC 3694, 65 C.L.A.S. 81

In the Matter of an Arbitration between Donohue Forest Products Ltd., (the "Company") and Iwacanada, Local 1-424, (the "Union")

V.L. Ready Member

Judgment: June 21, 2001

Docket: A-120/01

Counsel: Donald J. Jordan, Q.C., for the Company
Sandra Caffrey, for the Union

Subject: Public; Labour

Headnote

Labour and employment law

When an employer regularly pays all qualified employees a first aid bonus, it cannot cease paying the bonus by appointing designated employees.

The collective agreement provided a premium rate of \$0.85 per hour for all designated first aid ticket holders. The employer paid the rate to all holders of the first aid ticket. Upon creating a "safety technician" position, the employer ceased paying the high rate to all holders. — Grievance allowed. — As the collective agreement provided that if the employer is paying bonuses greater than those in the collective agreement, it must keep those bonuses in effect.

V.L. Ready Member:

1 The parties agreed I was properly constituted as an arbitrator under the terms of their Collective Agreement, with jurisdiction to hear and determine the matter in dispute. The case arises out of a group grievance filed by the Union, on behalf of certain employees, alleging a violation of Article V(4)(b), in relation to the payment of a premium for employees holding a first aid ticket. Since 1996, the Company has paid all employees holding a first aid ticket a premium of 85¢ per hour. In November of 1998, the Company established a Safety Technician classification and, commencing in January of 1999, the Company reduced the first aid premium paid to 5¢ per hour. This reduction in premium triggered the grievance.

2 Article V(4) reads as follows:

4. First Aid Attendants

a) Designated First Aid Attendants shall receive their job rate of pay plus the Ticket Premium rate. All other employees holding valid First Aid Tickets shall receive a premium of five cents (5¢) per hour over and above their job rate. There shall be no stacking or pyramiding of premiums.

b) *Where a company is paying a bonus or premium(s) greater than set out above, it shall keep such policy in effect.*

c) Effective July 1, 1994, premiums for designated First Aid Tickets shall be:

Level 3 - \$0.85 per hour

Level 2 - \$0.50 per hour

(emphasis added)

Background to Dispute

3 The Company operates two sawmill/planer mills, as well as a pulp mill at Mackenzie, British Columbia. The two sawmill/planer mills are located approximately one and one-half miles apart and are commonly referred to as Site 1 and Site 2. The sawmill/planer operation employees at both sites are certified by the IWA-Canada, Local 1-424. The pulp mill employees are certified by the Communications, Energy & Paperworkers Union (CEP).

4 Prior to 1996 the Company employed individuals known as Protection Officers to provide security and first aid coverage to all of the Company's operations. The Protection Officers were members of the CEP, and worked under that Union's pulp mill certification and collective agreement. The work of the Protection Officers, however, extended to the IWA certified sawmill/planer operations.

5 In the spring of 1996 the Company decided to separate the sites. The Protection Officers' positions were deleted, and tasks previously performed by individuals holding those positions were divided amongst IWA members, and supervisory personnel at Sites 1 and 2.

6 With a view to ensuring a pool of qualified, on-site, first aid attendants, the Company sponsored first aid classes at Mackenzie. The evidence reveals that a number of employees who wished to be ticketed were granted the opportunity to take the course. Approximately 50 employees completed the course and attained a Level 3 first aid ticket.

7 The evidence reveals that upon completion of the first aid course, and receipt of Level 3 certification, the Company paid each ticketed employee an 85¢ per hour premium.

8 In the fall of 1998 the Company posted a Safety Technician position. On November 26, 1998, the Company wrote to both IWA Plant Chairs the following, self-explanatory, letter:

This letter is to notify you as to the Company's intention to cancel the \$0.85 premium paid to all F.F.I. employees holding a valid First Aid ticket, effective January 15, 1999. We will, however, be adhering to our contractual obligation to pay the \$0.05 First Aid premium as per *Article v. Sec. 4(a)* of the collective agreement.

The Company will maintain the tuition refund agreement which reimburses our employees certification fees upon successful completion of the course.

Although F.F.I. will no longer be paying wages for time spent in attendance at school, we will make every effort to assist our employees with any shift scheduling conflicts.

9 On January 15, 1999 the 85¢ premium paid was cancelled, giving rise to the grievance before this board.

10 The evidence reveals that subsequent to the elimination of Protection Officers, but prior to the introduction of the Safety Technician position, the Company assigned particular individuals, one on each shift at each site, additional first aid responsibilities. These employees were identified on the "crew sheets" posted in the lunchroom. These employees were required to carry a radio or pager, to ensure prompt communication in the event of an incident. They worked through their lunch and coffee breaks, and commenced work one-half hour early to maintain and equip the emergency travel vehicle.

11 The evidence discloses that employees who occupied certain jobs were not appointed to provide first aid services due to the unsanitary nature of their work. Alf Wilkins, an Oiler with the Company, testified he had requested that he be

assigned first aid responsibilities, but was denied because he held a "dirty" job. Notwithstanding this denial, Mr. Wilkins still received the 85¢ per hour premium.

12 The evidence also establishes that employees who possessed a Level 3 First Aid Ticket would, on occasion, provide some measure of first aid service, even though they were not noted on the crew list specifically to do so, nor were carrying communication devices for that purpose.

13 Further, Mr. Wilkins testified that when employees took the first aid course in 1996, there was an expectation that they would be responsible for performing first aid. After the Company introduced the Safety Technician job, the expectations of those who possessed First Aid Tickets changed.

Positions of the Parties

14 On behalf of the Union, Ms. Caffrey argues the Company has chosen to pay first aid ticket holders a premium rate, and must continue to do so. She asserts that all ticket holders were not "designated" at all times. On this matter, she referred to Mr. Wilkins' evidence that he, as an Oiler, was not allowed to be assigned first aid responsibilities because his job was not a clean one.

15 Ms. Caffrey points to the express assignment of first aid responsibilities to particular employees noted on the crew sheets. The noted employees would carry communication devices, and otherwise comply with the statutory *Occupational First Aid Regulations* for first aid attendants. The Regulations define "attendant" as:

...a first aid attendant who is designated by an employer to provide first aid to workers at a workplace, and who holds a first aid certificate valid for that workplace

16 Section 33.5 of the Regulations provides:

- (1) There must be an effective means of communication between the attendant and the work areas served.
- (2) There must be an effective means for the attendant to call for additional assistance.
- (3) An attendant must only be assigned duties that will not interfere with the ability to receive a request for first aid service.
- (4) A Level 2 or 3 attendant must only be assigned duties that allow the attendant to promptly render first aid in a clean and sanitary condition.

17 On behalf of the Company, Mr. Jordan argues that, during the relevant period of time all employees were, in fact, "designated first aid attendants" to replace Protection Officers. He asserts this was essentially communicated at the first aid course in 1996. Mr. Jordan states the "designation" was supported by the expectation to perform required first aid, adding this expectation changed when the Safety Technician position was introduced.

18 Mr. Jordan asserts that the Company possesses the right to revoke the designation, and that it has properly done so in this case. He submits the grievance should be dismissed.

Decision

19 I have carefully considered all of the evidence, together with the submissions of the respective parties, and conclude the grievance must succeed. The facts before me reveal that between mid-1996 and early 1999 the Company "designated" particular employees as first aid attendants on the job, and paid these employees the negotiated 85¢ per hour premium. The evidence also shows, however, that the Company chose to pay "all other employees holding a valid first aid ticket" a premium of 85¢ per hour, as opposed to the 5¢ required under Article V(4)(a) of the Collective Agreement.

20 The payment of these additional monies is expressly provided for, and protected, under Article V(4)(b) of the Collective Agreement.

21 The Company's argument to the effect that it previously paid 85¢ per hour to all employees with a first aid ticket because they were all "designated first aid attendants" is not supported by the evidence. There is no indication that an express designation, with clearly defined accountabilities and responsibilities, was conveyed to all those who took the first aid course and possessed a Level 3 first aid ticket. This point is made particularly evident when one compares the expectations and services relating to individuals assigned as first aid attendants on the crew sheets, with all other first aid ticket holders at the two sites.

22 On the evidence, the individuals who are assigned as first aid attendants on the crew sheets were, in fact, the "designated first aid attendants" referred to in Article V(4)(a) of the collective agreement. Their appointment, or denotation, on the crew sheets was a *de facto* designation that clothed the individuals with certain additional responsibilities relating to the provision of first aid services. Consistent with the Regulations established in the statutory *Occupational First Aid Regulations* for "designated" first aid attendants, these individuals carried communication devices and had to hold "clean" jobs in order to be ready and able to fulfill their first aid obligations.

23 Support for this conclusion is found in the evidence of Mr. Wilkins, the Oiler, who requested to be appointed as first aid attendant but was refused, properly in my view, based on the unsanitary nature of his position. Mr. Wilkins was clearly not a "designated first aid attendant" although he, like all other ticketed employees, received the 85¢ per hour premium. Mr. Wilkins' first aid responsibilities were qualitatively different from those who were expressly assigned as first aid attendants on the crew sheets. Neither he, nor others not specifically assigned, carried communication devices, worked through lunch and coffee breaks, and arrived at work one-half hour early to maintain and equip the emergency transportation vehicle.

24 The term "designation" connotes some measure of distinction or differentiation consistent with the assignment of first aid responsibilities made to employees noted on the crew sheets. The Company's argument that a "blanket" designation was in effect is convenient, but does not address the clear distinction that existed between employees who were assigned first aid responsibilities on the crew sheets, and those who were not.

25 In the result, the grievance succeeds. I determine that the mere fact that one held a Level 3 first aid ticket did not mean that individual was "designated" under Article V(4)(a) of the collective agreement. On the evidence, individuals who were assigned as first aid attendants on the crew sheets were "designated" under that provision; all other ticketed employees who were paid the 85¢ per hour premium were not so designated. These employees are, therefore, entitled to continue to receive this benefit pursuant to Article V(4)(b). The Company shall make these individuals whole for any loss incurred as a result of the reduction of the first aid premiums.

26 I shall remain seized with jurisdiction to deal with any dispute the parties may encounter in implementing this Award.

27 It is so awarded.