Case Name:

Dunkley Lumber Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-424 (George Grievance)

IN THE MATTER OF an Arbitration
Between
Dunkley Lumber Ltd., (the "employer"), and
I.W.A.-Canada, Local 1-424, (the "union")

[2004] B.C.C.A.A.A. No. 281
Award No. A-200/04

British Columbia
Collective Agreement Arbitration
J.L. McConchie (Arbitrator)

Heard: (Prince George, B.C.) September 8, 2004.
Award: November 5, 2004.
(49 paras.)

(Chris George Arbitration)

Appearances:

Counsel for the Employer: Kevin O'Neill

Counsel for the Union: Dan F. De Frias

AWARD

I Introduction

¶ 1 These proceedings arise from a grievance filed by the Union on behalf of the grievor, Chris George, who is a loader operator. The Union alleges that the Employer is violating the Collective Agreement by assigning loader operator work on an overtime work assignment on Sundays to a millwright, Glen Misch. Mr. Misch performs both loader operator work and millwright work, says the Union. The Union does not take the position that Mr. George should supplant Mr. Misch on the overtime shift. It says that Mr. George must be assigned the loader operator work and Mr. Misch must be assigned only the millwright work. The Union says Mr. Misch cannot be assigned the loader operator work because that is not his work.

¶ 2 There are no job descriptions in the Collective Agreement nor are there any provisions which specifically delineate the work to be performed by employees in the various classifications. The Union relies on an Overtime Policy agreed to between the parties which states as follows:

1. Overtime is first offered to the incumbent on that shift. If refused, the overtime is then offered to the displaced incumbent on that shift, then the senior qualified person on that shift.
2. This approach will be used for all shifts.
3. This approach will be used 7 days a week.
4. If an employee drops his/her bid job, it is the employee's responsibility to let the company know if they will be available for overtime on that job.
5. Sawmill overtime will be confined to the Sawmill.
6. Planer overtime will be confined to the Planer.

¶ 3 The Union says that incumbent loader operator for the purposes of the overtime policy is Mr. George, not Mr. Misch. It says that Mr. Misch has performed work which should have been performed by Mr. George pursuant to the Overtime Policy. It seeks monetary and declaratory remedies on the grievor's behalf.

¶ 4 The Employer submits that it is acting entirely within its management rights in making the impugned work assignments to Mr. Misch. It submits that there is no language in the Collective Agreement, or in any applicable policy, which expressly or by necessary implication purports to restrict its management rights to assign work as it sees fit. From the Employer's perspective, it does not wish to have two persons working on an overtime shift where one will do.

II Evidence

¶ 5 The Employer is a privately owned sawmill business situated near the community of Hixon, south of Prince George. It has about 180 employees, many of whom are represented by the Union.

¶ 6 The mill operates Monday to Friday on two shifts. During that time, by the nature of the enterprise, the mill produces a considerable amount of wood debris which must be disposed of. For this purpose, the Employer operates a large conical-shaped burner into which wood waste is put for disposal during operating hours (and, to a lesser extent, on the off-shifts and Saturdays when the plant is not operating). On Saturdays, the burner begins its cool-down. Millwrights are on shift to address maintenance requirements generally at the plant. On Sunday, the burner is usually sufficiently cooled to allow employees to enter it for cleaning and maintenance purposes.

¶ 7 Mr. George, the grievor, works on the Monday to Friday shift while the plant is operating. As the name of his position suggests, much of his work consists of operating a loader for various purposes including transporting and stacking wood products. In his position as millwright, Mr. Misch has been trained to operate a loader and does so frequently when it is necessary to move a heavy piece of equipment on which he is working. However, he does not move lumber products with a loader during his Tuesday to Saturday millwright shift.

¶ 8 The controversy in this case arises in the following way. During the Monday to Friday period

during which the mill is operating, the burner is also operating full-steam and so no cleaning, inspection or repairs can be done on its interior components during that time. Inspection of accessible external or connective burner components can be carried out by millwrights and in many cases repairs can be effected at any time, without waiting until the burner has cooled on the weekend. However, some repairs may require plant down-time and so will be deferred, if possible, to the Sunday. These are job functions routinely performed by the millwrights, including Mr. Misch, who is the lead hand millwright. The job of loading wood products during the normal plant week is carried out by loader operators such as Mr. George.

¶ 9 Every second Sunday or so Mr. Misch comes to the plant and spends about three hours, and sometimes more, carrying out work in connection with the burner. As a millwright, he is responsible for the inspection, maintenance and repair of the burner and this is part of the work he performs on the Sunday. In order to do this work, the burner must first be cleaned. Using a loader, Ms. Misch removes the accumulated ash from the prior two weeks of burning. This must be done before certain inspections can be made of the component parts of the burner, specifically those connected with the below-fire burners that feed air to the burner to increase the efficiency of the burning. For some 12 years, Mr. Misch has performed both the initial cleaning functions and the inspection, maintenance and repair functions (which, for convenience, I will hereafter sometimes refer to as the "maintenance" functions).

¶ 10 The Union does not claim an entitlement on the part of the grievor to assignment of the maintenance functions. It accepts that this is not part of the grievor's role as a loader. Instead, it challenges the right of the Employer to assign Mr. Misch the job of cleaning out the ash from the burner and other directly related cleaning functions.

¶ 11 There is some relevant history. Prior to Mr. Misch taking on the assignment 12 years ago, the Employer had a different, less efficient burner. It required cleaning and maintenance every Sunday. The evidence disclosed that the cleaning of that less efficient burner, in what were likely the early 1990's, was performed by two former employees. However, memories having faded, the evidence did not disclose whether those persons were loader operators or millwrights.

¶ 12 Later, the weekend burner cleaning assignment was offered to and performed by a student who was a temporary employee. The evidence discloses that the Employer first checked with its loader operator group to determine if they had any objection to this. It is not clear whether this was done because the loader operators at that time were senior to the student or because the Employer felt that the work should properly be assigned to the loader operators. The evidence does support the proposition that in all likelihood the Employer divided up the Sunday work at that time into two categories. The first was the cleaning work which was done by the student and which it wanted to have done by a loader operator. The second was the maintenance work which had to be performed by a millwright. It is likely that at one time there were both a loader operator and a millwright on site at the burner on a Sunday, the loader operator cleaning and the millwright performing inspections, maintenance and repairs, as necessary. There is nothing in the evidence in this case to suggest that this arrangement would not be operationally feasible even today.

¶ 13 That situation, however, did change over time. The reality was that despite the fact that the Sunday work was overtime work for a loader operator or millwright with a minimum call-in of 3 hours, none of the loader operators were attracted to it. Union witness Richard May was for 5 or 6 years the incumbent on the loader and was asked in or around the mid-90's by a company foreman whether he would be interested in being assigned to the cleaning work on Sundays. He told the foreman he was not. Neither was any other loader operator. The evidence supports the conclusion that by this time, the student had left the company's employ. This was a reality which would prevail until the grievor became qualified as a loader operator in 2003. I will return to that later.

¶ 14 Some 12 years ago or so, after the others had refused the opportunity to do the burner cleaning work on Sundays, Mr. Mish was asked if he would agree to attend on Sundays and perform all the necessary work on the burner, namely, both the cleaning and maintenance functions. His answer was "Yes". He agreed to do so and has done so ever since. It was the evidence of Randy Wilson, Plant Manager, that Mr. Misch was selected because of the increasing importance of good maintenance given increased responsibilities for the environment and other operational needs. I am sure this is so but the evidence did not convince me that if a loader operator had been willing to work an overtime shift on the Sunday, the Employer would not have been content to engage both a loader operator and Mr. Misch for the purposes of respectively cleaning and maintaining the burner.

¶ 15 As it turned out this was not necessary. Mr. Misch took on the dual role and has become dedicated to the task. It was his testimony that he takes pride in ensuring the good condition of the burner. He even schedules his vacations around the need to ensure the cleaning and maintenance of the burner on every second or third Sunday.

¶ 16 While in the beginning, the work needed to be done every weekend, the replacement of the old burner with a more efficient new burner in 2002 has reduced the frequency to the current requirement of every second or third week.

¶ 17 The parties adduced considerable evidence regarding the very specific functions Mr. Misch performs on Sundays. It will only be necessary in this Award to give the briefest sketch of this evidence. As mentioned earlier, in order to attend to the internal maintenance of the burner, Mr. Misch first operates a loader in order to remove the ash from the burner. In the ordinary course, this involves 25-30 loads of ash. It was his evidence that this task takes him about 30 minutes or so. He then spends upwards of 45 minutes of so digging out ash from the 33 under-fire pots which line the floor of the burner. These are conduits for under-fire air that is pumped into the interior of the burner to increase the temperature and thus the efficiency of the burn. Digging out the pots is done for the purposes of both freeing them of debris and inspecting them for any needed repairs. Once this work is complete, Mr. Misch will then spend the balance of his time inspecting conveyer belts and bearings and any other burner components that need to be in good working condition for the upcoming week. The time required for his inspection and repair duties can increase, depending on the situation finds on a given Sunday. The work of digging out the pots and inspecting them is accepted by both parties as being work normally performed by millwrights.

¶ 18 The Union does not dispute that the maintenance work performed by Mr. Misch is important work. It simply says that there is nothing that operationally requires Mr. Misch to do the cleaning work on the burner in conjunction with his maintenance responsibilities. It is not disputed that the Employer has certain Ministry of the Environment requirements with respect to the temperature and opacity of the particulate which escapes from the top of the burner. Temperature readings are maintained on an ongoing basis in the control room. The Employer is subject to possible fines if it violates requirements. It is even at risk of being shut down. It therefore takes maintenance and repair responsibilities in connection with the burner very seriously.

¶ 19 The Union submitted that its own information showed that the cleaning duties take the preponderance of Mr. Misch's time on a Sunday. The Employer argued the reverse. In the end, it was the uncontradicted evidence of Mr. Misch that only 30 minutes or so of the time spent on each Sunday shift are spent on that task. Mr. Misch has been the only person present on Sundays who could speak to the actual time it takes to perform the various functions and I find him to be a credible witness. In fact, I was favourably impressed with all of the witnesses in this case, including Mr. George and the other union witnesses whose estimates were not the same as those of Mr. Misch. However, they were not present to observe the actual time spent and there was no other evidence led which cast any serious doubt on Mr.

Misch's assessment. To the extent it may have relevance to this case, I accept Mr. Misch's testimony and conclude that the preponderance of the work done by him on Sundays is maintenance work.

¶ 20 There were opposing theories advanced in this case as to whether Mr. Misch's performance of this work was known to members of the bargaining unit. This was in response to the Employer's argument that, if not successful in the substantive case, the facts should give rise to an estoppel.

¶ 21 On that score, the evidence supports the following conclusions.

¶ 22 It is conceivable that but for the reluctance of the loader operators to work on Sundays the Employer might have continued the much earlier practice (I use this term loosely and not in the sense of having reached any conclusions that there was a consistent practice) of having both a loader operator and a millwright perform the Sunday work. However, the Employer could not attract a loader operator to the task until Mr. George became a loader operator and requested the assignment. These facts buttress the Union's position that Mr. Misch's Sunday work was simply not an issue for the employees or the Union until Mr. George came along, because no one wished to do it.

¶ 23 However, this is different from saying that no one knew who was doing the work. Loader operators and others attending to the regular Monday to Friday shifts would have to know that the work of cleaning ash from the burner was taking place on Sundays. Mr. George himself testified that the question of why he was not being given the assignment was stimulated in his mind after he noticed some ash that had been removed from the burner the previous weekend and asked himself why it had not been he himself who had been asked to do that work. By a process of elimination among the small group performing loader operator work, not to mention the local union representatives who would be expected to be generally aware of plant practices, the conclusion would and should have been quickly reached that it was not one of the loader operators who was taking the Sunday assignment over the course of the previous 12 years. While it was not an issue that concerned the loader operators or the Union, and thus not one to which they might be expected to pay any particular attention, it strains credulity to believe that it was not generally known that it was Mr. Misch who was performing the cleaning work. In the end, I mention this for completeness only as it will not be necessary in this Award to address the alternate arguments based on estoppel.

¶ 24 When Mr. George became a loader operator, he was the first such person in that position in at least 12 years to show an interest in performing the burner cleaning work on Sundays. There is no doubt at all on the evidence that he is willing and able to perform it. Mr. George testified that in his view the overtime policy set out earlier requires the Employer to at least offer him the assignment as he is the incumbent on shift at the material times, as set out in the policy.

IV Arguments

¶ 25 It is the Union's position that the aforementioned Overtime Policy requires that the Sunday cleaning work on the burner be offered to the grievor. In accordance with the Policy, overtime is first offered to the incumbent on that shift. If it is refused, the overtime is then offered to the displaced incumbent on that shift and then to the senior qualified person on that shift. The Policy applies to all shifts, seven days a week. By definition, this means that the Policy applies to a Sunday shift as much as it applies to any other shift during the week which requires overtime.

¶ 26 The Union relies on Re Strudex Fibres and United Food & Commercial Workers, Local 175/633 (1989), 6 L.A.C. (4th) 226 (Roberts) for the proposition that the mere fact that the millwright may use a loader as an incidental part of his job does not entitle him to the overtime assignment. It is only those

employees who can claim to be "normally performing" the work who are eligible for the assignment. The Union also relies on Kelsey-Hayes Canada Ltd. and C.A.W., Local 636, 16 C.L.A.S 32 (1989) (Samuels), arguing that the failure to assign clean-up work to the employees in that case was similar to the failure to assign the loader operator work to the grievor in our own case. There, the arbitrator found it appropriate to order the employer to make payment to the grievors. The Union argues the same principle should apply here.

¶ 27 Even in the absence of the overtime policy, says the Union, the Employer violated the Collective Agreement when it assigned to Mr. Misch work which was clearly outside his classification, namely, the loader work which is normally assigned to and which forms the major role of the employees in the loader operator position. In support of this proposition, the Union relies on Douglas Aircraft Co. of Canada Ltd. and United Automobile Workers, Local 1967, (1973) 2 L.A.C. (2d) 396 (H.D. Brown).

¶ 28 The Union submits there are other ways in which the Employer here could achieve its objectives with respect to the cleaning and maintenance of the burner without denying work to Mr. George. First, it says that it is entirely possible on the evidence that the loader operator could be performing the work of removing the ash while the millwright performed his maintenance work. Alternatively, if this were not so, the loader operator could be called in to do the cleaning work on the Sunday and the millwright could be scheduled for the less expensive overtime shift early on the following Monday. This could result in a cost savings for the Employer so that it would not be required to have two employees work on the Sunday shift at double-time rates.

¶ 29 As to the appropriate remedy, the Union argues that the appropriate remedy in this case is to make an award of monetary damages to the grievor, rather than an award of future work opportunities. In support of this proposition, it relies on High Level Forest Products Ltd. and I.W.A., Loc. 1-207 (Paul) (1999), 79 L.A.C. (4th) 260 (P.A. Smith).

¶ 30 The Employer submits that it has the management right to supervise and direct the work force, including making job assignments, unless the Union can establish that those rights have been bargained away expressly or by implication. The Employer has assigned the incidental duties with respect to the removal of ash to the millwright, Mr. Misch, and is within its rights in doing so. It has no desire to add cost to its operation by calling in both a loader operator and a millwright to perform work that could be performed efficiently and correctly by the millwright alone.

¶ 31 In any event, submits the Employer, the work of a millwright includes operation of the loader. Mr. Misch was trained to operate a loader and operates it in the ordinary course of his job duties on his regular Tuesday to Saturday shift.

¶ 32 The Employer disputes that the evidence has disclosed any cheaper, practical ways to do the work. There is no evidence that moving the millwright functions to early Monday morning is practical, in view of the tight time constraints this could cause in the event unexpected problems were detected. Quite apart from this, the decision to have the work performed on the Sunday is a management decision which cannot be grieved unless the Union can point to a specific provision in the Collective Agreement which impacts on that right. They have not done so in this case, submits the Employer. There are no job descriptions in this Collective Agreement or any evidence that the Employer has otherwise bargained away its rights to assign the work as it has done. The Overtime Policy does not speak to this issue because the Employer is not assigning an overtime shift to a loader operator on Sundays. It is instead assigning a millwright to a millwright shift and adding some loader duties to the usual millwright duties. It is prepared to and does pay the higher rate since the millwright position attracts a higher rate of pay than does the loader operator position.

¶ 33 In short, says the Employer, there is nothing in the Collective Agreement that in any way purports to restrict the employer's rights to make the assignments which it has made over the past 12 years.

¶ 34 The Employer relies on a number of arbitral authorities including Re Alcan Smelters and Chemicals Ltd. and Canadian Association of Smelter and Allied Workers Local 1 (1979), 23 L.A.C. (2d) 123 (H. A. Hope); North Central Plywoods v. Pulp and Paper Workers of Canada, Local 25 (Gullacher Grievance) [2000] B.C.C.A.A.A. No. 85 (B.M. Greyell); Reynolds Extrusion Sales Co. Ltd. and United Steelworkers, Local 2784 (1964), 14 L.A.C. 401 (Arrell, Gargrave, Farrar); Re Polymer Corp. Ltd. and Oil, Chemical and Atomic Workers, Local 9-14 (1964) 15 L.A.C. 138 (Arrell, Freedman, Williamson); Slocan Forest Products and Industrial Wood and Allied Workers of Canada, Local 1-424, [1998] B.C.C.A.A.A. No. 342 (Korbin); Canada Post Corporation and Canadian Union of Postal Workers, unreported decision of Donald Munroe, Q.C.; April 24, 1996), among others.

V Decision

¶ 35 In this case, the Employer has elected to have certain necessary cleaning and maintenance work in connection with its burner performed on a Sunday, which is an overtime shift for any employee assigned to the work. It has also elected in the interests of efficiency, both in terms of cost and performance, to have the work performed by one employee rather than two. The only classification that is qualified to perform all of the necessary work is that of millwright, which is a higher-rated classification than that of loader operator. To meet its objectives, the employer has assigned certain cleaning functions to the millwright which, if they were to be carried out during the normal work week, would invariably be assigned to loader operators. In the context of the Sunday work, the cleaning functions are not the major focus of the work but are a necessary part of it.

¶ 36 The Union has taken pains to point out that there are other ways to accomplish this work while providing both the incumbent loader operator and the millwright with the opportunity for the overtime assignment. Whatever might be the merits of the Union's suggestions in this regard, the question of whether the Employer is obligated to do the work in a different way comes down to a straight-forward proposition. Is there anything in the Collective Agreement or, in this case, the agreed-upon Overtime Policy that expressly or by necessary implication restricts the Employer from assigning the full bundle of job duties to be carried out on every second or third Sunday to Mr. Misch?

¶ 37 This is not a case involving an assignment of bargaining unit work outside the bargaining unit. It is a case involving the assignment of job duties within the bargaining unit. In this context, the legal framework surrounding management rights is long-established. The authors of Brown & Beatty, Canadian Labour Arbitration (3d ed.) have put it this way at paragraph 5:2000:

> ... As a general presumption, arbitrators have taken the view that where the reorganization is not contrary to the general law, where it is done in good faith, and where it does not contravene clear prohibitions in the agreement, and subject to such overriding principles as waiver, management is free to reorganize the work procedures and methods within the bargaining unit as it requires. And this is so whether the assignment of work is temporary or permanent, or whether it is within a job classification or crosses classification or departmental lines ... [T]his presumption will sanction reorganizing, adding or discontinuing jobs within classifications, raising or lowering a classification, and, indeed, making any other bona fide change in the organization of the workforce ...

> Nevertheless, there are a number of provisions of the collective agreement, which while not prohibiting reorganization as such, do bear upon and affect the changes made ... [W]hile such provisions will rarely prohibit reorganizations, they may require that wages be paid pursuant to their terms ... [T]hese provisions may fetter management's ability to effect such changes by requiring that a certain wage rate be paid or certain procedures be followed. Thus, ... an employee might claim to be entitled to be reclassified or paid a higher wage ... [An] arbitrator will pursue an inquiry similar to that of job evaluation, involving a comparison of tasks, jobs and classifications, and from that comparison draw conclusions as to the significance of the change ...

And at [paragraph] 5:2220:

> As noted above, it is generally accepted that the existence of a wage schedule or job classification scheme in a collective agreement does not, of itself, freeze the number of classifications or prevent the assignment of duties from one classification to another, or wholly inhibit management's right to reorganize the workforce. Rather, it has been said that such provisions have as their purpose the assurance that equal work will attract equal pay and, as a corollary, that the different rates will reflect agreed-upon differences in skill, responsibility, complexity, difficulty and training.

¶ 38 It is worthwhile to repeat the question I must answer: is there anything in the Collective Agreement or in the Overtime Policy that prohibits or restricts the Employer from making the assignments it has made to Mr. Misch?

¶ 39 In my view, the evidence does not disclose any such restriction.

¶ 40 First, there is nothing in the Collective Agreement which either expressly or by implication limits the Employer in its decision to assign the ash cleaning responsibilities to Mr. Misch as part of his maintenance shift on Sunday. There are no job descriptions or descriptions of duties, which serves to distinguish this case from that in Douglas Aircraft, supra. Even if there were, the fact remains that unlike the Douglas Aircraft case, the dispute in front of me does not involve a classification dispute. The work here is not being assigned to a lower-paid employee but is being assigned to a higher-paid employee. I do not find the Douglas Aircraft case to be helpful in the factual context here.

¶ 41 Secondly, the Overtime Policy upon which the Union relies in this case simply cannot carry the freight that it must carry if the grievance is to succeed. For the grievance to succeed, I must find that the Overtime Policy, expressly or by necessary implication, prohibits the Employer from assigning the Sunday ash cleaning functions to a millwright, in this case Mr. Misch, and requires that such job functions be assigned to a loader operator, in this case the grievor.

¶ 42 The language of the Overtime Policy does not support such a conclusion.

¶ 43 I say this for two reasons. The first is that acceptance of the Union's interpretation of the Overtime Policy would create an anomaly, and arbitrators strive to avoid this: see Simon Fraser and the Association of University and College Employees, Local 2 (Unreported), October 8, 1981, (Bird); approved in Re Board of School Trustees of School District No. 39 (Vancouver), (1986) BCLRB No. 333/86 at p. 17. The anomaly is this. There is nothing in the parties' Collective Agreement to prevent the Employer from exercising its management rights in the manner described in the above-noted passage from Brown & Beatty, supra, if this is done during a regular non-overtime shift. However, if the work

assignment involves overtime, then, says the Union, the situation is different and the Employer is bound by the Overtime Policy to assign the work only to the classified group that ordinarily does that work in accordance with seniority.

¶ 44 On a reasonable interpretation, the language of the Overtime Policy itself neither compels nor supports the conclusion that this is what the parties meant by agreeing to the language of the Overtime Policy. On its face, the Overtime Policy does not purport to be a work jurisdiction provision. It does not purport to grant exclusive rights to the performance of specific work duties to persons in any particular classification. Instead, it appears to be a clause that establishes relative rights to overtime assignments to persons within a given classification when an overtime assignment is to be made within it. In other words, if the Employer makes an overtime assignment which requires the services of a member of the classified group, it is bound to first offer the overtime to the incumbent on the shift and so forth. There is nothing in the Policy that would purport to require the Employer to make the assignment to members of the classified group. The requirement of the Policy is that, if the assignment is to be made to members of a specific classification, it must be made based on the seniority order set out in the Policy.

¶ 45 The case authorities cited in the Union's argument do not assist it in my view. I have already referred to the Douglas Aircraft case, supra, which I have not found helpful here. The Strudex Fibres decision, supra, is also readily distinguishable. The decision there resolved around the precise and very different language before that arbitrator and was decided on different facts. The overtime provision in question required that scheduled overtime be offered by seniority and by department, to the employees who normally performed the work. The company there assigned the work to junior employees within the same classification (not outside the classification), which led to a grievance by the passed-over senior employees who argued that their seniority should have provided them with the right to the work. It was determined by the arbitrator in that case that the junior employees regularly performed the work and so it was not a violation of the Collective Agreement for the employer to have selected them. I do not read this case as supporting a general proposition that where work is normally performed by persons in a classification any overtime work involving those same job duties must be assigned to persons in that classification. The issue did not arise in that case.

¶ 46 The brief summary of the Kelsey-Hayes Canada Ltd. decision, supra, which was available to the Union and presented in its submission was simply too devoid of factual details to allow any particular conclusions to be drawn from it. The summary did not contain any observations about whether the overtime work in that case was assigned out of the classification in which it was normally performed or whether there was any language in the Collective Agreement which restricted management's rights in making such assignments.

VI Conclusion

¶ 47 In this case, the Union has grieved the Employer's assignment of certain work duties to a millwright, Mr. Misch, arguing that these duties should have been assigned to a loader operator, Mr. George. The legal framework within which these kinds of cases are decided requires that the Arbitrator be directed to a Collective Agreement or other binding provision which, expressly or by necessary implication, restricts the employer from exercising its management rights as it has done. That has not been done here, and so the grievance must be dismissed.

¶ 48 Both counsel are to be commended for the efficient conduct of this case, which took one day but which could have easily taken more without their efforts.

¶ 49 It is so awarded.

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