IN THE MATTER OF THE LABOUR CODE

and

IN THE MATTER OF AN ARBITRATION

BETWEEN:

FINLAY FOREST INDUSTRIES LTD.
(the "Company")

AND:

INTERNATIONAL WOODWORKERS OF AMERICA
LOCAL 1-424
(the "Union")

Statutory Holiday Pay Grievance

A W A R D

ARBITRATOR: Vincent L. Ready

COUNSEL: Ms. Mary Saunders for the Company

Ms. Sandra I. Banister for the Union

HEARING: June 9, 1986
Prince George, B.C.

PUBLISHED: July 23, 1986

I

At the outset of the hearings the parties agreed that I was properly constituted as an arbitrator pursuant to the provisions of their collective agreement to make a final and binding determination on the issue in dispute.

The Company operates a saw mill and planer mill complex at McKenzie, B.C.

II

The issue placed before me in this case can be easily identified, did the Company violate the terms and conditions of the collective agreement when it failed to pay certain employees statutory holiday pay for July 1, 1985 (Dominion Day)? The employees who failed to receive the day's pay fall into these distinct groups. The first refers to those employees who leave work prior to the completion of their shift on June 18, 1985 due to a labour dispute at their place of work. The second group consists of those employees who did not return to work for their normally scheduled shift on July 2, 1985 due to the presence of a picket line arising from the aforementioned dispute of June 28, 1985. The third group are three Grievors namely A. Belinski, M. Hilton and S. Suchdev. All three worked differing amounts of overtime during that holiday weekend.

III

The key portion of the collective agreement for the purpose of my review is Article XI - Statutory Holidays. Of particular interest is Article XI, Section 2(e) which contains the tests

to determine if an employee is entitled to receive payment for statutory holidays. Section 2(e) reads:

> To qualify for statutory holidays, an employee must have been on the Company payroll for the thirty (30) calendar days immediately preceding the statutory holiday and must have worked his/her last regularly scheduled work day before, and his/her first regularly scheduled work day after the holiday unless his/her absence is due to a compensable occupational injury or illness, which occurred within six (6) months of the holiday, or the employee is on authorized leave of absence in accordance with Section 2 or 3 of Article IX.
>
> (emphasis added)

It is against this backdrop that I will conduct my review in this case.

IV

The fact pattern in this case is straight forward.

On June 28, 1985 two of the workers employed in the planer mill became embroiled in a dispute with their supervisor. The details of the dispute are not particularly relevant to the case but suffice it to say that the dispute rapidly escalated to a point where the two employees involved were suspended and requested to leave the Company's property immediately.

As the details of this incident spread through the mill it gave rise to the predictable lunch room congregation where the situation was discussed by their fellow workers. During the

course of his "meeting" the Mill Manager, Mr. Fred Bray arrived and requested that the employees involved in the meeting return to work and continue with their scheduled shift. Mr. Bray's request was met with a lack of enthusiasm and it was denied. Further, the workers countered with their own request that Mr. Bray meet with the Union plant committee for the purpose of resolving the dispute. Mr. Bray responded by stating that he was prepared to meet with the plant committee, however, he attached a pre-condition to his agreement. Before the meeting could take place the employees would have to return to work. In the circumstances the workers were unwilling to meet the pre-condition established by Mr. Bray.

Given the dynamics present in such a lunch room stand off matters quickly deteriorated to a point where the crews from the planer mill went to the saw mill. After some discussions the crews of the saw mill joined the planer mill crews in the dispute and this precipitated a complete closure of both operations.

On the following Sunday, June 30, 1985, the Union held a membership meeting to discuss the events of June 28, 1985 and to determine what the appropriate course of action would be based on the incident. It was resolved at this meeting that the Union would and did instruct its members to return to work beginning with the 12:00 a.m. - 8:00 a.m. "graveyard" shift on July 2, 1985. The decision made at the meeting was not whole hearted embraced by all those in attendance. A number of

workers felt that a return to work should not take place on July 2, 1985. These individuals took matters into their own hands and prior to the 12:00 a.m. graveyard shift on the 2nd a picket line was established at the work site. In response to the picket line three employees did not cross the picket line. As a result the three employees did not receive any payment of statutory holiday pay for the July 1, 1985 holiday.

V

The Union asserts that the failure of the Company to pay statutory holiday pay to the employees involved in this grievance actually amount to an excessive disciplinary penalty under the circumstances. In particular the Union notes that those employees involved in the withdrawal of service on June 28, 1985 as well as the employees who failed to return to work on July 2, 1985 received a written reprimand. The Union argues that the denial of the statutory holiday pay to these employees along with the written reprimand amount to a double penalty and therefore it requests that I set aside this action by the Company and reinstate the statutory holiday pay for the affected employees.

The Union argued further that there was substantial compliance with the qualifying provisions contained in Article XI, Section 2(e) and therefore the Company is without grounds to deny the statutory holiday payments. The Union

sought comfort in the decision of Arbitrator Munroe, D.R., in Westar Timber Limited (Celgar Lumber Operations) and International Woodworkers of America, Local 1-405, 1984 3 W.L.A.C. 472. In that particular case Arbitrator Munroe determined that there was substantial compliance with the statutory holiday pay qualifying provisions by a number of millwrights. This finding was based on the evidence that the millwrights had completed more than half their normally scheduled shift before they were advised by the employer that there was no further work available for them to do. This shortage of work arose when the millwrights refused to "crack hot steam" which was being generated by an adjoining facility which was behind a picket line.

VI

The Company's position in this dispute is straight forward. The Company asserts that the language of the qualifying provisions, as set out earlier, is very specific in the provision that employees are required to ". . . have worked his/her last regularly scheduled work day before, and his/her first regularly scheduled work day after the holiday . . .". The Company argues that based on the facts of this case and the application of the language of Article XI, Section 2(e) to those facts that I am left with only one conclusion, the grievance must fail.

VII

Upon reviewing the evidence one fact becomes very clear. Those employees who walked off the job on June 28, 1985 did so

of their own volition in a voluntary show of support flowing from the instigation of the two employees who had earlier been disciplined following the dispute with their supervisor.

While it is not difficult to understand the dynamics of a dispute like this the fact remains that the two suspended employees escalated the dispute when they refused to leave the work site and went even further when they pursuaded the remainder of the employees to leave the premises with them. The employees chose to ignore the proper avenue of redress, the grievance procedure contained in the collective agreement, and take ad hoc action by withdrawing their services.

In Re Belkin Packaging Ltd. and United Paperworkers, Local 433 (1977), 15 L.A.C. (2d) 231 (Larson), the Arbitrator dealt with a case similar to this one. The grievors left work at lunch for the purpose of having a Christmas party at a local legion. They failed to return after lunch and were denied payment for both the Christmas and Boxing Day holidays on the grounds that their failure to return violated the qualifying provisions contained in the collective agreement. In rendering his decision Arbitrator Larson made the following observation:

> We are of the opinion that the grievors in this case are not entitled to statutory holiday pay for Christmas and Boxing Day 1976. It is true that tne earned benefit doctrine, perhpas best enunciated in Re T.C.F. of Canada Ltd. and Textile Workers Union of America, Local 1332, (1972) 1 L.A.C. 382 (Adell), would logically dictate that an

> employee be deemed to have earned statutory holiday pay proportionate to actual earnings in much the same way as vacation pay. As such the interpretation of qualifying days represents an incursion upon the symmetry of that doctrine since these purport to conditionalize payment on attendance on those days even though an employee may have otherwise attended faithfully during the whole benefit period.

Arbitrator Larson further states that:

> . . . the fact of inclusion of qualifying days in a collective agreement cannot be ignored. They must be given significance in accordance with the intentions of the parties.

In the Westar case, cited earlier, Arbitrator Munroe addresses the case of the employees other than the millwrights who left work due to the labour dispute. In summarizing their situation the Arbitrator says:

> The employees, other than the millwrights, left the work site without permission and without being informed that no further work was available. From a functional perspective, they were wholly uninvolved in the problems concerning "cracking" the steam. Theirs was a situation of complete volunteerism.

In my view the actions of the employees in leaving the workplace prior to the completion of their regularly scheduled shift violates the qualifying provisions contained in Article XI, Section 2(e) and therefore disqualifies them from receiving payment for the statutory holiday. Given this finding, the principle of substantial compliance is not applicable nor are there any extraordinary circumstances beyond the control of the

employees which would allow the principle of statutory compliance to come into play.

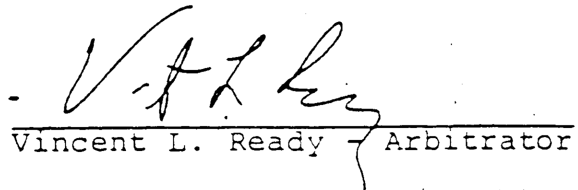
VIII

Finally I turn to the "special" case argued by the Union covering Grievors A. Belinski, M. Hilton and S. Suchdev. It is asserted that the cases of these three Grievors differ from the others. None of these three Grievors completed his regularly scheduled shift on June 28, 1985, however, all three worked some amount of overtime on the June 29-30 weekend immediately preceding the July 1 holiday. In making my determination for these Grievors I am again guided by the language contained in Article XI, Section 2(e) which requires the employee to "have worked his/her last regularly scheduled work day before" the statutory holiday. The three Grievors are in no different a position than the other Grievors who also walked out prior to the conclusion of the shift on June 28, 1985. These Grievors also fail to meet the qualifying conditions and therefore are not entitled to receive the statutory holiday pay. The work performed by the Grievors on the June 29-30 weekend was not regularly scheduled work but was overtime which was covered under the overtime provisions of the collective agreement and therefore was outside of the purview of Article XI, Section 2(e).

In the result the greivances are dismissed.

It is so awarded.

Dated at Vancouver, B.C. this 23rd day of July, 1986.



Vincent L. Ready - Arbitrator