

Fraser Lake Sawmills -and- IWA, Local 1-424

[1990] B.C.D.L.A. 315-02

British Columbia**A-48/90****Board: Ben van der Woerd****March 7, 1990****GRIEVANCE PROCEDURE - TIMELINESS
ARBITRABILITY AND JURISDICTION**

Although the Union did not advance the grievance to Step 3 until 17 days past the 14 day time limit contained in the collective agreement, the arbitrator exercised his discretion under s. 98(e) of the Industrial Relations Act to relieve against the delay, as it was not occasioned through neglect nor malfeasance but rather as a result of an honest misunderstanding between the Union's officers and the delay was not occasioned by any conduct on the part of the grievor nor was it lengthy and in fact the employer did not establish any prejudice to its position at arbitration as a result of the delay.

Decision: The arbitrator relieved against the delay under s. 98(e) of the Industrial Relations Act.

Facts: This award concerns a preliminary objection raised by the employer that the grievance was not filed in a timely fashion under the collective agreement and that the arbitrator had no jurisdiction under s. 98(e) of the Industrial Relations Act to relieve against a breach of the time limits in view of the express language contained in the collective agreement requiring a grievance to be advanced from one stage to the next within 14 days after completion of the proceeding stage. The Union did not advance the grievance from Step 2 to Step 3 until 17 days past the 14 day time limit.

Reasons: The language contained in the collective agreement indicating that a grievance shall be advanced within 14 days or otherwise be deemed to be abandoned, must be read against an arbitrator's statutory authority to relieve against that time limit in proper circumstances. If the arbitrator were to give effect only to the language of the collective agreement and ignore the direction contained in the statute, he would be open to criticism for ignoring a clear statutory mandate. The only reason advanced by the employer for denying the exercise of discretion is the strong language of the collective agreement and that reason alone was not sufficient to cause the arbitrator to uphold the employer's preliminary objection. The grievance at issue concerns whether overtime should be granted on the basis of seniority and such an issue is not going to be resolved merely by default of this grievance. It was clear to the employer what the position of the Union was on the issue of assigning overtime and in the circumstances, the employer could not reasonably have believed that the Union had abandoned the grievance.

(10 pages) B.C.D. Lab. Arb. - July-August, 1990

J. Coutts, Counsel for Employer

F. Lambeck, Counsel for Trade Union

WLP Update: PD901009 00000413