IN THE MATTER OF AN ARBITRATION, PURSUANT TO THE
B.C. *LABOUR RELATIONS CODE,* RSBC 1996 c. 244 (the "*Code*")

BETWEEN:

INTERFOR CORPORATION (ACORN DIVISION)
(the "Employer" or "Interfor")

AND:

UNITED STEELWORKERS' UNION,
LOCAL 2009
(the "Union")

(Hot Meals Grievance)

AWARD

ARBITRATOR:	JULIE NICHOLS
COUNSEL for the EMPLOYER:	GREGORY HEYWOOD
COUNSEL for the UNION:	SEAN BALL
DATE of HEARING:	DECEMBER 16 & 17, 2019
DATE of AWARD:	FEBRUARY 11, 2020

Introduction

This policy grievance relates to certain maintenance employees who work 8 hours per day from Tuesday to Friday and 10 hours on Saturday (the "Maintenance Shift"). The Union alleges that Interfor has failed to provide hot meal entitlements under Article V Section 10 of the Collective Agreement when employees work 10 hours on Saturday. The Employer maintains that, because the employees are working their normal shift, there is no requirement to provide/pay for hot meals.

The Union called Scott Lunny, Assistant to the Director of the United Steelworkers District 3, and Mike Duhra, Servicing Representative for Local 2009, to testify. The Employer called Augusto Flores, Sawmill Supervisor at the Acorn Mill, as its witness.

The Collective Agreement

The collective agreement language in question was originally negotiated by Forest Industrial Relations ("FIR") and the International Woodworkers of America ("IWA") in the Coast Master Agreement in 1970. FIR bargained for the Employer from the 1970's until the early 2000's. In 2004, the IWA merged with the Union. The applicable hot meal provision remained unchanged. In 2007, Interfor was no longer a member of FIR and bargained its own collective agreement with the Union. The hot meal language remained unchanged in the parties' 2007-2010 collective agreement and their 2010-2014 collective agreement.

In the current 2014-2019 Collective Agreement, the parties negotiated additional language to reflect their practice of paying for (as opposed to supplying) hot meals (see bolded language in the provision below), but the first paragraph remained unchanged. Article V Section 10 provides as follows:

ARTICLE V – HOURS OF WORK

> **Section 10: Hot Meals**
>
> Where maintenance, repair or construction employees are required to work two (2) hours or more overtime beyond their normal shift, the Company shall provide a hot meal, such hot meal to be consumed by the employee on Company time before beginning the overtime work.

> **Production Employees working in conjunction with or assisting Maintenance Employees and who work two (2) or more hours of overtime beyond their regular shift will be entitled to a hot meal, if the Maintenance Employees with whom they are working become entitled to a hot meal.**
>
> **The Company will ensure that a hot meal will be provided whenever possible.**
>
> **However, where the provision of a hot meal is considered impractical, Employees will be paid the equivalent of one (1) hour's pay at rate and one-half in lieu of both the hot meal and the time required to consume the meal.**
>
> **For the purpose of this agreement, rate and one-half will be calculated at the regular hourly rate of pay the Employee is receiving for the overtime work being performed.**

Preliminary Application – Admissibility of Documents

At the beginning of the hearing, the Employer objected to the admissibility of a number of documents, including: FIR Advisory Committee Minutes; the FIR Administration Manual (with updates); and, the IWA Coast Master Agreement Research Manual. Interfor, noting that it is no longer a member of FIR, maintained that the documents are internal, unilateral opinions that were produced long after the language was originally negotiated and are not consensual binding opinions on the interpretation of the Collective Agreement. It submitted that since opinion evidence is generally not admissible, the documents could only be admitted as expert opinion. No qualified expert was presented. In any event, the Employer argued that expert evidence was unnecessary given the interpretive task was for the arbitrator and additional specialized knowledge was unnecessary. It also raised natural justice concerns because Interfor had no opportunity to cross examine the author(s) of the documents. (see: *R. v. DD*, [2000] SCJ No. 44 (SCC)). There was no objection to the admission of Right of Reference Summaries, which reflect "with prejudice" settlements between FIR and IWA.

The Union argued that the documents should be admitted. It maintained that, while the Manuals are not binding on either party, they reflect the meaning and interpretation of the language as it was understood by the parties who had originally negotiated it for the industry. The Manuals were produced in the 1990's when the Employer was a member of FIR. Mr. Lunny, an author of the IWA Manual, was available to speak to its creation and use and his

understanding of the FIR documents. The Union submitted that the documents are relevant and illustrate the intention of the parties, particularly since the language has not been changed in the three rounds of bargaining since the Employer left FIR. (see: *Port Mellon Booming and Bundling Co. -and- IWA, Local 1-71* (1989), 13 CLAS 6 (MacIntyre); *Canadian Pacific Forest Products -and- IWA-Canada, Local 1-85* (1991), 26 CLAS 105 (Munroe); *IAM, Local 1740 -and- John Bertram & Sons Co.* (1967), 18 LAC 362 (Weiler)).

In an oral ruling, I concluded that the documents were admissible. The following is a summary of the reasons for that ruling, further to counsel's request to include them in this Award.

Under section 92 of the *Labour Relations Code*, RSBC 1994, c. 244 (the "*Code*"), arbitrators have discretion to accept evidence and are not bound by the strict rules of evidence followed by the Courts. In an interpretation case, arbitrators are tasked with determining the parties' mutual intentions respecting their bargained language. It is not unusual to admit evidence that one party says relates to the proper interpretation or application of the collective agreement. While the disputed documents were produced by FIR and the IWA (the Union's predecessor) after the language was originally negotiated, they relate directly to the historical evolution of the provision in issue within the industry. The Employer was a member of FIR when the documents were created. Further, Mr. Lunny was available to speak to the nature of the documents, which provided an opportunity for cross-examination. These parties could choose to lead evidence relating to the evolution of their intentions respecting the provisions now in issue. Finally, it was also open to them to argue what weight, if any, should be given to the documents in light of their historical context.

Historical Manuals & Documents

Mr. Lunny began working with the IWA in 1994. He testified that the FIR Manual referenced: third party interpretive decisions; FIR Advisory Committee minutes/summaries (the FIR Negotiating Committee's view of an applicable interpretation that was provided to member companies); and, Right of Reference summaries (where agreement was reached by both parties on specific interpretive issues). The IWA Manual was prepared so that the IWA would have its own version of the FIR Manual. Mr. Lunny worked with the IWA Negotiating Committee to prepare the IWA Manual. Where clarification was required, he did some review and research and followed up with the Locals to determine what was occurring at the operational level. The IWA Manual was

completed prior to (but updated/published after) the 1997 negotiations. It was used to reflect the meaning of specific language and to advise a Local as to whether a dispute should be referred for some determination (or whether the issue had already been addressed in the Manual).

In cross-examination, Mr. Lunny acknowledged that the individuals who originally negotiated the language in 1970 were not consulted when the IWA Manual was prepared. He could not identify the individual(s) who prepared the FIR Manual. While he reviewed historical bargaining notes generally, he was uncertain whether notes specific to hot meals were referenced. He agreed that the IWA Manual represented the views of the IWA Negotiating Committee in 1994, but noted the fact there had been no proposals about or changes to the hot meal language was an indication that FIR and the IWA were content with the provision. He also confirmed that the IWA and FIR did not agree to the content of the other's manual; they were unilateral documents.

The IWA Manual provides that the hot meal provision applies "even if overtime is scheduled well in advance". The FIR Manual includes a similar reference.

The FIR Manual also refers to a Right of Reference Summary (relating to Appendix No. 1 – Right of Reference: Item 5(b) Hot meals for field mechanics after 10 Hours - June 16, 1994) which addressed the question "where field mechanics regularly work overtime, at what point are they entitled to a hot meal?" and noted the agreement that "where certain employees work 2 hours in excess of their regularly scheduled shift, they are entitled to a hot meal". There was no objection to the admissibility of this Right of Reference Summary, itself.

Factual Background

Prior to becoming a Servicing Representative in 2018, Mr. Duhra worked as a Planer Chargehand at the Acorn Mill. He also acted as a Shop Steward and Plant Chairperson for a number of years. He testified that, in September 2015, Interfor notified the Union of a change from alternate shifts (four 10 hour shifts per week) back to five 8 hour shifts per week for cost cutting reasons. The notification was given further to the Alternate Shift language in the Collective Agreement and the shift change went into effect in October 2015. In response, the Union expressed its view that all collective agreement issues and past practice would be respected in terms of job postings, seniority, training and bumping.

The Employer also implemented the Maintenance Shift as a weekly scheduled shift, not as an alternate shift. Mr. Notopoulos (the Maintenance Chargehand) and Mr. Castaneto (the Maintenance Oiler, who is certified for First Aid) were assigned to the Maintenance Shift and, generally, worked 8 hours Tuesday to Friday and 10 hours on Saturday. On Saturday, the employees were paid 8 hours at their regular rate and 2 hours at overtime rates. Hot meals were not provided or paid for the work on Saturdays.

Mr. Duhra testified that the Union was never notified of a change from an 8 hour shift to a 10 hour shift on Saturdays, further to Article V Section 1(c) of the Collective Agreement. However, while he could not recall the exact time, he confirmed the Union was aware that employees were scheduled and working 10 hours on Saturday by the end of 2015. In cross-examination, Mr. Duhra recollected a meeting with Mr. Flores (the Sawmill Supervisor) and Mr. Isner (the then Mill Manager) where the Employer advised him that it had rehired casual employees and that maintenance employees would work the same shift as the casual employees to provide supervision and first aid. Mr. Duhra did not recall (but could not deny) any mention of a 10 hour shift in that discussion.

Mr. Flores testified that he and Mr. Isner met with Mr. Duhra in the office boardroom at the end of October or in early November 2015 to discuss the need to re-hire casual maintenance employees at the Mill. They advised him that the two regular maintenance employees would work 10 hours on Saturday in order to support the team of casual employees working those hours. After that meeting, the Employer also advised the employees.

Shift schedules are posted on Thursday, revisions are made Friday and the schedules become effective on Sunday. Mr. Flores saw the maintenance schedules posted outside the shop and assumed they were posted each week. He testified that, once the Maintenance Shift was scheduled, the maintenance employees knew they were expected to work 10 hours on Saturday. While he agreed that overtime is voluntary, he noted it would be a concern if an employee left after 8 hours on a Saturday without speaking to management. Requests to leave early on a specific day are generally accommodated, where possible. Mr. Flores could not recall anyone leaving before working 10 hours on a Saturday without asking permission. No one has been disciplined for leaving early on a Saturday.

Mr. Duhra testified that, in March 2017, Mr. Perez (a casual employee who replaced Mr. Castaneto on the Maintenance Shift), raised a concern about

working 10 hours on a particular Saturday. After discussion between Mr. Duhra and Mr. Flores, he was permitted to leave early. In July 2017, Mr. Perez (who had worked nine Saturday shifts sporadically from 2016 to June 2017) raised the concern that he was not paid for hot meals after working 10 hours on Saturdays. When the parties could not reach a resolution on that issue, the Union filed the grievance alleging a breach of Article V Section 10.

In cross-examination, Mr. Duhra maintained that the Maintenance Shift had been scheduled and was normally worked as five shifts of 8 hours, plus 2 hours of overtime on Saturday. He agreed that 10 hours had normally been worked on Saturday since late 2015. He confirmed that the Union had not filed a grievance about the Maintenance Shift being a 42 hour work week, noting there was no issue with 2 hours of voluntary overtime on Saturday. It was not unusual for the employees to agree to work voluntary overtime, but they have the option of turning it down. He confirmed that the regular maintenance employees understood the 10 hour Saturday shift (8 hours, with 2 hours overtime) was required and they agreed to work it. After accepting the overtime, employees would need to speak to their Supervisor if they changed their mind about working the 10 hours. He agreed the Maintenance Shift had been in place for 1½ years prior to the grievance being filed and involved employees "usually", "regularly" and "normally" working 10 hours on Saturday without hot meal entitlements and without complaint.

When he worked at the Mill as a Planer Chargehand, Mr. Duhra regularly worked nine hours per day (6am to 3:30pm) Monday to Friday and was paid 8 hours at his regular rate, plus one hour of overtime each day (i.e., 40 hours, plus five hours of overtime each week). He was also paid 8 hours at his regular rate, plus one hour of overtime on statutory holidays. Similarly, Mr. Notopoulos, the Maintenance Chargehand, is paid 8 hours at his regular rate, plus one hour of overtime from Tuesday to Friday. He, too, is paid 8 hours at his regular rate, plus one hour of overtime for statutory holidays.

There is no dispute that four employees (the "Sawfilers") normally work 8 hours per day Monday to Friday. In the Summer of 2019, they were scheduled for overtime to provide coverage while others were on holidays and medical leave. Interfor uses a computerized system ("Kronos") to track employee hours. The Kronos Reports show the Sawfilers were consistently paid for hot meals when they worked 10 hours in a day (two hours being overtime).

Mr. Flores inputs comments into Kronos when employees leave early to provide an explanation to payroll. He identified certain entries in the Kronos

Reports that provided no explanation when an employee left early on a Saturday. However, he explained there are inconsistent practices among the four or five Supervisors who make Kronos entries and a missing entry did not necessarily mean the employee left without permission.

After certain inconsistencies were identified in the Kronos Reports respecting the payment of hot meals on Saturdays where Mr. Notopoulos and Mr. Castaneto worked 12 hours or more, the Employer conceded that Mr. Castaneto is owed four hot meal allowances and Mr. Notolpolous is owed one.

Positions of the Parties

Union

The Union asserts that the regular hours of work are 8 hours per day, 40 hours per week (see Article V Section 1(a)). After 8 hours a day, overtime applies. As such, the 2 additional hours on Saturday are voluntary overtime after a normal shift of 8 hours and trigger hot meal entitlements under the language of Article V Section 10. It notes that the terms "beyond their normal shift" are a necessary part of the provision because some overtime could occur separate and apart from an employee's normal shift (e.g., weekend overtime after a Monday to Friday shift) and the hot meal entitlement would not apply in that situation. (see: *Thyssen Krupp Elevator -and- IUEC, Local 102* (2013), 115 CLAS 352 (Peltz); *Pioneer Coal -and- UMW, Local 26* (1989), 14 CLAS 30 (MacLellan)).

The Union says the hot meal language in issue has been unchanged since 1970. While the FIR and IWA Manuals are not binding, they reflect the consistent views about the meaning of the language that was bargained (and not changed) by the parties' predecessor representatives. The Manuals reflect how the language was interpreted in the industry. Both Manuals (even in later updated versions of the FIR Manual) show a mutual understanding that, even if overtime is scheduled well in advance, employees were entitled to hot meals. No changes were made in the two rounds of bargaining that took place after the Employer left FIR and the IWA merged with the Union. While the additions in 2014 recognize the practice of paying (rather than supplying) hot meals; the original paragraph remained untouched. If there were concerns about the shared meaning of the language, there was ample opportunity to bargain something different.

In response to the argument that the Maintenance Shift is regular and scheduled, the Union asserts that there is no support in the Collective Agreement for a regular Tuesday to Saturday shift, with 10 hours of work on

Saturday. It notes Article XI, Section 1(c) provides that statutory holidays are to be paid based on the regular rate of pay for the regular work schedule. If there was a normal 42 hour work week, the statutory pay for the maintenance employees would be higher. Further, it submits there are no notations made in Kronos when maintenance employees left before working 10 hours on Saturday because notations not required (i.e., voluntary overtime is not part of the normal 8 hour shift and there is no need to explain the departure).

The Union argues that Interfor unilaterally changed the hours of work on the Maintenance Shift to 10 hours on Saturday and did not advise the Union in the Fall of 2015. It says Mr. Duhra's evidence on that point should be preferred. In any event, the hot meal issue was not raised until July 2017 and, thereafter, the grievance was filed (see: *John Bertam, supra*).

In terms of remedy, it seeks an order directing the Employer to comply with Article V Section 10 and pay hot meal entitlements to eligible employees who worked 10 or more hours on Saturdays, retroactive to October 2015.

Employer

To begin, the Employer says the IWA and FIR Manuals should be given no weight. As they were written in the 1990's, long after the language was originally negotiated, they do not reflect the opinions of the original negotiators and provide no insight into the parties' intentions at the time the language was bargained. In addition, the Maintenance Shift was not contemplated at the time the Manuals were created.

On the interpretive issue, Interfor argues that the Maintenance Shift is the "normal shift" for the maintenance employees (or their relief) and, as such, no hot meal entitlement is triggered. It says the purpose of the entitlement is to provide a hot meal (or pay) when an employee unexpectedly works two or more hours beyond their normal shift. Yet, the Maintenance Shift is scheduled, posted, standard, regular and repeated in the same manner each week (with a few exceptions and accommodations). The Union was aware of the Maintenance Shift by late 2015 and has never grieved it. The maintenance employees knew it was their scheduled shift and worked it without complaint. Where an employee normally works a 10 hour shift, they can plan for meals in advance.

The Employer notes that, once an employee agrees to work the 10 hour shift on Saturday, they have agreed to the scheduled shift and must talk to management before leaving early. While there may be a few situations where

employees have left early, neither those situations nor the supervisors' inconsistent Kronos notations detract from the Maintenance Shift being the "normal" shift.

The Employer submits that the canons of collective agreement interpretation must be applied to give effect to the parties' mutual intention, noting the primary source for the interpretive exercise are the terms of the collective agreement. (see: *Pacific Press -and- GCIU Local 25-C*, [1995] BCCAAA No. 637 (Bird) at para. 27; *BC Hydro and Power Authority -and- IBEW, Local 258*, [2018] BCCAAA No. 83 (McPhillips) at para. 59).

Turning to the language here, it first argues that different terms should be given different meanings, noting Article V Section 10 refers to "normal shift", while Section 1 refers to "regular hours of work". It is significant that the parties chose the terms "normal shift" in the hot meal provision, as opposed to 8 hours of work. On the evidence, scheduled shifts can be 9 hours per day, 45 hours a week (in the case of Chargehands) or 42 hours a week (for the Maintenance Shift). The Union was aware that certain scheduled shifts may not comply with Article V Section 1 and acquiesced to it. Given different terms were chosen and have been applied inconsistently, there is no interpretive "nexus" between the terms in Section 1 and in Section 10.

Alternatively, Interfor submits that there is "no magic" to the terms "regular hours of work" or "normal shift" in Article V Sections 1 and 10. The terms "normal" and "regular" are not 'terms of art'. On its plain meaning, normal means "regular"; "usual"; "typical"; "confirming to a norm, standard or regular". (see: <u>Canadian Oxford Dictionary</u> (Toronto: Oxford University Press, 1998); <u>Black's Law Dictionary</u> (St. Paul.: West, 1979); <u>Webster's Encyclopedic Dictionary of the English Language</u> (Canadian Edition); *St. Boniface General Hospital -and- MAHCP*, [1994] MGAD No. 45 (Atwell)). Thus, the terms "their normal shift" in Article V Section 10 refer to the shift an individual employee normally works (i.e., the shift on which they are regularly scheduled). There is no indication of an intention to exclude overtime from the concept of normal shift. It points out that the parties used the term "regular" in a similar manner in Article XI(c) where given statutory holiday pay is based on what an employee regularly works (e.g., nine hours for Chargehands, including overtime).

In any event, Interfor argues that had the parties' intended hot meals would apply anytime employees worked overtime, or "more than 10 hours, regardless of the shift scheduled", or "more than two hours of overtime following their

shift", they would have bargained that language. It submits that the Union's interpretation ignores the terms "beyond their normal shift", noting the terms are possessive and, thus, reflect what the individual employee is working (as opposed to a "one size fits all" approach).

Should the language be found to be ambiguous, the Employer argues that there has been a clear past practice of only paying hot meal entitlements when an employee works two hours or more of overtime beyond their regularly scheduled shift (which may be eight, nine or ten hours in a day). Except for a few payroll errors, the practice has been consistent. It says the evidence relating to the Sawfilers illustrates this consistent approach (and, notably, is distinguishable from the situation of the maintenance employees).

Finally, the Employer argues that since the Union was made aware of the Maintenance Shift in late 2015, it is now estopped from challenging it. (see: *ICBC -and- OPEIU, Local 378*, [2002] BCCAAA No. 109 (Hall)).

Decision

When interpreting a collective agreement, an arbitrator must determine the parties' mutual intentions respecting the meaning of the language in issue. To assist in that task, a number of rules of interpretation have been established and include the following:

- the collective agreement is the primary resource for the interpretive exercise;
- a harmonious interpretation is preferred;
- all words should be given meaning;
- different words are presumed to have different meanings;
- terms should be given their plain meaning;
- the purpose and context of the provision as well as how the provision fits within the scheme of the contract must be considered;
- extrinsic evidence only assists when it reveals the parties' mutual intention; and,
- extrinsic evidence may clarify, but not contradict, the collective agreement.

(see: *Pacific Press, supra* at para. 27; *BC Hydro, supra* at paras. 57-64).

Thus, the starting point for the analysis is the language in the current Collective Agreement, which provides in part:

ARTICLE V – HOURS OF WORK

Section 1: Hours and Overtime

(a) The regular hours of work in all the forest products operations shall be eight (8) hours per day and forty (40) hours per week with rate and one-half for any hours worked over eight (8) hours per day and forty (40) hours per week, except as provided in (b) below. Production employees shall be paid rate and one-half for Saturday and/or Sunday regardless of the number of hours worked during the week, except as provided in (b) below.

…

(c) The established hours of work will not be altered without prior consultation with the Shop Committee, except in circumstances not in the control of the Company.

…

Section 5: Tuesday to Saturday

It is agreed that maintenance, repair and construction employees can be employed on a Tuesday-to-Saturday work week for which they will be paid straight-time for Saturday work. In such event, Sunday and Monday will be recognized as their rest days and any work performed on their rest days will be paid for at rate and one-half except as provided in Section 1(b). It is further agreed that the rest day, Monday, may be changed by mutual consent between the employee and the Company. In such event, work performed on Monday will be paid for at straight-time. If the employee works on Monday at the request of the Company the rate of pay will be rate and one-half. However, if the employee requests a temporary change from his rest day on Monday, work performed on Monday will be paid for at straight-time.

…

Section 10: Hot Meals

Where maintenance, repair or construction employees are required to work two (2) hours or more overtime beyond their normal shift, the Company shall provide a hot meal, such hot meal to be consumed by the employee on Company time before beginning the overtime work.

Production Employees working in conjunction with or assisting Maintenance Employees and who work two (2) or more hours of overtime beyond their regular shift will be entitled to a hot meal, if the Maintenance Employees with whom they are working become entitled to a hot meal.

The Company will ensure that a hot meal will be provided whenever possible.

> However, where the provision of a hot meal is considered impractical, Employees will be paid the equivalent of one (1) hour's pay at rate and one-half in lieu of both the hot meal and the time required to consume the meal.
>
> For the purpose of this agreement, rate and one-half will be calculated at the regular hourly rate of pay the Employee is receiving for the overtime work being performed.

In addition, overtime is addressed in a Letter of Understanding that is part of the Collective Agreement. Section 3(b) of that Letter of Understanding provides "[t]he employee has the right to voluntarily agree to work or to refuse to work overtime. If the employee agrees to work he will be expected to report for those hours agreed to."

Alternate Shift Scheduling, as addressed in Article V Section 2 and Supplement No. 8 of the Collective Agreement, includes the general principle that the 40 hour week is to be maintained over the averaging period.

Finally, both parties referenced pay calculations under Article XI, Section 1(c) of the Collective Agreement which provides statutory holiday pay is to be calculated "at his regular job rate of pay for his regular work schedule".

While the parties are at odds on the interpretive issue, there are several facts that are not in dispute. First, the period of days over which the Maintenance Shift is scheduled is not an issue given a Tuesday to Saturday shift is contemplated under Article V Section 5. Second, there is no dispute that the employees who worked the Maintenance Shift were paid overtime rates for hours worked beyond the first 8 hours on Saturday. Third, the Maintenance Shift was not implemented as an alternate shift, further to Supplement No. 8.

On the evidence, the Union was aware of the hours of the Maintenance Shift (including the 10 hours on Saturday) by late 2015. While Mr. Durha did not recall specific mention of the 10 hour Saturday shift in his meeting with Mr. Flores and Mr. Isner, I am prepared to accept Mr. Flores' detailed evidence that the 10 hour Saturday shift was discussed in late October or early November 2015. However, the issue of hot meal entitlements did not come up until July 2017, after which the grievance was filed. The Union confirmed that it is seeking a remedy respecting the hot meal entitlement for maintenance employees (or their relief) who work 10 hours on Saturdays. To be clear, the Union has not grieved the Maintenance Shift, per se.

To uncover the parties' mutual intentions as to the circumstances in which employees can receive hot meal entitlements, I turn to their bargained language. Under Section 10, the entitlement is triggered when maintenance employees are required to work 2 hours or more overtime "beyond their normal shift". Interfor says the Union's interpretation ignores the terms "beyond their normal shift" and notes that other clear language could have been negotiated if the entitlement is simply triggered after 10 hours of work. However, given the fact that overtime can be accepted and worked at a variety of times in a day or a week, it appears the parties have been more specific in their bargain. Rather than a simple threshold of number of hours of overtime, the language indicates the entitlement is triggered when the overtime extends from an employee's "normal shift". This is consistent with the Union's position that overtime worked separate and apart from an employee's shift would not trigger the entitlement. I agree that the words are necessary to meaningfully illustrate the scope of the entitlement in that regard.

What did the parties intend "normal shift" to mean? On the face of the Collective Agreement, the parties have used "normal" and "regular" in a number of provisions. While they have recognized "regular hours of work" in Article V Section 1, they have used "their normal shift" in the first paragraph and "their regular shift" in the second paragraph of Article V Section 10 with respect to hot meal entitlements. Generally, the same terms are to be given the same meaning and different terms are presumed to have different meanings. However, here, the parties' interconnected use of the terms "regular" and "normal" in two sections that address hours and overtime creates ambiguity that cannot be resolved simply by considering different narrow meanings of the terms in isolation. A broader purposive and contextual examination of Article V is necessary to unearth the parties' shared meaning. In addition, further to the interpretive principles set out above, the Collective Agreement must be read as a whole and interpreted harmoniously, where possible.

In Article V Section 1, it is clear that the parties have recognized "regular hours of work" as 8 hours in a day and 40 hours in a week, after which overtime rates apply. The principle of a 40 hour week is also reflected elsewhere in the Collective Agreement (e.g. in the context of alternate shifts). This must be considered along with the parties' bargain that overtime is voluntary, although it must be worked once the overtime assignment is accepted (Overtime Letter of Understanding Section 3(b)). When Article V Section 10 is considered in this overall context, a number of difficulties with the Employer's position arise.

First, while the Maintenance Shift is scheduled and regularly worked by certain employees each week, it also includes 2 hours of overtime on Saturday. On the language of the Collective Agreement and the evidence, overtime is voluntary. This means that, each week, an employee can choose to work (or not to work) the 2 additional hours scheduled on Saturday. The fact that employees regularly accept the overtime without complaint may benefit both the Employer and the individual. However, on the face of the Collective Agreement, an employee may refuse the overtime on Saturday.

Interfor points out that Chargehands regularly and normally work nine hours a day and 45 hours in a week and those on the Maintenance Shift regularly work a 42 hour work week with the knowledge of the Union. As no grievance has been filed about these arrangements that violate the defined "regular hours of work", the Union has acquiesced to these shifts, knowing they were inconsistent with Article V Section 1. As a result, it says the Union is estopped from complaining about the Maintenance Shift.

Yet, it was confirmed that the Union did not view the Maintenance Shift as a 42 hour work week or a Section 1 issue; and, it has not grieved it as such. I accept that Mr. Duhra was told about Interfor's intention to schedule 10 hours of work on Saturday by November 2015. However, he testified that employees normally work 8 straight time hours, and regularly work voluntary overtime. His evidence was that Chargehands "normally" work 8 hours, plus one hour of overtime and the Maintenance Shift was scheduled for five days of 8 hours, plus 2 hours of overtime on Saturday. There appears to be no dispute that employees regularly exercise their right to accept voluntary overtime. In my view, the fact that the Union did not interfere in that choice (which is available under the Collective Agreement) does not, on its own, support the conclusion that it acquiesced to or represented acceptance of ongoing breaches of the bargained 40 hour work week, a principle that is referenced in a number of provisions in the Collective Agreement.

It was also argued that there is no indication of an intention to exclude the overtime worked by an individual from "their normal shift" and the possessive language means "their" shift encompasses all the hours the individual normally works. Yet, on that interpretation, by regularly accepting overtime, an employee would (at some unspecified and uncertain point) have their voluntary overtime included in "their normal shift". Thus, by frequently working overtime, the employee would potentially eliminate their own eligibility for the hot meal entitlement they would otherwise receive. This raises practical and labour relations difficulties as well as uncertainties and potential inconsistencies

with the application of Section 10 among employees. I can find no indication that the parties intended such a result.

Nor, is there a basis for the conclusion that the hot meal entitlement does not apply when an employee works overtime with frequency or regularity. I note the Right of Reference Summary Hot Meals For Field Mechanics After 10 Hours (July 16, 1994) dealt with the question "where field mechanics regularly work overtime, at what point are they entitled to a hot meal?" and indicates the parties agreed that "hot meals apply where certain employees work 2 hours in excess of their regularly scheduled shift". At least historically, there was no evident indication of an intention to include regularly worked overtime as part of an employee's "regularly scheduled shift" or to limit the hot meal entitlement when overtime is regularly worked. But, in any event, if these parties meant to restrict the hot meal entitlement when employees work overtime frequently, one would expect some indication that it was their intention to do so.

From a purposive perspective, it was suggested that the hot meal entitlement is intended to provide a meal (or pay) in unexpected circumstances, as opposed to situations where an employee knows their schedule and can plan for the meal. This is one point that is addressed in the FIR and IWA Manuals and I find they merit some consideration. It is noteworthy that there had been no change in the language from 1970 until the Manuals were created. And, while I accept the original negotiators were not consulted and the Manuals are not bargaining evidence, when taken together, they offer consistent insight into the industry practice at the time they were created and updated. Thereafter, these parties were free to negotiate changes if they wished to reflect a different mutually intended application. Yet, the provision has remained unchanged. Both Manuals state that hot meal entitlements apply even when overtime is scheduled well in advance. This common description supports the conclusion that unexpected circumstances were not the only situations that were intended to fall within the purpose and scope of the benefit. Therefore, the fact that the Maintenance Shift was scheduled in advance and known to employees, does not, on its own, preclude the entitlement.

Interfor submitted that it has a consistent past practice of providing hot meal entitlements (e.g., payment to the Sawfilers) which supports its interpretation. I note the Sawfilers work a different schedule and worked overtime in different circumstances. There is no dispute between the parties as to their entitlement in the context of their circumstances. As such, that evidence did not assist in illuminating the parties' mutual intentions in relation to the situation before me.

Further, I note there were a number of inconsistencies in the application of hot meal entitlements generally. In any event, given the issue was first raised with the Union in July 2017 and the grievance was filed soon after, it cannot be said that any practice reflected the mutual intentions of the parties in relation to hot meals or could properly be used as an interpretive aid to clarify ambiguity (see: *John Bertram, supra*).

Both parties referenced Article XI, Section 1(c) which addresses how statutory holiday pay is calculated. However, that provision has a different purpose and addresses pay calculations for particular days. As such, its application to the issue before me is not particularly helpful. Similarly, the inconsistencies in the Kronos Reports did not assist one way or the other on the interpretive question.

Taking all of the above into account, I find that the language of the Collective Agreement and the evidence supports the conclusion that hot meal entitlements apply to the maintenance employees (or their relief) who accept and work 10 hours on Saturday as part of the scheduled Maintenance Shift. In my view, this finding is consistent with the structure and purpose of Article V, which includes the negotiated scheme for hours of work and triggers for voluntary overtime. It allows for a harmonious interpretation of both Sections 1 and 10 within the context of the overall provision, the Overtime Letter of Understanding and the Collective Agreement as a whole.

Accordingly, the grievance succeeds. While counsel briefly commented on remedy during the hearing, full remedial arguments were not made in final submissions. As such, I remit the remedial issues to the parties and retain jurisdiction on those issues should they be unable to agree. From a practical perspective, I encourage the parties to also address the inconsistencies in hot meal payments when maintenance employees worked 12 or more hours on a Saturday (as reflected in the Kronos Reports and summarized by the Union) as part of their remedial discussions.

DATED: February 11, 2020 in Vancouver, BC.

"Julie Nichols"

JULIE NICHOLS, ARBITRATOR