

Cited as:

**Lakeland Mills Ltd. v. Industrial Wood and Allied
Workers of Canada, Local 1-424 (Starchuk Grievance)**

IN THE MATTER OF An Arbitration
Between
Lakeland Mills Ltd. (The Company), and
IWA Canada, Local 1-424 (The Union)

[2001] B.C.C.A.A.A. No. 180
Award no. A-112/01

**British Columbia
Collective Agreement Arbitration
A. Brokenshire, Arbitrator**

Heard: May 4, 2001.
Award: June 11, 2001.
(135 paras.)

Concerning the Grievance of Pat Starchuk

Appearances:

Larry Page, for the Employer.
Sandra Caffrey, for the Union.

AWARD

¶ 1 Arbitration hearings were held in Prince George, British Columbia on March 29 and May 4, 2001. The concerned parties agreed the Board was properly constituted and had jurisdiction to hear and rule on the matter in dispute.

¶ 2 Witnesses were called, were sworn and provided evidence at the hearings.

¶ 3 The case opened by Mr. Page saying the Company contended Ms. Starchuk's grievance had not been progressed from Step 3 to Step 4 (arbitration) of the grievance procedure in accordance with terms of the Collective Agreement and therefore the contractual right to proceed to arbitration did not exist. It was anticipated the Union would seek relief from this circumstance by asking the Board to grant an extension of time by utilizing the "Authority of Arbitration board", Section 89: paragraphs (e) or (f) of The Labour Relations Code of British Columbia which read as follows:

- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the Collective Agreement.
- (f) dismiss or reject an application or grievance or refuse to settle a difference if in

the arbitration board's opinion, there has been unreasonable delay by the person bringing the application or grievance or requesting the settlement, and the delay has operated to the prejudice or detriment of the other party to the difference.

¶ 4 Mr. Page submitted the Company did not agree that the above noted sections of the Code were applicable in this case and the onus was on the Union to present a case that would persuade the Board to agree with that position.

¶ 5 The Union and the Company were in agreement that the matter of whether or not the grievance was "out of time" was the initial determination to be made by this board of arbitration. That is the issue that would be spoken to at the March 29, 2001 hearing.

¶ 6 If the Board ruled the grievance itself should progress to Step 4 (arbitration) of the grievance procedure a date for the hearing of the grievance would be set . If the Board rules the grievance was "out of time" it follows the matter was ended.

¶ 7 The question before this Board of Arbitration is:

Does the Union have the right, within the terms of the Collective Agreement: Article XIII - Grievance Procedure and or within the terms of the Labour Code of British Columbia Section 89 - Paragraphs (e) and (f), to progress Ms. Starchuk's grievance to arbitration?

¶ 8 Mr. Page opened the Company's case by providing a brief outline of the circumstances that prevailed within the Company's operation at the time Ms. Starchuk processed her grievance.

¶ 9 On April 22, 2000 a fire in the Company's Planer Mill caused it to be shut down for a period of time. This caused the employees at the Planer Mill to be out of work. Some employees bumped into the Company's Sawmill operation. The Planer and the Sawmill have separate seniority. However, certain "bumping" rights between the two plants have been established by the Company and the Union.

¶ 10 Ms. Starchuk was a Planer employee who bumped into the Sawmill. After a short time there she was removed by the Company who considered she did not have the experience to do the job into which she had bumped. That Company action was grieved by Ms. Starchuk.

¶ 11 The Company's position is the grievance properly proceeded through steps 1,2 and 3 of the grievance procedure but was not progressed to step 4 within the contractually prescribed 14 days and therefore, it was abandoned. It was over two months later that the Union advised the Company of its intent to proceed to arbitration.

¶ 12 The Company's position is:

- 1) the grievance is abandoned by the Union and the arbitrator has no jurisdiction to consider the merits of the grievance.
- 2) If the arbitrator does not find the grievance is abandoned the Company says this is not an appropriate case wherein the arbitrator should extend time limits through the application of terms of the Labour Code.

¶ 13 Ms. Caffrey briefly responded by saying the Union agreed that after the Step 3 meeting there

was a period of inactivity on its part. This was an inadvertent circumstance on the part of Mr. John Zuehlke, the involved Union Business Agent. This case is very important to the Union members and the Union had intended to proceed to settlement.

¶ 14 She said it was appropriate in this case for me as arbitrator to grant an extension of time by exercising my jurisdiction as set out in the Labour Code.

Company Evidence

¶ 15 The first witness called was Keith Brain the Company's Personnel Manager.

¶ 16 Mr. Brain testified that at the time of the fire in the Planer Mill three employees had exercised their bumping rights by going to the Sawmill.

¶ 17 One of those removed himself from the Sawmill after three days. He did not have the up to date needs to do the job. The second person was taken off the Sawmill job because he was not competent unless trained.

¶ 18 The Company removed Ms. Starchuk from her Sawmill job because of perceived inability to operate a chainsaw which was a requirement of her new job. She confirmed she did not have the ability to run the saw. It was this removal from the job that led to her grievance. She disputed the Company's interpretation of competency as set out in a "Letter of Understanding" between the parties.

¶ 19 A grievance was filed on April 25, 2000 and the grievance procedure progressed through to Sept 3 on May 19, 2000.

¶ 20 Mr. Brain said he attended that meeting as did John Zuehlke. There was no issue of time limits at that time. The witness said that he showed a letter of settlement proposal to Mr. Zuehlke. A copy of that letter dated May 26, 2000 and addressed to Mr. Zuehlke was entered as Exhibit 3.

¶ 21 The letter records the grievors were asking the Company to put aside the bumping provisions of the Letter of Understanding (LOU) on Seniority and Posting Procedures and past practice and allow them to bump into the bottom four categories in the Sawmill even where they would require training, not just familiarization or orientation to perform those jobs.

¶ 22 The letter notes that in the past where the Planer had been shut down for more than 10 consecutive working days and the Sawmill had continued to operate, bumping was allowed into those jobs in the bottom four categories in the Sawmill that were occupied by probationary employees.

¶ 23 The Company then offered a settlement which departed from past practice. The settlement proposal would allow bumping into jobs in the four bottom categories in the Sawmill under certain conditions. Six conditions for this bumping were set out. I will not set these out in detail as they are clear in Exhibit 3.

¶ 24 The letter closed by saying if the terms set out by the Company were acceptable to the Union would be Company be so advised as soon as possible.

¶ 25 A letter dated May 29, 2000 (Exhibit 4) written by Mr. Bruce Spurrier, the Union's 1st Vice President and sent to the Company advised that the Local Union did not accept the Company's proposal to settle the grievance and that "failing a more equitable proposal from the Company the Local Union

will be forced to proceed with the grievance".

¶ 26 Mr. Brain testified that at that time he did not know why the Union's response had been written by Bruce Spurrier rather than John Zuehlke.

¶ 27 He responded to Mr. Spurrier's letter on May 30, 2000 in a short fax which asked that the Union share with the Company those aspects of the proposed settlement wherein there was disagreement (Exhibit 5). There was no response from the Union.

¶ 28 Planer employees were recalled to work in the Planer on June 29, 2000. In the period of time between May 30, 2000 and June 29, 2000 two meetings were held with the Union to discuss local issues. These were attended by John Zuehlke and Frank Everett from the Union. No mention of Ms. Starchuk's grievance was made at those meetings. At the time of the June 19, 2000 Planer start up no mention had been made by the Union of taking the grievance to arbitration.

¶ 29 Shortly after the Planer start up the Company concluded that the grievance had not been progressed within the prescribed 14 day time limit and it was therefore abandoned.

¶ 30 The witness said that after the May 30, 2000 letter written by him to Bruce Spurrier the next contact with the Union was not later than August 9, 2000. At that time John Zuehlke contacted him and requested a meeting to re-discuss the Starchuk grievance. Mr. Brain said he told Mr. Zuehlke this was no longer an issue and it would not be revisited by the Company. Time limits had been exceeded and the matter was considered to be abandoned. However, the Company would meet to discuss how to avoid future difficulties. Mr. Zuehlke did not disagree with Mr. Brain's statement. A meeting to discuss ways to avoid like situations in the future was discussed. Subsequent to that conversation a meeting was set for and held on September 29, 2000. This was not held as a grievance meeting.

¶ 31 Company minutes of that meeting were entered as Exhibit 6. Present for the Union were John Zuehlke and Pat Starchuk. Ms. Starchuk was the Planer Mill representative on the Plant Committee.

¶ 32 Present for the Company were: Keith Anderson, Mike Roche, Monte Williams and Keith Brain.

¶ 33 The minutes show the Company's position for meeting was to discuss how to avoid problems in future such as were experienced with the April 2, 2000 Planer fire. The Company's position was there would be no bumping where training was required.

¶ 34 The Union considered that jobs in Group 1 to Group 4 required minimal training. The minutes of the meeting conclude by saying:" after much discussion on this issue, it was agreed to hold another meeting.

¶ 35 The witness testified that during the meeting there was no disagreement regarding the purpose of the meeting. There was no talk of compensation for Planer employees who couldn't do Sawmill work, there was no reference to any employee claim made as a result of the Planer fire and the Starchuk grievance was no mentioned. No subsequent meeting was held none was asked for by the Union.

¶ 36 A letter from Mr. Zuehlke (Exhibit 7) to the Company dated October 19, 2000 advised the Union would be proceeding to arbitration with the Starchuk et al grievance.

¶ 37 Counsel asked the witness if the Company would have agreed to the September 29 meeting if it had known the Starchuk case was going to arbitration. The answer was that it would not have done so

because an arbitration would have set the course for the future.

¶ 38 Ms. Caffrey opened her cross examination of Mr. Brain by asking if local issues prior to main contract negotiations had been underway from April to mid June 2000. Mr. Brain said that in general all agreements between many forest products companies and the IWA were being negotiated and local issues were discussed with each participating company.

¶ 39 Lakeland Mills was involved with those negotiations. Local issues were discussed with John Zuehlke until about May 19, 2000 then with Frank Everett.

¶ 40 When asked, the witness said he knew Mr. Zuehlke was working the Fort Nelson area and returning to Prince George about every three weeks.

¶ 41 Ms. Caffrey referred to Bruce Spurrier's May 29, 2000 letter which rejected the Company's settlement proposal and asked if the Company considered the 14 days in which to progress a grievance to the next step ran from that date. The witness replied in the affirmative.

¶ 42 Mr. Brain agreed that at times there are more than one 3rd step grievance meeting re a grievance where there is more to discuss than can be done at one meeting. He reiterated he had not had contact with Mr. Zuehlke between May 30 and August 2000. He had seen Frank Everett once or twice during that period.

¶ 43 He also restated that when contacted by John Zuehlke on August 9, 2000 he had made it clear that the purpose of setting up a meeting was not to discuss the Starchuk grievance rather it would be to discuss future matters.

¶ 44 Ms. Caffrey suggested Mr. Zuehlke, when told the Company considered the grievance was abandoned, may have said the grievance should be resolved as a way of looking to the future.

¶ 45 Mr. Brain responded by saying that if that had been said he would not have responded as he did regarding setting up a meeting. The witness when asked replied his past communications with Mr. Zuehlke had been good and points of concern had not been difficult to make.

¶ 46 Ms. Caffrey asked if John Zuehlke could have used the word "resolve" when referring to Ms. Starchuk's grievance at the time the September 29 meeting was arranged. The answer was that could have been said.

¶ 47 The witness restated, when asked, that at the September 29 meeting there had been no discussion re remedy regarding bumping although that could have been discussed at step three of the Starchuk grievance and that resolution of a problem during the processing of a grievance can set practices in the future.

¶ 48 When questioned Mr. Brain said there had been times in the past when the contractual time limits for grievances had been exceeded. This usually followed contact between the Union and the Company, often by phone, and where there had not been a disagreement regarding the noted extension of time.

¶ 49 The Union produced a number of grievance forms and subsequent correspondence between the Company and the Union setting out the Company's answer to those grievances at Step 3 of the grievance procedure and also copies of the Union's notification to the grievors regarding the disposition of their

grievances. These forms and letters show each case was reviewed at third step and the results conveyed to the grievors. Copies of the letters sent to grievors were not provided to the Company.

¶ 50 Arising from the Union's cross examination of the witness Mr. Page reminded Mr. Brain that the evidence shows that from time to time during the last 3 or 4 years time between the grievance procedure steps had been extended. He asked if, during that time, where the length of time had been extended was there another instance where the time frame in length of extension compared with the case before the Board. Mr. Brain said there was none which was comparable.

Union Evidence

¶ 51 The first Union witness called was John Zuehlke. He stated he was a Business Agent for the IWA at the time of the April 22, 2000 Planer fire. He had worked in that capacity since December 1, 1999.

¶ 52 His responsibility as a Business Agent was to service a number of mills between Prince George and as far north as Fort Nelson. Lakeland Mills Ltd. was in his territory. Before becoming a Business Agent for the Union he had been employed at Finlay Forest Industries in Mackenzie, British Columbia as a Kiln Stacker Operator.

¶ 53 He explained that Step 1 and Step 2 of the grievance procedure were handled by the local plant committee. If the grievance progressed to Step 3 it was sent to the Union. Ms. Starchuk's grievance moved forward to Step 3 and a Step 3 meeting was held on May 19, 2000. The witness testified that the year 2000 was a contract negotiation year when both industry and local issues were negotiated. Participation in those negotiations gave him a very busy calendar. In spite of this he tried to visit each mill once every three weeks.

¶ 54 Ms. Starchuk's grievance was presented at a May 19, 2000 meeting that also dealt with local issue negotiations. After the May 19, 2000 meeting the witness was engaged in Union business north of Prince George so all matters at Lakeland Mills were turned over to Frank Everett. When leaving his Prince George duties to work further north he asked Bruce Spurrier to look after the Starchuk grievance. This was done when he responded to the Company on May 29, 2000 and rejected the Company's proposal regarding bumping from the Planer to the Sawmill.

¶ 55 He said his next contact with the Company was in August when he got the Starchuk file back from Mr. Everett and saw the grievance had not been attended to. When this was noted Mr. Zuehlke said he contacted the Company and asked for a meeting to resume discussion of the grievance with the purpose of resolving it.

¶ 56 When asked if Mr. Brain had replied that there was no remaining issue Mr. Zuehlke said he was not sure of the exact words but thought the reply was the Company considered the grievance abandoned. Mr. Zuehlke said he told Mr. Brain the grievance must be resolved so like problems would not again occur in the future. A meeting for September 29, 2000 was scheduled.

¶ 57 Ms. Caffrey referred to Mr. Brain's evidence which was the purpose of the meeting was to discuss how bumping would be handled and the meeting was not a grievance meeting. Mr. Zuehlke replied that his resolved in holding the meeting was to settle the grievance. He thought that was the purpose of the meeting. The matter of senior people being able to work during a shutdown was discussed. Money matters were not discussed.

¶ 58 Ms. Caffrey asked the witness if he had asked Mr. Spurrier to attend to certain matters while he was up north. Mr. Zuehlke replied that in his mind he had asked Mr. Spurrier to handle correspondence. He had not discussed his role beyond that.

¶ 59 The witness said that when he returned to the Prince George office he found the correspondence related to the grievance on his desk. He considered this to be his grievance. He discussed it with the Union and it was decided if no settlement was reached the case would be referred to arbitration. There was no settlement at the September 29, 2000 meeting but the need of a further meeting was recognized. This did not happen immediately and Mr. Zuehlke then was out in the field for a time. He returned to Prince George on October 12, 2000 and visited the mill and then the Union office where he found his line of responsibility had been changed and he no longer would be servicing Lakeland Mills effective November 1, 2000.

¶ 60 The Starchuk grievance was his only outstanding item of business and at that time he sent a letter to the Company dated October 19, 2000 (Exhibit 7) advising the Union was taking the grievance to arbitration. When asked the witness replied he could not recall if there had been more than one Step 3 meeting on this grievance. He considered there was some progress made at the September 29, 2000 meeting which in his opinion had everything to do with the grievance. He recognized this was contrary to Mr. Brain's evidence. He agreed that in his conversation in August, 2000, Mr. Brain had said there was no grievance because it had been abandoned.

¶ 61 Ms. Caffrey noted that the Company had provided a number of grievance forms where the Union had not responded directly to the Company regarding settlement terms and asked for comment by the witness. He said he had written directly to each grievor telling him of the disposition of his grievance.

¶ 62 Under cross examination Mr. Zuehlke confirmed that the Starchuk grievance was about bumping from the Planer to the Sawmill. Specific dollar amounts had not been claimed by the Union on behalf of the affected employees. The resolution would be effected by "making each employee whole" for the period of the Planer shutdown.

¶ 63 The witness said Bruce Spurrier had not been sent a copy of the Company's proposals regarding bumping (Exhibit 3) before he replied to the proposal on May 29, 2000 (Exhibit 4).

¶ 64 Mr. Zuehlke further said when asked he had not provided Bruce Spurrier with a copy of his notes regarding the May 8, 2000 grievance meeting. He considered that with his extensive experience he would be able to handle the matter. The matter may have been discussed in a brief telephone talk that covered a number of items. The witness agreed he knew of the fourteen day windows wherein grievances are to be progressed to the next step. He was surprised when in August he found this had not been done. He then phoned the company right away and was advised the Company thought the Union had abandoned the grievance. He recalled the Company saying it would not review the grievance or discuss it further. The witness thought he had replied that there must be resolution of the grievance to not have repeat problems in the future. Avoidance of future problems meant to the witness the resolution of the grievance.

¶ 65 Counsel asked the witness if he recalled Mr. Brain saying that if the object of the meeting was to discuss bumping with the objective of avoiding future problems a meeting could be arranged. Mr. Zuehlke replied he recalled something like that.

¶ 66 Counsel drew attention to the Company's September 29, 2000 minutes of that meeting which

record future problems were discussed but there is no mention of the Starchuk grievance. The witness replied no one was called upon to say anything about this being a Step 3 grievance meeting.

¶ 67 The witness answered Counsel's question by saying he had not advised Keith Brain he would be working up north and not servicing the Lakeland Mills operation. When he left for the north he was confident Mr. Spurrier was capable of handling matters in his absence and therefore had not kept close contact with him. The witness said he had too much to do to be in constant contact with a man who was fully experienced in how to handle Union matters.

¶ 68 Ms. Caffrey asked why the witness thought no one had discussed the Starchuk grievance or referred to it at the September 29, 2000 meeting as being a grievance meeting. The witness again said no one had been called upon to say that. The witness answered a question from Ms. Caffrey by saying that he had learned to not always make specific demands for settlement of a grievance. He had found it better to ask that the grievor be made whole as this is all inclusive.

¶ 69 Ms. Caffrey asked Mr. Zuehlke why he and Mr. Spurrier during their brief phone conversation had decided to reject the Company's May 26, 2000 proposal for resolution of the problem of bumping between plants. Mr. Zuehlke replied the proposal was less beneficial than the practice set out in the letter of understanding.

¶ 70 This concluded Mr. Zuehlke's evidence and the Union had one more witness to call. Because of the lateness of the hour the hearing was adjourned with the understanding it would be reconvened at an early date. The hearing was reconvened in Prince George on May 4, 2000.

¶ 71 Ms. Caffrey called Mr. Bruce Spurrier as a witness. He is First Vice President and a Business Agent of IWA Local 1-424. He held those positions at the time of the April 2000 Planer fire.

¶ 72 He said he had been involved with correspondence with the Company after John Zuehlke was given duties in the north. Mr. Zuehlke asked him to respond to the Company's May 26, 2000 letter (Exhibit 3). He was aware of that letter, he had been told about it or maybe had seen it. He and Mr. Zuehlke spoke about it on the phone and found the proposals made in the letter to be unacceptable to the Union. He wrote his May 29, 2000 letter (Exhibit 4) telling the Company the Union did not accept the proposal and the Union would be forced to proceed with the grievance.

¶ 73 Mr. Spurrier said his meaning was the grievance would go to arbitration. When he received Keith Brain's May 30, 2000 letter (Exhibit 5) asking what aspects of the Company proposal were not agreeable to the Union he placed the letter on Mr. Zuehlke's desk. He considered he, at that point had done what he had been asked to do and therefore he did nothing more.

¶ 74 In cross examination Mr. Page asked the witness if he had discussed the Company's May 26, 2000 proposal with John Zuehlke before he went out of town on his northern duties. Mr. Spurrier replied he knew of the grievance but had not discussed it as such. He had not been involved until he was asked to look after the correspondence with the Company. He further replied that he did not know when Mr. Zuehlke had first seen the Company letter but he had seen it and called Mr. Spurrier before Mr. Spurrier was aware of its existence.

¶ 75 Mr. Page asked if the witness had recommended rejection of the Company proposal to Mr. Zuehlke, had he been aware of the previous discussions by the parties, was the grievance file left with him. The answer to all of these questions was negative.

¶ 76 When asked if Mr. Zuehlke had told him to write the letter of proposal rejection Mr. Spurrier replied "pretty much", it was his decision I did what was asked.

¶ 77 Counsel referred to Mr. Spurrier's evidence which said he had placed the Company's May 30, 2000 letter on John Zuehlke's desk and asked how he would get the letter.

¶ 78 The witness said people were not out of the office for long periods of time. They are in and out every few days so it would be expected that the letter would be picked up. When asked if Mr. Zuehlke had been out of the office for June and July the answer was it would be an extreme circumstance if he would be gone for two months.

¶ 79 Mr. Page drew attention to different recall by Mr. Zuehlke and the witness regarding who instigated the phone call regarding rejection of the Company proposal. Mr. Zuehlke's recall was Mr. Spurrier recommended rejection saying it provided lesser benefits than those presently in place. The witness had testified that Mr. Zuehlke had asked him to write a letter of rejection. Mr. Spurrier agreed there was a difference of recall.

¶ 80 Counsel asked if Mr. Spurrier knew why Mr. Zuehlke had not done anything on the grievance.

¶ 81 Mr. Spurrier replied he did not know what Mr. Zuehlke had or had not done regarding the grievance. He said it was a busy time of the year.

¶ 82 Ms. Caffrey closed the evidentiary segment of this hearing by asking Mr. Spurrier if John Zuehlke had seen the Company's proposal letter of May 26, 2000 before Mr. Spurrier had seen it. The answer was that it was assumed he had because he had either seen it or had been made aware of its contents because the call between them had been originated by Mr. Zuehlke.

¶ 83 When asked if he could recall all the matters discussed in that phone call Mr. Spurrier replied in the negative.

Company Argument

¶ 84 Company Counsel Larry Page proceeded to make argument by providing a written submission which he utilized as the format for his oral presentation. He argued that the Planer fire which occurred on April 22, 2000 was an unprecedented problem in the mill and the grievance now before this Board arose out of that unusual event. The resulting layoff of over 40 employees in the Planer and the fact that the fire caused closure of the Planer for more than 10 days gave Planer employees the right to bump into the Sawmill subject to the terms of a Letter of Understanding. Those terms in part provided that to make the move to the Sawmill employees must have sufficient seniority and be competent to perform the work in the jobs to which they moved.

¶ 85 These rights were exercised by three Planer employees but were considered to lack competence.

¶ 86 The grievor Pat Starchuk was removed after two or three days on the basis of lack of competence as were the other two. One of these voluntarily removed himself.

¶ 87 Mr. Page cited the Collective Agreement between the parties saying Article XIII sets out the Grievance Procedure. He contended the time limits are given importance when the Contract shows that if a grievance is not advanced to the next step within the time limits (14 days), it is deemed to be abandoned. Attention was drawn to Keith Brain's testimony regarding the instances when the 14 day

limit had not been met. In those instances the usual practice had been a phone call or some other method of contact being made with the Company by the Union and agreement had been reached. This has happened with the result of up to a two week delay of the time limit.

¶ 88 Counsel said; "This is how the parties handle the extension 'by mutual consent' set out in the Collective Agreement".

¶ 89 When the Union rejected the Company's offer at Step 3, on May 29, 2000 Step 3 was completed. A Company fax sent to the Union on May 30 requesting what parts of the Company proposal was in disagreement was not answered by the Union.

¶ 90 The Union had 14 days from May 30 to advance the matter to arbitration. That was not done. Therefore, the grievance was then deemed to have been abandoned in keeping with the terms of the Collective Agreement (Article XIII - Section 2: Paragraph (a).

¶ 91 When Mr. Zuehlke phoned Mr. Brain in August asking to meet and discuss the grievance Mr. Brain declined to meet to discuss the grievance saying it had been abandoned by the Union.

¶ 92 While Mr. Zuehlke testified it was his desire to discuss and settle the grievance to avoid future like problems Mr. Zuehlke did agree Mr. Brain did not change his position about the grievance being abandoned. Counsel reviewed the setting up and contents of the September 29, 2000 meeting attended by John Zuehlke and Pat Starchuk from the Union and Keith Anderson, Mike Roche, Monte Williams and Keith Brain from the Company.

¶ 93 Keith Brain made minutes of that meeting which show, the meetings purpose was to discuss ways to handle similar matters in the future and the meeting had nothing to do with Pat Starchuk's grievance. Counsel stated John Zuehlke had agreed there had been no discussion of the actual grievance nor about compensation for affected employees. A proposed follow up meeting had not taken place. It was not pursued by either party.

¶ 94 On October 19, 2000 the Company received a letter from John Zuehlke saying the Union was taking the grievance to arbitration.

¶ 95 Mr. Page said that the letter saying the matter was being progressed to arbitration was written four and a half months after the contractual deadline to give notice of going to arbitration but it was also more than two months after the Company had stated to the Union that the grievance was abandoned [August 9 - October 19, 2000].

¶ 96 Counsel argued that this second period of delay when Mr. Zuehlke had re-assumed full control of the grievance cannot be overlooked, by the arbitrator. There was no involvement by any other Union Officer whereby any confusion as to who was handling what.

¶ 97 Mr. Page reviewed a number of grievances that had been abandoned by the Union after they had completed Step 3. These showed that when the grievances were not advanced to the next step they had been deemed to be abandoned. The Union normally does not advise the Company that a grievance has been abandoned. That happens automatically under the terms of the Collective Agreement when the fourteen day time limit expires.

¶ 98 In summing up the Company's case Mr. Page stated the primary position of the Company was that the grievance had been abandoned. When in early August 2000 Keith Brain told John Zuehlke the

grievance was abandoned, he did not disagree. The Company refused to discuss the grievance further. The Union agreed to and did meet with the purpose of discussing how to handle like problems in the future. The Union did not dispute that the grievance was abandoned and there was no attempt to discuss it on September 29, 2000.

¶ 99 Counsel said that it appeared that the Union was taking the position that it did not form an intention to abandon the grievance and it was negligence in the handling of it that led to the non compliance with the time limits set out in the Collective Agreement. Under the Collective Agreement the grievance is "deemed to be abandoned" if it is not processed. Intention doesn't enter into it.

¶ 100 Counsel concluded his argument regarding abandonment of a grievance by saying that once a grievance is abandoned it cannot be revived. The facts are clear in this case, there was abandonment, and the Union agreed that it had been abandoned. That being so, the Arbitration Board has no jurisdiction to deal with it and that is the end of the matter. The issue of relief from time limit does not arise and there is no jurisdiction to relieve from the fact of abandonment.

¶ 101 As an alternative argument Mr. Page said that if relief from time limits is to be considered this case is not an appropriate one where relief should be granted. Such relief should proceed only on the basis that it is an "extraordinary event and that discretion must be exercised judicially.

¶ 102 Counsel said that in the time after the Starchuk grievance was processed to Step 3 there was adequate opportunity for the Union to give notice of going to arbitration. John Zuehlke was around the area and as well as that he could have asked Bruce Spurrier to give that notice to the Company. Nothing was done by the Union to move the grievance to arbitration. It is the Company's position that the grievance was deemed to be abandoned under the terms of the Collective Agreement.

¶ 103 The applicable law on relief of time limits is that it is an extraordinary event, and that discretion must be exercised judicially., These conditions are not applicable in this case and it would not be reasonable to extend the time limits and saddle the Company with the consequences of the Union's negligence. To grant an extension would effectively remove the time limits from the Collective Agreement.

¶ 104 Mr. Page provided a "Brief of Authorities" which I have studied. These, I have found helpful while recognizing that each arbitral decision was based on the circumstances of the individual case which in my opinion is the responsibility of the sitting arbitrator.

Union Argument

¶ 105 Sandra Caffrey, Union Advocate opened her argument by saying there was agreement that if the time limits for stepwise progression were breached the grievance was deemed to be abandoned.

¶ 106 The Union is seeking relief from that situation in this case by asking the arbitrator to relieve against that breach under the right to do so as defined in the Labour Relations Code. This is very much a case where it is just and equitable to do so. Evidence shows there was never any intention on the part of the Union to abandon the Starchuk grievance. Bruce Spurrier's May 29, 2000 letter to Keith Brain states the Union did not accept the Company's proposal to settle this grievance and then says: "Failing a more equitable proposal from the Company, the Local Union will be forced to proceed with the grievance". As soon as John Zuehlke found that nothing had been done with the grievance he contacted Keith Brain to ask for a meeting. He was anxious to gain a resolve of the grievance and thereby establish how matters would be handled in future problem circumstances.

¶ 107 Ms. Caffrey submitted there was reasonable cause for the delay in notifying the Company of the Union's intent to proceed to arbitration. The purpose of the Labour Relations code is to set up a process to resolve disputes. Section 82 of the code provides some specific guidance.

¶ 108 Further argument states that there had been previous breaches of time limits but until now there had not been a problem in having an extension of time arrived at through mutual consent and also it was agreed that Step 3 grievances were discussed over and during several months.

¶ 109 John Zuehlke considered the September 29 meeting to be a grievance meeting and he was willing to meet again at what he thought was Step 3. His reason for not speaking to the grievance as such was he thought resolution of the problems that gave rise to the grievance would be resolved if settlement was reached. Instead of asking for specific compensation he had already, in the earlier steps asked that the grievor (or grievors) be "made whole".

¶ 110 While John Zuehlke considered it was a grievance meeting Keith Brain felt he had made it clear it was not. Both people had honest ideas as to what was the purpose of the meeting. Those ideas were different.

¶ 111 During the time of April through to the fall of 2000 Mr. Zuehlke , a fairly new Union Business Agent was carrying a heavy work load through participating in local and industry contract negotiations as well as servicing a number of employees in mills situated in the broad northern area of IWA Local 1-424 jurisdiction. Under all these circumstances it was not surprising something slipped through the cracks.

¶ 112 Ms. Caffrey said the grievance processed by Ms. Starchuk is of importance because the results of it if won by the Union would affect a number of people. The granting of a time extension to allow the grievance to proceed would have little likelihood of adversely prejudicing the Company or acting to its detriment. The time frame wherein there could be benefits gained by employees was determined by the length of the shut down caused by the Planer fire. A delay of grievance progression would not change any benefits that might flow from that period of time. Therefore this case is an appropriate one where an extension of time should be granted under Article 89 paragraph (e) of the Code.

¶ 113 A Union Brief of Authorities was also provided and again I have read and considered the decisions of Arbitrators who conducted those cases and have benefited from the opinions gained based on the facts of each case and within the confines of the relevant Contract Agreements.

¶ 114 Where there was some difference in the evidence provided by Mr. Spurrier and Mr. Zuehlke it was suggested that the passing of a year could have contributed to lack of clear recall of some details.

Contract and Code Requirements

¶ 115 To give full meaning to the evidence provided by Union and Company witnesses at the hearing there is contractual and legislated language that must be recognized.

¶ 116 The Labour Relations Code sets out Arbitration Procedures at Part 8. In part Part 8 reads as follows:

Purpose of Part

82.(1) It is the purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a Collective Agreement without resort to stoppages of work.

(2) An Arbitration board, to further the purpose expressed in subsection (1), shall have regard to the real substance of the matters in dispute and the respective merit of the position of the parties to it under the terms of the Collective Agreement and shall apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

(Emphasis added).

¶ 117 The term or provision of the Collective Agreement that is pertinent to this dispute is:

Article XIII Grievance Procedure

Section 2:

(a) If a grievance has not advanced to the next stage under Step 2, 3, or 4 within fourteen (14) days after completion of the preceding stage, then the grievance shall be deemed to be abandoned, and all rights of recourse to the grievance procedure shall be at an end. The fourteen (14) day limit may be extended by mutual consent of both parties.

¶ 118 Authority of Arbitration Board is set out in Section 89 of the Labour Relations Code Paragraph (e) reads as follows :

(e) May relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the Collective Agreement.

¶ 119 The Company submits that the fourteen day limit in which the Union was contractually required to progress the grievance from Step 3 to Step 4, Arbitration had not been met and therefore the grievance was abandoned.

¶ 120 The Union does not disagree that the fourteen day limit was not met but says the grievance is not abandoned until such time as the request for an extension of time has been dealt with by this arbitration board.

¶ 121 The Company says the failure to meet the time limit between Step 3 and Step 4 of the grievance procedure was caused by Union neglect.

¶ 122 The Union says it was an inadvertent oversight caused by the heavy workload being carried by Mr. Zuehlke during local and industry contract negotiations.

¶ 123 While the parties are not at odds regarding the failure of the Union to meet the fourteen day limit for progression to Step 4 I have carefully looked at Mr. Spurrier's letter of May 29, 2000 to see if

his reply to the Company in that letter could be considered as being notice of progressing to arbitration. The last sentence of the letter says: "Failing a more equitable, proposal from the Company, the Local Union will be forced to proceed with the grievance". I have decided that sentence speaks of a possible further proposal from the Company. This shows the matter remained at the Step 3 level with no mention of going to arbitration as of the date of the letter.

¶ 124 There has been for many years a Section in Contract Agreements between Employers and the IWA that was similar to the Article XIII Section 2: a) present in the current contract between Lakeland Mills Limited and IWA Canada Local 1-424. This is shown by its inclusion in several of the cases provided in the Union and Company Briefs of Authorities. In some previous years the section was longer and set out exceptions that could extend the time limits.

¶ 125 Now the section is clear, if the fourteen day limit is exceeded the grievance is deemed to be abandoned and all rights of recourse to the grievance procedure are at an end unless the time limit is extended by mutual consent of both parties.

¶ 126 I note that Section 2(a) uses the word "deemed" and I wonder why it is there. Why would the wording not simply be "then the grievance shall be abandoned". The dictionary meaning of "deemed" says - to think, believe, judge, to hold an opinion, to suppose and to conclude on consideration. However, when the words "shall be deemed to be abandoned" are followed by the statement that "all rights of recourse to the grievance procedure shall be at an end I conclude the word "deemed" does not affect the meaning that the grievance is truly abandoned.

¶ 127 I find the Union did not meet the requirement of moving the grievance from Step 3 to Step 4 within the contractually required fourteen day time limit.

¶ 128 I now turn to the Union's request for relief against the breach of the time limit under the terms of Section 89(e) of the Labour Relations Code.

¶ 129 The code says an arbitrator may provide relief on just and reasonable terms. The question then is are there just and reasonable terms that can allow me to grant such relief. The Union's case is based on the fact that Mr. Zuehlke was very busy from April to August 2000 and inadvertently did not give notification to the Company that the grievance was going to arbitration.

¶ 130 There is every likelihood that Mr. Zuehlke was very busy with Local and Industry contract negotiations along with day to day requirements with employees in several mills. However, he was never further away from other Union Officers than a phone call. He could have asked one of those officers to advise the Company. I note that when the letter dated October 19, 2000 advising the Company of the Union's intention to go to arbitration was written the body of the letter consisted of four lines and would have taken a very few minutes to write a similar letter within the time limit. As an arbitrator I would have to find there had been extraordinary or exceptional circumstances which severely diminished or precluded the Union's ability to give notice of arbitration to the Company before I could relieve against the breach of the time limit on just and reasonable terms.

¶ 131 It is my decision that the heavy work load carried by Mr. Zuehlke during contract negotiations from April to August was not an extraordinary or exceptional circumstance which prevented the Union from advising the Company the Starchuk grievance was being progressed to arbitration at Step 4 of the grievance procedure.

¶ 132 Therefore, I deny the Union's request for relief from its breach of time limits in this

case. Having reached that decision it is not necessary for me to consider the wording of Section 89(f) of the Code.

¶ 133 If I were to grant relief of the fourteen day time limit in this case I would be invading the negotiated language of Article XIII: Section 2: a) and thereby causing an abrogation of its meaning.

¶ 134 In answer to the question posed in this case, it is my decision that the Union does not have the right within the terms of the Collective Agreement: Article XIII - Grievance Procedure and/or within the terms of the Labour Relations Code of British Columbia : Section 89: Paragraphs (e) and (f) to progress Ms. Starchuk's grievance to arbitration.

¶ 135 Failure to progress the grievance from Step 3 to Step 4 of the grievance procedure caused it to be abandoned under the terms of Article XIII: Section 2(a) of the Collective Agreement and all rights of recourse to the grievance procedure are at an end.

QL Update: 20010618

qp/i/qlmmm