HOURS OF WORK / OT

IN THE MATTER OF AN ARBITRATION

BETWEEN:

NORTH CARIBOO FOREST LABOUR
RELATIONS ASSOCIATION

(hereinafter called the "Employer")

AND:

INTERNATIONAL WOODWORKERS OF AMERICA,
LOCAL 1-424 and 1-425

(hereinafter called the "Union")

(Sunday Overtime Arbitration)

Arbitrator:	H. Allan Hope, Esq.
Counsel for the Employer:	W. R. Hibbard, Esq.
Counsel for the Union:	R. B. Blasina, Esq.
Date of Hearing:	March 16, 1982
Place of Hearing:	Prince George, B. C.

A W A R D

I

In this arbitration the parties seek the interpretation of a provision of the Collective Agreement as it applies to employees who work a 42-hour week. On their first shift each week they commence work at 10:00 p.m. on Sunday and work a ten-hour shift through into Monday at 8:00 a.m. They then revert to an eight-hour shift commencing at 12:01 a.m. for the following four days of the week. The purpose of the unusual Sunday shift is that the employees report in advance of

the full crew to prepare the mill for startup at midnight. It is a situation that arises where a mill shuts down for a Saturday and Sunday or for Sunday, and commences operations with a Sunday midnight startup. The employees who report for the start-up process receive pay at the rate of time and one-half for the first two hours but the Union argues that they are entitled to receive double time. The arbitration is raised pursuant to a provision of the Collective Agreement, a master agreement negotiated on behalf of a number of employers, providing specifically for the resolution by arbitration of disputed interpretations of the agreement. Pursuant to that provision the parties agreed that the arbitrator was properly constituted and had jurisdiction to determine the issue in dispute.

The Union approached its argument gingerly, relying primarily on the interpretation to be applied to the word "day". The provision requiring interpretation is as follows:

> "7(1) (b) Overtime will be paid at rate and one-half for all hours worked in excess of eight in a day, and for Saturday and/or Sunday with the following exceptions:
>
> Double straight-time rates shall be paid for the following:
>
> (i) hours worked in excess of 11 hours per day.
>
> (ii) hours worked on Sunday by employees who have worked five (5) shifts during the preceding six (6) days.
>
> (iii) Item (ii) above shall not apply to employees who work on Sunday as a regular scheduled day.

(iv) for the purpose this provision, a Statutory Holiday shall be considered as a shift worked." (underlining added)

The Union commences its task by saying that the employees in question, even though they are regularly scheduled to commence work at 10:00 p.m. every Sunday, are not "employees who work on Sunday as a regular scheduled day" because they only work two hours on Sunday and because, on a 42-hour work week, they fall within the ambit of Article 7 (b) (ii) as employees working on Sunday, "who have worked five shifts during the preceding six days" The argument is ingenious but fails. It produces a result contrary to the intentions of the parties as those intentions are interpreted from the provision itself and the context in which it appears in the Collective Agreement.

Essential to the argument of the Union is the determination that the term "shifts" as used in Art. 7 (b) (ii) means an eight hour period worked within a given calendar day. If the two hours on Sunday are seen as a part of a single ten-hour shift worked on Sunday and Monday then the argument fails. The Union says that the employees concerned must be seen as having been scheduled to work five shifts of eight hours commencing each week at midnight on Sunday and that the two hours worked prior to midnight are time excess to those five shifts. But it is clear from the

Collective Agreement that the term "shift" is not limited to a period of time in one calendar day. In the same article the following provision appears:

> "Section 5. It is agreed between the parties that if three hours or less are necessary after midnight Friday, or on a statutory holiday, to complete the shift which commenced on Friday afternoon, or the afternoon preceding the statutory holiday, time worked after midnight to complete this shift will be paid at straight time." (underlining added)

On the reading of that provision it is clear that the parties do not limit the meaning of the term "shift" to a period within a calendar day and that a shift can be scheduled that overlaps between calendar days. An examination of the overtime provision gives some insight into the general intent of the parties as to the compensation of employees for working overtime. Double time benefits, for instance, do not come into effect until an employee has worked in excess of three hours overtime after an eight hour shift. Nor are double time benefits paid to an employee who is designated to work a full shift on Sunday. Employees who work in excess of forty hours per week are compensated at time and one-half rates for all work, including Saturday and Sunday, unless Sunday is a scheduled day of rest in the sense that the employee is not regularly scheduled to work that day and has already worked five shifts.

Those provisions are not determinative of the interpretation issue raised by the Union but they do enclose in general terms the intentions of the parties that double time is a premium benefit of limited application and only applies with respect to Sunday work where an employee is, in effect, called out to work on Sunday outside of his ordinary schedule. That is not to say that the Union is bound by the general intentions emerging from the language used in the overtime provision and the juxtaposition of benefits set out in that provision. It is to say that it is helpful in the interpretation of the Collective Agreement to identify the nature of the benefit the parties seek as that intention emerges from a general reading of the provision in its context. One is bound to conclude from reading the language of the section that the benefit urged by the Union by means of interpretation falls somewhat outside that general scheme in the sense that it affords a double time benefit to an employee who works on Sunday as an ordinary incident of his regular schedule.

The Union is entitled to succeed in the interpretation it urges if the language supports that interpretation, however, and the general intent of the parties emerging from the scheme does nothing more than imply that the position taken by the Union is a technical position that can succeed only if the specific language clearly mandates that result.

The language does not mandate that result. The employees in question work five shifts per week, one of them being a ten-hour shift. The Union argued that the work schedule is rigidly defined in Section 1(a) of Article VII as follows:

> "The regular hours of work shall be eight (8) hours per day and forty (40) hours per week, Monday to Friday inclusive."

But that cannot be so on a reading of the remainder of the Agreement. The very provision in dispute contemplates regular scheduling of work on Sunday. Section 4 of the same provision dealing with three-shift operations provides that "details of shifts shall be varied at the Employer's option." In that same section part (c) provides "the Employers shall have the right to determine the number of shifts operated in any unit or department of the operation." Again that language is not determinative of the issue but it does contemplate the degrees of discretion vested in the Employer with respect to the designation of shifts to meet its manning and production requirements. Art. VII, Sec. 1(a) merely sets out a basic schedule against which is measured the entitlement to premium rates depending on the nature of scheduling outside that basic schedule. The vital question always is the precise nature of the premium to be paid, if any, for work outside the Monday to Friday schedule.

In my view the employees in question are regularly scheduled to work a ten-hour shift commencing at 10:00 p.m. on Sunday in what is in effect regularly scheduled overtime occurring two hours prior to the commencement of the straight-time shift. The Union says "day" must mean calendar day, with the result that the Sunday work occurs on a sixth day. The word "day" is ambiguous in the absence of express definition and must therefore be interpreted in context. See Robson-Lang Leathers Ltd. and Canadian Food and Allied Workers, Local 250-L (1973) 2 LAC (2d) 400 @ 402. In National Starch and Chemical Company (Canada) Ltd. vs Canadian Union of Distillery Workers (1976) 11 LAC (2d) 288 (Rayner) the arbitrator again said that the meaning of "day" was to be determined by the context in which the term appeared. He was dealing with the interpretation of "day" as it appears in a legislative enactment but the same principle applies.

The Union argues that the two hours of Sunday time must be seen as additional to the five shifts worked by the employees. The answer of the Employer is that the two hours are part of the shift that commences Sunday at 10:00 p.m. That specific issue was addressed in Dominion Bridge Co. Ltd. and United Steelworkers Local 3390 (1980) 27 LAC (2d) 399 (Adams). The arbitrator dealt with a Union submission that employees who had worked four shifts, Monday through Thursday, from 4:06 p.m. to 12:06 a.m. and who then worked eleven hours commencing at 4:06 p.m. on Friday and ending at 3:06 a.m. on Saturday, were

entitled to be paid double time for the three hours on Saturday. The Employer paid the employee time and one-half as being time in excess of eight hours in a shift. The Union argued that the three hours constituted a Saturday shift and therefore attracted double time. On page 400 the arbitrator said as follows:

> "Having reviewed the stipulated facts and the provision of the agreement, I have come to the conclusion the grievance must be dismissed. The issue is whether the three hours scheduled from 12:06 a.m. to 3:06 a.m. on the Saturday can be said to constitute a "shift on the Saturday" within the meaning of Article 18.05 and, in my view, it cannot...In my view the three hours in question scheduled at the end of and consecutive with the employees regularly scheduled shift are referable to their regularly scheduled shift on the Friday and constituted an extension of it. The hours do not constitute a separate shift which could be considered as a Saturday shift. Working these three hours at the end of a regularly scheduled Friday shift is nowhere near as inconvenient as being called in for a separate and distinct Saturday shift. Moreover, the notion that additional hours scheduled at the end of and consecutive with a regularly scheduled shift are properly referable to that shift and considered an extension of it, is well developed by previous arbitration decisions."

The only difference in the circumstances in this dispute is that the two hours in question precede the regularly scheduled shift but are otherwise consecutive with the regularly scheduled shift. In fact, the two hours of overtime are regularly scheduled as part of the first shift of the week.

I have already mentioned the provision that makes it clear that the Employer can schedule a shift over two calendar days. In my view the language used means that an employee who is scheduled to work on a Sunday as part of his regular work schedule cannot claim the higher premium. The language cannot be stretched to require that the work scheduled to be performed on Sunday consist of a full eight hours as part of a five-day schedule in order to fall within the exemption.

I am fortified in my interpretation by an arbitration award published by T.R. Berger, now the Honour Mr. Justice Berger of the Supreme Court of British Columbia, who was functioning in the role of Interpreter of the master agreement between Interior Forest Labour Relations Association and the International Woodworkers of America in what is called the Southern Interior Master Agreement. In that award, published on October 30, 1975, Mr. Berger, as he then was, was required to interpret a similar provision in the Southern Interior Master Agreement. He confronted a factual situation similar to the one before me. In disposing of the argument that employees were not working on Sunday as a "regularly scheduled day" as contemplated in the exception in Article 7(1) (b) (iii) he said, "It is my view that "a regularly scheduled day" is a day when an employee expects routinely to go to work."

The Union urged that Mr. Berger was not called upon to deal with the arguments advanced by the Union in this arbitration and the matter was disposed on more narrow grounds. A reading of the award discloses that the contract language and the factual circumstances were precisely similar to the dispute before me and the reasoning addresses squarely the principle issue of interpretation confronted by me. I agree with the interpretation of Mr. Berger and, in any event, I disagree with the interpretation urged by the Union.

H. Allan Hope, Arbitrator

Dated at Prince George B. C. this 26th day of April 1982.