

Cited as:
**Northwood Pulp and Timber Ltd. v. Industrial
Wood and Allied Workers of Canada, Local 1-424
(Manhas Grievance)**

IN THE MATTER OF An Arbitration
Between
Northwood Pulp and Timber Limited (Houston Sawmill)
(Northwood or the Employer), and
I.W.A. Canada, Local 1-424 (The Union)

[1993] B.C.C.A.A.A. No. 5
Award no. A-5/93

**British Columbia
Collective Agreement Arbitration
K. Albertini, Arbitrator**

Heard: (Prince George, B.C.) December 17, 1992.
Award: January 14, 1993.
(29 paras.)

(Baljit Manhas Grievance)

AWARD

¶ 1 In this case, the Union alleges that two violations of Article XVI Section 5 of the Collective Agreement occurred when Northwood assigned a non-bargaining unit person to perform work which the Union describes as grading and when the same person operated a tilt hoist machine. Section 5 reads:

WORKING FOREMEN

Employees outside the bargaining unit will not perform work that is normally done by employees in the bargaining unit. However, nothing in this Agreement shall be construed as prohibiting Foremen from doing work for purposes of instruction provided by doing so a lay-off of bargaining unit employees does not result, or in the case of an emergency when regular employees are not available.

¶ 2 The parties agree that this board is properly constituted and has jurisdiction to hear and decide the issues in dispute.

¶ 3 Northwood operates a number of sawmills in northern British Columbia. The events which gave rise to this grievance occurred at the Northwood Houston Sawmill between May 11 and May 19,

1992. The relevant facts are not in dispute. Northwood, in addition to its regular lumber production and sales, ships green unfinished lumber to Japan. The wood shipped in that manner is referred to as Taruki Green. Taruki Green is cut in the sawmill, block graded, dipped in an anti-stain treatment, packaged, and shipped to Japan. Upon its arrival in Japan the Taruki Green is "broken down" into smaller sites and re-manufactured to meet the local needs.

¶ 4 Taruki Green is graded by bargaining unit employees who have been trained as Graders and who have been made familiar with the specifications of that product. The grading takes into account stains, if any, compression, knot size, shape, and wane. Descriptions were provided for each but my attempt to restate them is not only irrelevant to this case but, I'm sure, would do an injustice to those who gave evidence. In any event, the grading of Taruki Green differs from the grading of regular run lumber in that there is only one grade; each piece of Taruki Green either meets the specifications or it does not. Those that fail to meet the specifications are rejected and placed back into the mills regular production run.

¶ 5 The importance of the grading of lumber can not be over stated. The grading of each piece of lumber must be in accordance with specifications agreed upon by the Canadian Lumber Standards Association and the American Lumber Standards Association. Their agreement of standard specifications is to insure that purchasers receive lumber of equal quality whether it is shipped from a Canadian or an American sawmill. In this province the Council of Forest Industries of BC (Cofi) conducts regular inspections of graded lumber at each sawmill. If a Cofi inspector determines that there are too many errors in a load or shipment it will require a "re-grade". A re-grade is time consuming and a costly process for employers and, accordingly, are taken seriously. If a large re-grade is ordered by Cofi at any of Northwood's sawmills a senior Quality Control Inspector from the head office will attend. the senior Inspector, the local Quality Control Inspector, and one or more bargaining unit employees will conduct the re-grade with each piece of lumber in the load or shipment being re-graded. On smaller re-grades the senior Inspector will not attend.

¶ 6 Because of the time and expense of conducting re-grades, Northwood employs at least two Quality Control Inspectors at its Houston mill. They conduct regular quality control inspections at the mill. McNally is one of those Inspectors. He conducts quality control inspections on all green lumber including Taruki Green.

¶ 7 A routine quality control inspection involves the random checking of pieces of lumber from one or more loads in a shipment. According to the evidence, quality control inspections are a regular ongoing part of the sawmill's operation. If lumber in one or more loads has, in the opinion of the inspector, been incorrectly graded he can and has had an the entire shipment re-graded. In those cases when a Quality Control Inspector calls for a re-grade the re-grading is done by bargaining unit employees. Except for the first inspection, the regular quality control inspections of Taruki Green were carried out in the same manner, random checks from one or more loads. On the first shipment McNally inspected every board in the order as Northwood wanted to insure a quality product was shipped.

¶ 8 In March 1992, the Vancouver sales office of Northwood received an order for kiln dried Taruki lumber. It was the first such order received. That office notified the Houston Sawmill and Andy Meints Mill Manager agreed to process and ship the order. The instructions on the order were clear in that "dry product [was] to be repackaged for shipping after drying without re-grading or further trimming" and "product to be graded in the green form and dried to approx. #19% after grading. Grade guarantee will be made on green product only." In other words, the regular process of

cutting the Taruki Green to the required sizes, grading and processing was to continue, the only added process was the drying. As mentioned earlier the grading and quality control inspection of Taruki Green is done in accordance with Taruki Green specifications.

¶ 9 Despite the instructions to Northwood with respect to the Taruki Dry, Meints wanted the first shipment to be a high quality product and as such to impress the Japanese customers. He considered the order to be "unique" and wanted it to be the first of many. He was, however, also aware of the possibility of the kiln drying having an adverse effect on the wood. Although the Taruki had been graded by bargaining unit employees while the wood was in its green state, to insure a high quality Meints instructed McNally to quality control inspect every piece of lumber after it had been dried in the kiln.

¶ 10 Meints' instructions to McNally to inspect every piece of Taruki Dry involved a great deal of work on McNally's part. In fact, the resulting inspection took five or six days with five and a half hours each day. There were no specifications for the Taruki Dry, as guidance McNally used the Taruki Green specifications but whether a piece of lumber was shipped or rejected was a judgement call by McNally. With his knowledge of the Japanese customers if he didn't think they would like the appearance of a piece of lumber he rejected it. In his words they were "subjective judgements".

¶ 11 McNally realized that the physical work involved in the inspections was to be extensive. To accomplish the task McNally used some ingenuity. The Houston sawmill has an export spray line which had been used for production purposes until 1985/86 to spray certain lumber with wax. The spray line consisted of a tilt hoist on the end lumber was initially stacked, a number of chains which moved the lumber along for spraying, and a packaging machine at the final end. Baljit Manhas testified that the line had been used for a re-grade approximately three years ago, that may have been where McNally got the idea to use the spray line for this detailed inspection.

¶ 12 In any event, McNally asked that a cylinder on the tilt hoist be rebuilt, apparently the parts were available. McNally and two bargaining unit employees started to inspect the Taruki Dry using the spray line. The immediate results were unsatisfactory, the line moved too fast for McNally to inspect and pull pieces that, in his opinion, would be unacceptable to the customer. McNally then had further modifications made. He had the control mechanism for the tilt hoist and the chains connected to two foot pedals. With one he could stop and start the tilt hoist and with the other he could stop, start, and control the speed of the chains which moved the Taruki Dry along the line. Once connected, McNally operated the tilt hoist and the chains himself. In his words, it gave a more even flow and gave him more time to conduct his inspection. The two bargaining unit employees continued to work with McNally, one worked on the packaging end while the other pulled pieces of lumber that had been rejected by McNally.

¶ 13 Manhas is a thirteen year employee of Northwood. He is classified as a Fork Lift Operator and is qualified as a Grader. Manhas has performed grading functions for the last ten years, but has never graded Taruki lumber as his grading is on finished product whereas all grading of Taruki Green had been done by the Grader responsible for grading rough lumber. At the time of the Taruki Dry inspection Manhas was the Union shop steward at Northwood. He saw McNally working on the spray line and, in his opinion, McNally was conducting a re-grade of the Taruki Dry. As re-grades had always performed by bargaining unit employees Manhas considered Northwood to be in violation of the collective agreement. Also, the operation of the tilt hoist on the spray line had always been assigned to bargaining unit employees. In fact, the collective agreement contains a classification for that work: Planer Hoist Operator/Export Spray. Manhas maintains that Northwood by allowing or

instructing McNally to operate the tilt hoist committed a second violation of Section 5.

¶ 14 Northwood disagrees with the allegation. It is the Employers position that it received an unique order for lumber that it had never produced before and that the quality control inspection by McNally and his use of the tilt hoist was directly related to that order. Northwood argues that the bargaining unit employees do not have a proprietary right to the tilt hoist machine, and further, McNally's use of that machine did not effect the integrity of the bargaining unit. Also, McNally did not conduct a re-grade of the Taruki lumber, he performed a quality control inspection, work that is not covered by the terms of the agreement.

¶ 15 I am satisfied that the grievance as it applies to the operation of the tilt hoist machine must succeed. I am equally satisfied that the grievance as it applies to the alleged re-grading of the Taruki drive must fail. My reasons follow.

¶ 16 This is not a case which relies upon an applied restriction (Re: Irwin Toy Ltd. -and- United Steel Workers, (1982) 6 Lac(3) 382 (Burkett). Section 5 of the current Agreement prohibits the assignment of work which is normally performed by bargaining unit employees to employees outside of the unit but for two exceptions. The first exception is for the purpose of instruction, but, even then an assignment cannot result in the lay off of bargaining unit employees. The second exception is in the case of an emergency when bargaining unit employees are not available. Northwood does not rely on either of the two exceptions noted. On its face Section 5, with the two exceptions noted, prohibits the assignment of work "normally done by employees in the bargaining unit" to employees outside of the unit. To succeed in this grievance the Union is required to prove that work on the tilt hoist is, work which has been "normally done by employees in the bargaining unit" and that McNally either graded or re-graded the Taruki Dry.

¶ 17 With regard to the use of the tilt hoist, the machine was used for production purposes until 1985/86 and during those years there is no dispute that it was operated by bargaining unit employees, employees while so employed were classified and paid as Planer Hoist Operators/Export Spray. No one can dispute that the machine was used for production purposes in May 1992. The Taruki lumber was produced in response to an order from a customer and in the final result the product was sold to that customer. There was no instruction involved nor was there an emergency. This is not a case of the Union grieving "merely because of past performance" (see Re: Boise Cascade Canada Ltd. -and- Canadian Paper Workers Union, Local 92 (1990) Lac (4) 347 (Palmer). In that case, which was relied upon by Northwood, the Union grieved the assignment of the installation of pipe insulation. The new insulation used velcro as the means of securing the product whereas the cement crew in the mill had been assigned the work of securing installation for many years before the velcro assignment. The grievance was dismissed with arbitrator Palmer opting for a common sense approach and in doing so set out a test which I believe is appropriate in the instant case:

Similarly, just because persons in a classification change insulation, it does not follow that they have exclusive jurisdiction of all tasks involving the change of insulation. What is necessary to do is to examine what "really" is the situation. This requires an analysis of both jobs and a comparison of a broad number of factors: the tools used; the materials involved; the skills required, and the complexity of work. other considerations may apply: the list is only bounded by relevance. (pages 344 and 345)

¶ 18 Council for Northwood argues that the Union has no proprietary interest in the tilt hoist machine, if the equipment is used by a non bargaining unit employee for a purpose other than that which attracted the initial agreement of the Employer to have it operated by members of the bargaining unit, the Union must show that the integrity of the bargaining unit was threatened by the assignment. It was not.

¶ 19 In finding for the Union on this point I considered the factors set out in Boise Cascade supra. What were the tools used? It was the tilt hoist machine. The same machine which was operated as part of the wax spray line until 1985/86. When the wax line was operating, lumber was stacked on to the tilt hoist which, in some manner, fed the chain line. With the exception of the foot pedal, which, I consider to be irrelevant, the tilt hoist was used for exactly the same purpose when it was stacked with Taruki Dry lumber. The "materials" remain the same. The extent and operation of the machine was unchanged. With regard to the skills and complexity required the only change was the addition of the foot pedal. That type of modification does not alter the agreement of the parties that the Tilt Hoist operator will be a member of the bargaining unit.

¶ 20 Arbitrators have been very careful to hold parties to their written agreement in regards to assignments of work to non bargaining unit employees particularly when the parties have negotiated a prohibition and exceptions to that prohibition. As stated by Arbitrator Lysyk in Re: Orenda Ltd. and International Association of Machinists, Lodge 1922 (1972)1 LAC (2nd) 72 (Lysyk):

When there is such a specific prohibition, a board of arbitration will not be astute to imply exceptions not spelled out in the agreement.

¶ 21 I am equally hesitate to imply a further exception to Section 5 and, accordingly, find that Northwood was in violation of the Collective Agreement when it assigned/allowed the tilt hoist to be operated by a non unit employee.

¶ 22 For the Union to succeed in its second allegation of a violation of Section 5 it is necessary that I find that McNally conducted a re-grade of the Taruki dry. I cannot so find. Manhas's immediate conclusion that McNally was re-grading the Taruki lumber is understandable. He saw McNally working on the wax spray line checking every piece of lumber in the shipment, a process used during re-grades. My reasons for arriving at a different conclusion and rejecting the claim are as follows.

¶ 23 There is no dispute that the grading of lumber by bargaining unit employees is done in accordance with specifications. Employees who wish to work as a Grader are required to attend classes and pass tests which are intended to ensure a high degree of consistency in meeting agreed upon standards. On those occasions when a re-grade is required the lumber is again measured against the same specifications applied in the original grading.

¶ 24 There were a number of differences in McNally's involvement with the Taruki Dry which leads me to the conclusion that his work in May 1992 was more closely related to a quality control inspection than grading or re-grading.

¶ 25 To begin, McNally's involvement with the Taruki Dry began with Meints's instructions to quality control inspect every piece of lumber in the shipment. There was no need to do so, in fact, Meints's instructions were contrary to the customer's request. The customer's order required that the

green lumber be graded followed by repackaging after drying. It was a "first of a kind" order and Meints wanted to impress the customer which, in turn, would lead to additional orders. That is the first difference, there was no need for the inspection.

¶ 26 The most obvious difference between McNally's inspection and a re-grade is the criteria used. As stated earlier, grading and re-grading is done in accordance with agreed upon standards. McNally's review of the Taruki Dry was not based on agreed standards, there were none. The Taruki Dry had been graded prior to drying, that grading was done in accordance with the specifications for Taruki Green. As McNally inspected each piece in the shipment, he had the Taruki Green specifications in mind but the final decision on each piece was based on his subjective judgement as to whether the customer would like it or not. There is no evidence that anyone in the bargaining unit possessed the same degree or any knowledge as to this customer's likes or dislikes.

¶ 27 Also, a similar process was used on the first shipment of Taruki Green, each piece was inspected after it had been graded. This is not a case where the Employer is taking the position that any future shipments of Taruki Dry will be quality control inspected in the same manner, any future orders will not be "unique". Having found that McNally's inspection was neither an initial grading nor a re-grade of the Taruki lumber the allegation of a second violation of the collective agreement must fail.

¶ 28 With regard to remedy for the tilt hoist issue, the Union seeks a declaration of a breach of Section 5 and remuneration to the Union for all hours worked by non bargaining unit employees. I agree.

¶ 29 Accordingly, I declare that Northwood violated the terms of the Collective Agreement when it assigned or permitted McNally to operate the tilt hoist machine. Further, I order that Northwood pay to the Union an amount equal to 27.5 hours @ the Tilt Hoist Operator rate (5 days x 5.5 hours). It is so awarded.

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