Cited as:

# Plateau Forest Products Ltd. and IWA Canada, Local 1-424

IN THE MATTER OF An Arbitration

Between
Plateau Forest Products Ltd. (the "Company"), and
IWA Canada, Local 1-424 (the "Union")

(Concerning the Grievance of Laurence Fortin)

[1997] B.C.C.A.A.A. No. 303
Award no. A-148/97

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

Heard: April 23, 1997.
Award: May 13, 1997.
(25 pp.)

**Appearances:**

For the Company: Frances R. Watters.
For the Union: Camran S. Chaichian.

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AWARD

¶ 1 Company Counsel provided an opening statement wherein she confirmed Mr. Fortin had been terminated by the Company when it was considered he did not perform the strip layer job in a satisfactory manner. Termination was effective August 29, 1996. The employer's contention is Mr. Fortin, at that time, was working in his 30 day probation period.

¶ 2 Counsel said Mr. Fortin had been hired by the Company on March 13, 1996 as a casual employee. As such he performed weekend maintenance work. Casual employment was usually filled by hiring students. The Grievor possessed a First Aid ticket and was therefore, hired to provide that coverage on weekends.

¶ 3 From time to time casual employees express a desire to become regular production workers. Some are hired in that manner. When that occurs the applicant is terminated as a casual employee and rehired as a production employee. Mr. Fortin wished to be hired as a full time production employee. Consistent with company practice he was terminated as a casual employee and rehired as a full time production employee on July 18, 1996.

¶ 4 It is the Company's position that Mr. Fortin commenced a 30 day probationary period when he

was hired as a production worker on July 18, 1996. The Union has contended time spent as a casual worker counts as probationary time.

¶ 5 Counsel cited Article VII Section 12 of the collective agreement along with Article VIII Section 1: (a) and (b) as being supportive of the Company's position. Counsel said Mr. Fortin had been told of the system used when casual workers were hired into production positions and he had signed a "Personnel Notification form" which spelled out the terms of hire. (Exhibit 3). The strip layer job is an entry production job that is well suited to providing a testing ground which shows whether or not the probationary employee is capable of doing that and other production jobs in an acceptable way. The elements of doing the strip layer job were those that would be required in other production positions. A worker's ability to show co-ordination, dexterity, ability to work with others, initiative, to keep up the pace of production and forward planning could all be assessed while a person did the strip layer job. It was considered the job should be mastered in a maximum period of 4 days.

¶ 6 It was stated Laurence Fortin had worked two days on the strip layer job on July 22 and 23, 1996.

¶ 7 He did the job in a satisfactory way. He did other production jobs and when he returned to strip laying on August 28, 1996. It was clear to supervisors there were real problems with him being able to do the job. While he did the mechanics of the job in a suitable manner, he was unable to keep up with the speed of the job. He was assisted by supervisors who coached him and helped him by telling him what was lacking. Improvement did not take place and Mr. Fortin was terminated toward the end of shift on August 29, 1996.

¶ 8 Union Counsel said the Union's position is, time worked as a casual employee counts as probationary time. Article VIII of the collective agreement is clear on that point. In any event, regardless of whether or not Mr. Fortin was in his probation period when he was terminated on August 29, 1996 the discharge must be set aside as the Company cannot satisfy the discharge. The Company has said it takes four days to master the strip layer job. Mr. Fortin had not had the opportunity of four days to show what he could do.

¶ 9 The parties agreed there are two issues to be decided by the Arbitrator.

¶ 10 They are:

1. Is time worked as a casual employee counted as a part of the probationary period (if so August 28 and 29 would be after the probation period).

2. If time worked as a casual employee does not count as probationary time did the employer have cause for termination. Did the employer give Mr. Fortin a fair chance to do the job.

Company Evidence

¶ 11 The Company's first witness was Al Volts who is a Senior Shift Supervisor. He has worked more than nine years in the sawmill. He explained that in the mill there was a production day shift which started at 7:00 a.m. and ran to 3:30 p.m., a production afternoon shift from 3:30 p.m. to 12:00 midnight and a graveyard maintenance shift from 12:00 midnight to 8:00 a.m. The production shifts worked Monday to Friday, five days each week. The graveyard maintenance shift of casual employees worked on weekends, Saturday and Sunday. The weekend graveyard shift was composed mostly of students who assisted the millwrights by cleaning areas in preparation for maintenance. They also did fire watch

for the trades. They worked with maintenance crews as required but did not do production work. By not doing production work they are not subjected to the pace of the production equipment. They are, at the time of hiring, instructed on safety matters, lock out procedures and are instructed as to what is expected of them. These casual employees have a seniority list which is separate from the regular seniority list.

¶ 12 When questioned, Mr. Volts testified production workers, following their hiring, are placed in a thirty day probation period. This gives the Company the opportunity to assess the employee's capability to fit fully into the production work. It also allows the employee to see if he/she wishes to follow that line of work.

¶ 13 Each production employee hired is provided with an orientation period so they know what is required of them. They then are observed at work to see how they progress. Mr. Volts said that production requirements place more pressure on people than the casual weekend work does. When a worker moves from the casual weekend work to regular five day a week production he/she is told they are terminated as casual and rehired as a production worker. A form to that effect is signed by the person concerned and they understand that at that time they enter a probationary period. Mr. Volts said he had gone through that process himself in 1988. He testified that time worked as a casual employee was not included on the regular seniority list. After completion of the probation period seniority is back-dated to the date of entry to the production probation period.

¶ 14 The witness described the strip layer job and commented on a video that was shown. This video gave a very good view of the strip layer job, work station and the adjacent areas. There are two production lines "A" and "B". They work independently of each other and have separate production workers. "A" mill handles more wood than does "B" mill.

¶ 15 While the strip layer job is basically the same on both lines it is usual to start new people on "B" as it is less demanding because of a lower lumber flow. The witness described the strips used on the job. They are five feet long, 1 inch wide and 3/4 of an inch thick. It is the strip layer's responsibility to ensure there is an adequate supply of strips entering the area in "boxes" from which the strip layer manually picks them up by the handful and puts them in the appropriate magazine. The magazines are built above and across the conveyor on which the lumber flows. The strips are dropped and act as spacers in the loads of lumber. It is necessary for the strip layer to keep the magazines fairly full. If this is not done the strips have a tendency to bounce and not drop correctly. Mr. Volts said the strip layer job is not technical and new people can learn it in two to four days. Some can do it well in the first few hours.

¶ 16 The witness confirmed Mr. Fortin had started as a production worker on July 18, 1996. His change of status from casual to regular employment was explained to him. Ron Morley, the Human Resources Suspervisor, had Mr. Fortin sign the Company's Personnel Notification form which acknowledges he knew he was terminating as a weekend maintenance helper and starting as a production employee, subject to the probationary period all new employees go through. (Exhibit 3). The witness identified the exhibit as being the form used by the Company in all hirings of casual employees to production employees. He also identified the signatures of Mr. Fortin and Mr. Morley.

¶ 17 Mr. Volts testified he knew Laurence Fortin had worked the strips on July 22 and 23 and also that his probation period would end fairly soon. These factors were discussed with another supervisor. It was decided to bring the worker back onto the strip laying on "A" mill as of August 28, 1996. This was done and he was initially given a helper named Morgan Summerskill, a man who had completed his thirty day probation and was then a regular production employee.

¶ 18 Mr. Fortin's job performance was observed by Al Volts on August 28, 1996. He was having

problems such as picking up the strips and keeping up the pace required. It seemed he could keep up with the pace required for short periods of time, then he would slow right down. This caused the level of strips in the magazines to drop too low and help was needed to get the levels back up. Help was provided by Mr. Volts, another supervisor named Carl Larson and Morgan Summerskill. Different ways of catching up on strips were shown to Mr. Fortin.

¶ 19 The witness said the daily production goal for "A: mill is 350,000 F.B.M. which amounted to 80 to 110 loads per day. A daily through put of 400,000 F.B.M. was often done by "A" mill.

¶ 20 An "A" mill Production Report for August 28, 1996 was provided as Exhibit 4. This shows that production of Mr. Fortin's shift was 338,785 F.B.M. and 92 stacked loads.

¶ 21 Exhibit 5. the "A" mill Production Report for the August 29, 1996 shift shows production was 342,615 F.B.M. and 89 stacked loads.

¶ 22 The witness said he had spoken with Laurence Fortin several times on August 29, impressing on him the necessity of meeting job requirements. On August 29 he was not provided with a helper so it could be gauged what he could do by himself. He also had been made aware he must show his capability to cope with the pace of the lumber flow if he was to be retained as a Company employee.

¶ 23 On August 29 there was no improvement, the magazines were not kept at the required levels and help had to be provided to top them up. The levels would soon be down again. Mr. Fortin could do the job for a short period of time and then his speed would taper off. When asked why he was having problems he once replied his wrist was sore and at another time he said; "maybe I'm too old for the job."

¶ 24 Production on August 28 and 29 was lower than the production objective. Mr. Fortin's job performance was discussed between the witness and Carl Larson. It was concluded he could not do the strip layer job and therefore, was not suitable to be retained as a regular production employee.

¶ 25 The decision to terminate his employment was conveyed to Mr. Fortin at about 3:00 p.m. on August 29, 1996. The usual termination documentation was processed.

¶ 26 Union Counsel conducted a thorough cross examination of the witness.

¶ 27 Carl Larson who is a Mill Supervisor gave testimony which substantially corroborated that given by Al Volts. He said he had observed Mr. Fortin at work on August 28 and 29. During that time he saw him being unable to keep adequate strip levels in the magazines on a sustained basis. He had provided physical assistance to rectify this and also had given advice as to how best the job could be done. Mr. Larson's testimony was precise as to the times this occurred. He read from his daily notebook. He said the matter of Laurence Fortin's performance had been discussed at the weekly staff meeting. Dave Logan who had been Mr. Fortin's supervisor when he worked on "B" mill said his strip laying at that time was good.

¶ 28 Mr. Larson testified that he had been in the lunch room during the lunch break on August 29 and walked into a discussion among employees regarding employee benefit plans. Laurence Fortin said he had completed his probation period and had his Union membership and had filled in all his health forms. Carl Larson told him he had not completed his probation.

¶ 29 The witness said that because of the observation he had of Mr. Fortin's inadequate job performance on August 28 and 29 he had supported the termination decision., He had been present at the

3:00 p.m. termination meeting., When advised he was terminated Mr. Fortin commented things had been tough and he didn't know if they would improve.

¶ 30 Dave Logan a Senior Shift Supervisor with broad sawmilling experience testified he had been Laurence Fortin's supervisor on July 22 and 23, 1996 when he worked as a strip layer on "B" mill. After the usual induction and familiarization programme was given he was put on the job with David Campbell who acted as a trainer. The first day, with intermittent help from the trainer, Mr. Fortin caught onto and did the job to the point the trainer was moved to another close by job on the bins. Mr. Logan said Mr. Fortin did a good job and he told him so.

¶ 31 "B" mill Production Reports for July 22 and 23, 1996 were presented as Exhibits No. 8 and No. 9. The July 22 sheet shows production to be 268,439 F.B.M. and 82 stacked loads. The July 23 sheet shows production at 288,964 F.B.M. and 82 stacked loads.

¶ 32 Peter Marshall is the mill Maintenance Superintendent. He said casual employees report to him both directly and indirectly. He said casual employees did not go through a recognized probation period. Many of the casual workers are students and as such some are on their first job. The Company places more importance on safety and quality of work than on quantity of work.

¶ 33 When Company counsel asked a question regarding Mr. Fortin's work performance as a casual worker Union Counsel objected. The objection was based on the argument that Mr. Fortin's termination had been predicated on his performance as a strip layer not what he did as a casual worker. After listening to argument I recognized the objection. The witness was excused without further testimony.

¶ 34 Ron Morley the mill Human Resources Supervisor told the hearing he was involved in the hiring of regular and casual workers. He said that it was a long time Company practice to terminate casual workers at the time they became production employees and to rehire them as such. To illustrate this he had put together a list of people's names who had first been casual employees. The list was entered as Exhibit 10. In all, seven forms dated back to July 11, 1983 were shown. Mr. Morley said the Company files contained another 22 similar forms. Each form shows the date of hiring into the regular mill job as being the effective date of seniority, that being the first day worked in the three month probationary period.

¶ 35 A current seniority list is provided by the Company to the Union. A list dated August 8, 1996 was entered as Exhibit 11. This shows regular employees at of that date. A letter to the Union (Exhibit 12) written by Loretta Gumm and dated August 29, 1996 answers a Union question regarding the seniority dates of seven people. Laurence Fortin's seniority date is shown to be July 18, 1996. Ms. Gumm's letter says:

> "These dates are the correct seniority dates. These were weekend / casual people who terminated from that job and were re-hired as probationary regular full-time employees. These dates are their official plant dates as their 1st day worked in the 3 calender month probation period."

¶ 36 The Union raised no challenge to the Company's response.

¶ 37 The witness said he met with Mr. Fortin at the time of his rehiring, July 18, 1996. He was told of the severance as a casual worker and his rehiring as a probationary production worker. He was told it would be necessary for him to complete a satisfactory 30 day probation, within a 3 month period. He also knew the alternative was termination. The entry job of strip layer was discussed and Mr. Fortin

understood he would be terminated if he could not master the job.

¶ 38 The Union did not call any witnesses and stated there was acceptance of the evidence put in by the Company.

Company Argument

¶ 39 Ms. Watters argued that the two issues that are before the Board are straightforward. The first issue, is whether time spent as a casual worker counts toward the make-up of the worker's required probation period.

¶ 40 Casual work is defined in Article VII, Section 12 at page 15 of the collective agreement. Article VIII of the agreement at pages 16 and 17 says employees are hired on probation. That probationary period continues until 30 days have been worked. The 30 days worked shall only be cumulative within the three calendar months following the date of entering employment.

¶ 41 Counsel speculated that the Union might argue that the contract does not confine the thirty day probation period to time worked as regular employees. The argument may be made by the Union that all time worked within three months after entering employment counts as time worked toward the probation period because the contract does not specifically cite regular employees. Counsel said such an argument, if made, would be dead wrong. She proceeded to give five reasons in support of the Company's position.

¶ 42 1. Article VIII Section 1(a) of the Agreement does not specifically say it is regular employees who are subject to the probation period. However, Article VIII Section 1(b) does cite a difference between probationary and casual employees. Therefore the reference to "all employees" in Section 1(a) must mean all regular employees. If that is not so then these sections of the agreement do not make sense.

¶ 43 2. The employer's position is supported by the Company's long standing practice of terminating and rehiring those employees who move from casual employment to regular employment. The casual workers who move to regular employment are terminated and are rehired into regular employment and get full contractual benefits if they successfully complete a 30 day probation period. This practice has been present back to at least 1983. The forms provided to this arbitration hearing shows this to be a fact. These forms also show that people who leave casual mill employment and are rehired as regular employees are subject to the same rules and benefits as new employees hired off the street.

¶ 44 3. The union has never challenged the Company's actions in this regard. It receives a seniority list every 6 months and checks the information contained therein. If there is or seems to be a discrepancy regarding employees' seniority as listed, the Union contacts the Company and clarification is gained. Corrections are made if required.

¶ 45 4. Mr. Fortin, at the time of hire to regular mill employment, had these things explained to him orally and confirmed in writing. If he was not in agreement and was of the opinion that time worked as a casual employee should be factored into the required 30 day probation period, he could have grieved as of August 1, 1996. August 1st was the day he would have completed his 30 day probation within a 3 month period. He did not grieve at that time.

¶ 46 5. The Union's position makes no labour relations sense. The probation period has to be in the type of work a person will be doing. If this were not so a person could work a substantial part of 30

days on a job that had no value in assessing his capability on regular employment he was being hired to do on an ongoing basis. This could mean that a person hired off the street would do a 30 day probation while a person coming from casual employment to production employment would have a lesser probation time while performing work which would be a regular mill requirement. This would be blatant discrimination. Very clear contractual language would be required to allow such a thing to happen.

¶ 47 Turning to the second issue, Counsel argued that if the Union is correct when it contends Mr. Fortin's probation period started on July 18, 1996, his termination on August 29, 1996 was still warranted.

¶ 48 Evidence shows the worker did not meet required standards on the strip layer job. He was coached on how to improve, he was given direct assistance and he was told he must be able to meet the production pace if he was to be retained by the Company. It was clear he could not do the strip layer job. This job is utilized in the probationary assessment of people as it is a good testing place to see if they are suited for regular mill production work.

Union Argument

¶ 49 Mr. Chaichian argued that time worked as a casual employee must be taken as time toward the 30 day probation period. The Company's practice of terminating casual employees and rehiring them at their time of moving to regular mill employment is nothing more than a way the Company has done this. There is no agreement with the Union as to this practice. Before practice can be relied upon there must be ambiguity in the language of the Collective Agreement. This is trite law. Counsel said the contract language is clear when it says: "notwithstanding anything to the contrary contained in this Agreement, it shall be mutually agreed that all employees are hired on probation". Those words clearly state without exception all employees are subject to probation when they are hired. There is no ambiguity in that language. All time must be considered, otherwise people could work for years without gaining seniority protection.

¶ 50 The signing of forms by people who are moving from casual to regular employment does not have contractual value. It amounts to nothing more than a personal agreement. If the Union has not signed it is not valid.

¶ 51 The best argument the Company could make is that the use of a longtime practice has created some kind of estoppel. However, there is no evidence as to what other Company's practices are. An estoppel argument is weak.

¶ 52 If the Union's position is correct, Mr. Fortin was beyond his 30 day probation period when he was terminated on August 29, 1996. This would call for consideration of him as a regular employee. As such he would have had to have been subjected to progressive discipline and the other factors required to justify him being fired. No evidence is provided to show any of these things were done. On that basis, if he was beyond his probation period on August 29, 1996, he should not have been fired and this should now be corrected.

¶ 53 The second issue arises only if the Union is wrong and Mr. Fortin was within his 30 day probation period when he was terminated on August 29, 1996.

¶ 54 Company witnesses have stated that to succeed during a probation period it is necessary for mill employees to master the strip laying job. Mr. Fortin did that, he was commended by Dave Logan for the job he did on the two days he was on "B" mill. The jobs are substantially alike. Production from the two

mills was fairly close. After succeeding on "B" mill it was not fair that the Company's judgement of suitability should only be based on a two day experience on "A" mill. The generally now recognized test to be used when a person is terminated during a probation period is the determination of whether or not a fair chance to succeed has been given. In Mr. Fortin's case two days trial on "A" mill was not a fair chance and therefore, there should not have been a termination. Counsel said that the "William Scott" questions would not apply if the probation standards were the basis of a decision to terminate.

¶ 55 Union Counsel and Company Counsel provided and spoke to cases contained in Briefs of Authorities. It was recognized there is not a lot of case history available regarding cases in the forest industry that have to do with arbitrations concerned with the probation period as set out in collective agreements.

¶ 56 I have read with interest and have given consideration to the case histories provided at this hearing.

Collective Agreement

¶ 57 A copy of the Agreement between the Slocan Group, Plateau Division and IWA Canada, Local 1-424 which is presently in force was entered at the hearing as Exhibit 1.

¶ 58 Article VII of the Agreement says in part:

Section 12: Casual Work.

a) The term 'Casual Work' as used in this Agreement shall apply only to work performed on Saturday and/or Sunday by either laid-off regular employees or other persons hereinafter referred to as 'Casual Employees'.

b) Casual employees on maintenance, repair or preparatory work shall be paid straighttime rates, and those on production shall be paid rate and on-half for all work performed on Saturday and Sunday.

c) Casual work on maintenance, repair and preparatory work will be paid at straight time job rate.

d) Regular laid-off employees shall not be classified as Casual Employees, and shall have preference for available work over the said casual employees.

e) The employer agrees to keep a separate seniority list of casual employees who have worked at least ten (10) working days, exclusively for recall purposes and, subject to clause d) further agrees to recall casual employees in accordance with their seniority as set forth in this list.

¶ 59 Article VIII of the Agreement says in part:

Section 1:

a) Notwithstanding anything to the contrary contained in this Agreement, it shall be mutually agreed that all employees are hired on probation, the probationary

period to continue until thirty (30) days have been worked, during which time they are to be considered temporary workers only, and during this same period no seniority rights shall be recognized.

b) It is agreed that probationary employees will have preference over casual employees for any work performed during the normal work week, subject to competency.

c) It is further agreed that in the application of b) above, probationary employees will be called in for work in accordance with their hiring date, unless such call-in is beyond the control of the employer, and is subject to the employee being competent to perform the work. This obligation does not apply where the employee cannot be readily contacted or where the employee has already worked one shift in the 24-hour period.

d) Upon completion of thirty (30) days worked they shall be regarded as regular employees, and shall be entitled to seniority dating from the day on which they entered the Company's employ, provided however, that the probationary period of thirty (30) days worked shall only be cumulative within three (3) calendar months following the date of entering employment.

¶ 60 Article VIII, Section 6 of the Agreement says:

It is agreed that upon the request of the Union a list will be supplied by the Company setting out the name and starting date with the Company of each regular employee: however, such request shall not be granted more than twice during each year of the term of the Agreement.

The Company will advise the Union once each month of changes to the said list.

Decision

¶ 61 Labour agreements that were first written many years ago and subsequent to that time of first writing have been modified through the process of collective bargaining seldom if ever retain their original clarity of wording, phraseology and grammar. A word of a sentence added or deleted to depict a negotiated change causes an agreement, over time, to be difficult to read and understand. However, with the passing of time and the application of the terms of the agreement the parties concerned retain an understanding of their correct application and there is often reticence by the parties to the agreement to make sweeping changes to the wording that has become something less than perfect. The agreement entered as Exhibit 1 at this hearing is no exception to many others in these regards.

¶ 62 Where one section or clause seems to be contradictory to another or others it is necessary to read and consider all of the related contract sections. Above, I have set out those sections. The Agreement defines three categories of employees in Articles VII and VIII. First in Article VII, Section 12 the terms Casual Work, Casual Employees and Regular laid-off employees are used. There is a distinction drawn between Casual Employees and Regular laid-off employees regarding available work. Regular laid-off employees get preference, this includes "casual work" which is work performed on Saturday and/or Sunday.

¶ 63 A further difference between regular and casual employees is drawn when Section 12 (a) says: "Regular laid-off employees shall not be classified as Casual Employees.

¶ 64 Clause e) of Section 12 again illustrates the different treatment accorded casual employees as compared with other employees when the contract calls for a separate seniority list of casual employees to be used exclusively for recall purposes. Taking into consideration the prime right of regular laid-off employees for available work, recall of casual employees is to be done in accordance with their seniority as set out on their separate seniority list.

¶ 65 In Article VIII Section 1, the terms of "all employees" and "temporary" workers are used. The contract says all employees are hired on probation and during the probation period are to be considered temporary employees only and during this period no seniority rights shall be recognized. This indicates that employees who are temporary workers because they are within the 30 day probationary period can not be casual workers because casual workers have the right to recall in keeping with their positioning. Therefore, a distinction between casual and regular employees is again drawn.

¶ 66 Article VIII Section 6 sets out the requirement of the Company supplying the Union with a seniority list showing each regular employee's name and starting date with the Company.

¶ 67 The contract stipulates workers, during their probation period, are considered to be temporary employees. Section 6 calls for regular employees to be listed on the seniority list. This requirement again illustrates the existence of two seniority lists, one for casual employees and one for employees who, while on probation, are temporary employees. At the successfull end of the prescribed 30 day probation period temporary employees are then regular employees with full seniority rights dating back to the date of entry to the probation period.

¶ 68 Union Counsel argued that when the contract in Article VIII Section 1 a) says: "notwithstanding anything to the contrary contained in this Agreement ... all employees are hired on probation" ... it clearly shows time worked as a casual employee counts toward completion of the prescribed probation period.

¶ 69 If that portion of the agreement is read in isolation the Unions' contention could be valid. However, when Article VII Section 12 and Article VIII Sections 1 and 6 are read a different conclusion can emerge. Section 12 of the Agreement is specifically headed "Casual Work". Casual work can only be performed by laid-off regular employees or by casual employees who do the casual work on Saturday and/or Sunday. By this wording the category of casual employees is established. Article VIII Section 1 a) shows that employees who are in their 30 day probationary period are temporary workers only. Casual workers are not temporary workers because they, after 10 days of employment, are listed on the casual workers separate seniority list and thereby have recall rights. They can not be classified as casual workers and temporary workers at the same time. These designations have different meanings. Mr. Fortin remained classified as a casual employee until July 18, 1996. That classification was not disputed by the Union when so notified.

¶ 70 It is my decision that when the pertinent parts of the collective agreement are read in concert, the words "notwithstanding" and "all employees" as used in Article VIII Section 1 a) become shrouded in ambiguity.

¶ 71 This requires me to turn to consideration of the beginning time of Mr. Fortin's probation period.

¶ 72 Evidence provided at the arbitration hearing shows the Company has, as far back as 1983, followed a certain practice when casual employees move to become regular employees. They are terminated as casual employees and hired as regular employees at which time they enter the contractually required 30 day probation period.

¶ 73 The Union argued that this process is a Company practice and there is not an agreement with the Union which validates the practice. The Company contends the practice used is in conformity with the terms of the Collective Agreement.

¶ 74 Since 1983, a number of Collective Agreements have been negotiated by the Union and the Company. If the Union was in disagreement with the Company's interpretation of the contract language and the hiring practice that arose therefrom it seems to me there was ample opportunity to raise and clarify that language at the negotiating table. By not doing this I must conclude the Union was either in agreement with the meaning and application of the contract language or was not aware of the Company's practice.

¶ 75 Between 1983 and the present time there were, at least 29 recorded movements of people from casual employment to regular employment. All were done in the same manner, that being severance as casual, hired as regular. It is very unlikely the Union was unaware of that practice.

¶ 76 Taking the foregoing into consideration and by carefully analysing the wording contained in Articles VII and VIII of the current agreement between the parties I have concluded the following:

¶ 77 Employees who are employed by the Company as casual employees and who later wish to and are selected to become regular employees enter a 30 day probation period which commences at the time they start working on regular mill work. As stated in the contract during that 30 day probation period, they shall be considered temporary workers only, and during this same period no seniority rights shall be recognized.

¶ 78 Mr. Fortin was hired as a regular production probationary employee on July 18, 1996. He was terminated on August 29, 1996 at which time he was working his twenty ninth day of his thirty day probationary period. He was at that time a "temporary" worker.

¶ 79 Question 1 is whether time worked by Mr. Fortin as a casual employee should be counted as a part of his probationary period. The answer is "no".

¶ 80 Question 2. is whether the Company gave Mr. Fortin a fair chance, during his probation period, to demonstrate his ability to do the job of strip layer.

¶ 81 At one time in the forest industry, people who were working in their probationary period were considered to have very few, if any, rights to dispute a termination of employment. This has changed over time and it is now generally accepted that when a person is terminated within the probationary period that action should be based on a fair assessment of the probationer's long term potential of being a suitable employee.

¶ 82 I will not at this time cite authorities which have established the above noted change of thinking. I believe many of the cases involved are well known and readily available.

¶ 83 I subscribe to the position that probationary employees are entitled to a fair assessment of their capabilities.

¶ 84 Evidence shows Mr. Fortin would have a general knowledge of the mill lay-out when he was hired as a regular production probationary employee on July 18, 1996. He had worked 34 days prior to that time as a casual employee. He worked successfully as a strip layer on the "B" mill on July 22 and 23. He then did other jobs until August 28. Shortly before that date the Company decided a further

assessment was needed by having Mr. Fortin do the strip layer job on "A" mill which processed more wood than "B" mill and therefore, was more demanding. Evidence shows that Mr. Fortin was provided with both physical and advisory help during August 28 and 29, 1996. He demonstrated he could perform the mechanics of the job but on a sustained basis did not, or could not, keep up with the pace demanded by the lumber flow. Because of this and because the strip layer job was used as a measure of capability to do other production jobs the Company concluded Mr. Fortin was not suitable to be retained as a production employee. He was terminated late in the August 29, 1996 shift which was the second to last day of his 30 day probationary period.

¶ 85 No evidence was provided that conclusively established why Mr. Fortin successfully did the "B" mill job and not the "A" mill job. This has caused me some concern. However, I do not find the Company placed any impediments in the way that would cause Mr. Fortin to be incapable of doing the "A" mill job. In fact, based on the evidence before me the Company did much to assist him to succeed.

¶ 86 I question to some degree whether two days on "A" mill was enough time to provide for a successful trial. After viewing the video I am convinced the basic requirements of the job are not very demanding. Evidence is Mr. Fortin mastered these basics but could not keep pace with the lumber flow. One explanation that may be reasonable is the success on "B" and the failure on "A" mill is attributable to the increased flow on "A" mill. The figures provided show that the average footage on "A" mill on August 28 and 29 was 22.5% higher than the average footage on "B" mill on July 22 and 23, 1996. Whether that is the reason or not a strip layer must be capable of doing the job on either "A" or "B" mill.

¶ 87 It is my decision that the Company did give Mr. Fortin a fair chance to demonstrate his ability to do the required job and that he failed to demonstrate that ability.

¶ 88 The grievance fails.

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