Case Name:

Riverside Forest Products Ltd. v. Industrial Wood and Allied Workers of Canada, Local 1-425 (Colville Grievance)

IN THE MATTER OF An Arbitration
Between
Riverside Forest Products Limited (Soda Creek Division) ("Soda Creek" or "the company"), and
I.W.A. - Canada, Local 1-425 (the "union")

[2002] B.C.C.A.A.A. no. 218
Award no. A-155/02

British Columbia
Collective Agreement Arbitration
R.B. Blasina, Arbitrator

Heard: June 19 and 20, 2002.
Award: July 24, 2002.
(74 paras.)

Re: Ron Colville (Contracting Out) - Grievor

Appearances:

Norman Trerise, for the employer.
Sandra Banister, for the union.

AWARD

I

¶ 1 This arbitrator has been appointed pursuant to the arbitration provisions of the Collective Agreement, Article XVI(2). This arbitrator has not been appointed as an "Interpreter" pursuant to Article XV(1). If any interpretation of the collective agreement is required in order to resolve the present grievance, it will be given for that limited purpose only. The parties have agreed that any interpretation that may be given here is without prejudice or precedent for any other operation.

¶ 2 Soda Creek is a sawmill/planermill complex located at the north end of Williams Lake. Soda Creek, and the predecessor owners of the site, have been represented in collective bargaining by the Council on Northern Interior Forest Employer Relations ("CONIFER"). It was acquired by Riverside Forest Products Limited ("Riverside") in 1997, and thus became Riverside's "Soda Creek Division". For most of its history, Soda Creek was owned by Pinette and Therrien Mills ("P&T"), and, for relatively brief periods before the sale to Riverside, by British Columbia Forest Products, and Fletcher Challenge

Canada. When the expression, "the Company" is used in this award, it will refer, depending on the context, to the Corporate body, namely Riverside, or to Soda Creek as a division of Riverside.

¶ 3 The Soda Creek site contains a single-line "small log" sawmill, which receives logs up to 15" in diameter at the butt, and produces 2 x 4 and 2 x 6 studs. The site also contains a fingerjoint mill, and a large mill yard or log yard which is more than sufficient to meet its log storage needs.

¶ 4 Riverside also owns another sawmill/planermill complex about three miles away, southwest of Williams Lake. This is Riverside's "Williams Lake Division" ("Williams Lake"). There are three sawmills or "breakdown lines" at this site. Line No. 1 is a headrig line designed to receive logs between 30" and 44" in diameter at the butt; Line No. 2 is designed to receive logs between 9" and 22" in diameter at the butt; and Line No. 3 is a small-log mill. Unlike Soda Creek, Williams Lake has not had sufficient log yard space to meet its log storage needs. It has been unable to stockpile enough logs to feed its three lines through the roughly 2 1/2 months of spring break-up in March, April, and May. This is a time when log delivery from the bush is interrupted because ground conditions are too soft and wet. Historically, Williams Lake has been required to additionally stockpile logs at two leased properties. These logs would be re-loaded onto logging trucks for final delivery during spring break-up.

¶ 5 However, with the acquisition of Soda Creek in 1997, Riverside obtained sufficient residual space there to also stockpile logs for Williams Lake's needs during spring break-up. The property leases were discontinued, and logs that were intended for ultimate delivery to Williams Lake were temporarily stored at Soda Creek. These logs were transported by logging truck from the bush to Soda Creek. There, the logs were weighed and scaled, and off-loaded and decked by bargaining-unit log-loader operators. During spring break-up however, it was contractors who were utilized to load the logging trucks for final transportation of the logs to Williams Lake.

¶ 6 Ron Colville is a loader operator at Soda Creek. Although it was Mr. Colville who filed a grievance on March 12, 2001, this matter is really a Union policy grievance. The Union contends that any log-loading which was done in the mill yard was done by bargaining-unit employees, and that Soda Creek was in breach of the contracting-out prohibitions of the collective agreement. Soda Creek contends that the log-loading which was contracted-out was different work from that done before by the bargaining-unit, and, in the alternative, that this was logging work which is expressly exempted from the contracting-out prohibitions.

II

¶ 7 During 1986 forest industry collective bargaining in the province, IWA local unions across British Columbia demanded protection against contracting-out. In the early summer, strikes were called across the province as the local unions through the Provincial Bargaining Committee negotiated with the forest employers' associations, i.e. CONIFER in the northern interior, Forest Industrial Relations Limited ("FIR") on the coast, and the Interior Forest Labour Relations Association ("IFLRA") in the southern interior, and with a number of "independents". Contracting-out was probably the single-most important item on the bargaining table. In the northern interior, the strike lasted only three days as between the two northern locals of IWA - Canada, i.e. Locals 1-424 and 1-425, and the member employers represented by CONIFER. They agreed to the following contracting-out language, contained in Article XVI(7) of the current 2000 - 2003 collective agreement:

ARTICLE XVI - GENERAL PROVISIONS

Section 7: Contractors

a) The Company will not contract out any work that is performed by employees in the Bargaining Unit at the effective date of the agreement.

b) Current practices in operations shall be agreed on with the local union in writing. Until such time as agreement is reached the above clause a) only will apply. (sic.)

¶ 8 The Provincial Bargaining Committee for the IWA continued to negotiate with FIR, the IFLRA, and the independents, seeking to achieve the same agreement elsewhere as it had with CONIFER. This effort met varying success as the strike finally ended elsewhere as much as 4 1/2 months later.

¶ 9 Pursuant to Article XVI(7)(b), the parties were expected to negotiate a letter of understanding outlining current practices. A union-management "Current Practices Committee" was constituted, which visited every affected operation. On February 24, 1987 the following Letter Of Understanding was concluded between P&T at the time, and the Union:

CONTRACTING OUT PRACTICES

As provided for in Article , Clause (B), the following represents the current contracting out practices at Pinette and Therrien Mills. (sic.) It is understood that the work on this list is currently performed by both contractors and bargaining unit employees. Contracting out of the work on this list will not result in the loss of a bargaining unit employees' position.

I. Site Maintenance
Yard Maintenance
Site Services
Rail Maintenance

II. Building Maintenance and Improvement
Structure Maintenance
Burner Maintenance
Kiln Maintenance

III. Office Maintenance and Improvement Office Maintenance and Repairs

IV. Production Overload
Primary production overload, (e.g. purchase of dunnage, equipment rental).

V. Maintenance
-Overload equipment services and trades, (e.g. welding, millwrighting, mechanical, pipefitting and carpentry).
-Mobile equipment maintenance, (e.g. warranties, tire repair, steam cleaning).
-Specialized construction maintenance, (e.g. plumbing, machining, spray booth maintenance, sprinklers, pipework, blower pipes, electrical/new

installations (MCC's), painting gas fitting, mobile steam cleaner).

VI. Special Services
Technical expertise and specialty services, (e.g. computer services).

VII. General
The application of contracting out restrictions does not apply to logging, jobs eliminated as a result of technological change, construction contracting, emergencies, job elimination or work imposed through legislated requirements. (sic.)

In addition, P&T and the Union concluded a Supplement which listed the work which had been contracted-out according to whether it had been exclusively contracted-out or whether it had been performed both by contractors and by bargaining-unit employees:

CONTRACTING OUT PRACTICES

TOTAL CONTRACT	OVERLAP
SPECIALIZED CONTRACT CONSTRUCTION MAINTENANCE	OVERLOAD, WELDING, M/W, MECHANICS, PIPEFITTING & CARPENTRY
Railway Construction	
Flooring - Tiles, Linoleum, Carpeting	SPECIALIZED CONSTRUCTION MAINTENANCE
Radios	
Tires	
Janitors	Burners
Trucking	Rail Maintenance
High Tension Work	Plumbing
Excavating	Machining Work
Glass, Mobile/Sealed Units	Kiln Maintenance
Paving	Spray Booth
Maintenance	
Backhoe	Carpentry
Weigh Scale Service	Sprinklers & Pipework,
Non-Destructive Testing	Blower Pipes
Belt Vulcanizing	Roofing
Moisture Meter Service	Yard Maintenance
Proof Loader Calibration	Office Maintenance &
Concrete Forming, Placement	Repairs
and Finishing	Computer Services
Sandblasting	Steam Cleaning
Septic Tank Services	Tires, Minor Repairs
	Painting
SERVICE CONTRACTS	Gas Fitting

Burner Cleanout
Blowdown

WATCHMAN & SECURITY

Electrical/New
Installations (MCC's)
Kiln Carts

GENERAL PRODUCTION
OVERLOAD

Dunnage Supply Equipment Rental (Mobile)

MACHINERY & EQUIPMENT
WARRANTY WORK

¶ 10 The underlying purpose of the current practices meetings was to enable each employer to bring forward and list that work or type of work which it had contracted-out in the past in order to protect its right to specifically continue to do so in the future. Work which had been performed exclusively by contractors was listed under the "total contract list", and, work which at one time or another had been performed by either contractors or employees, including contractors and employees working together, was listed under the "overlap list". The employer would have a freer hand contracting-out work referenced in the total contract list, and, could also contract-out work referenced in the overlap list, but not if it resulted "in the loss of a bargaining unit employees' position" (sic.) according to the Contracting Out Practices Letter of Understanding.

¶ 11 For example, the Contracting Out Practices Supplement lists "Yard Maintenance" under the overlap list. Yard maintenance has largely to do with clean-up of the yard, and at Soda Creek it is generally performed by log-loader operators either as dedicated work, or work done between other duties. P&T asserted at the current practices meeting of February 24, 1987 that it had contracted out yard maintenance in the past. Mr. Colville, a log-loader operator who had worked at the operation since February 9, 1976, had no knowledge of any contractor ever coming on site to do yard maintenance work. He unabashedly testified that he thought P&T was lying; and he still thinks so, even though P&T produced copies of some bills from an equipment service company in which it had some interest, showing the company had done some yard maintenance work on a sporadic basis. When the Union-side met in caucus, Mr. Colville voiced his objection, but a vote was conducted, and the Union agreed that yard maintenance could be included as a contracting-out practice on the overlap list.

¶ 12 "Log-loading" is not mentioned in either the Contracting Out Practices Letter of Understanding nor the Supplement. It was not specifically discussed. Wade Fisher, President of the Union, opined that this meant that log-loading was totally bargaining-unit work, referring of course to log-loading at the mill site. He stated, "Therefore it couldn't be contracted out."

¶ 13 "Logging" is mentioned in Clause VII of the Contracting Out Practices Letter of Understanding. It is exempted from the "application of contracting out restrictions". There were no logging operations certified to the IWA local unions in the North.

¶ 14 The Contracting Out Practices Letter Of Understanding and Supplement refer to "production overload" including "equipment rental". This case involves the contracting-out of log-loading to a contractor utilizing a "Butt'n Top". A Butt'n Top is a track vehicle - similar to an excavator - with a jointed boom and grapple. The body of the machine can be rotated 360 degrees, and similarly the grapple has a 360 degree rotation. This design provides considerable flexibility from a stationary

position. It enables the operator to pick up a log or logs and to rotate the log(s) and place the butt toward the front or the rear of the load so that the truck-load would be balanced horizontally. A Cat 966 log-loader is a "wheel loader"; i.e. it is a rubber-tire vehicle, and the operator would have to use the grapple to arrange the logs on the ground, or drive around the logging truck and load from both sides, to create horizontal balance. In the bush, a Butt'n Top enables road-side loading, while a Cat 966 requires a landing at which to operate.

¶ 15 Soda Creek had two Cat 966 log-loaders at its log yard; but, with the contracting-out, it may be said to have rented a Butt'n Top with an operator. Soda Creek had intended to argue that the contracting-out was therefore permissible because of the references to "equipment rental" in the Contracting Out Practices Letter Of Understanding and Supplement. The Union joined issue, and it became apparent that the hearing could not be completed within the time allotted. The Company withdrew from advancing this argument, "without prejudice". Neither party thereafter adduced evidence or argument concerning this issue.

III

¶ 16 Both parties made reference to an earlier decision of this arbitrator, Re Weldwood of Canada Ltd. (Quesnel Division) -and-IWA - Canada, Local 1-424 ("Logging" and Contracting Out Grievance), [1999] B.C.C.A.A.A. No. 479, November 16, 1999 (R. Blasina). In that case; Weldwood had historically conducted "cut-to-length" logging, where contractors in the bush processed the logs according to specie and pre-specified dimensions prior to forwarding them to the mill. By the early 1980's, the company had largely concluded the "cut-to-length" program, and instead, it expanded its "merchandising" operations at the mill site whereby the processing that would have been done in the bush was to a great extent then being done by bargaining-unit employees. Then, in 1994, Weldwood returned to cut-to-length logging. In other words, work that had been contracted-out historically was now being contracted-out again. Work that had been done in the bush, and moved to the mill, was now returned to the bush. While the processing work may not have been "logging" when done at the mill, it was "logging" when done in the bush.

¶ 17 Weldwood operated five divisions in the North, which were also shut down due to the province-wide strike in 1986. Weldwood is an "independent" in the north; and, immediately after the three-day strike against CONIFER operations, the IWA presented Weldwood with the same contracting-out language. Weldwood would not readily agree. After further discussion however, the parties adopted the same contracting-out language, and concluded Letters of Understanding on current practices. "Logging" was exempted from protection from contracting-out.

¶ 18 The strike at the Weldwood operations had continued another three weeks. The Weldwood Letters Of Understanding were the first concluded, and these became a template for elsewhere. The Letter Of Understanding of February 24, 1987, in the present case, is similar to that described in Weldwood, supra.

¶ 19 Although the Weldwood case, supra, was not an "Interpretation" case under the collective agreement, the parties joined issue on matters of interpretation. It was held in Weldwood, supra, that "the agreement" referred to in the "a)" part of the contracting-out article, was the "current practices" agreement contemplated in the "b)" part. In other words, the "current practices" agreement would be the critical reference point from which in future one could determine what could be contracted-out, and what could not.

¶ 20 It was the IWA's view that the prohibition against contracting-out was intended to also protect

work which would be assigned to the bargaining-unit in the future, i.e. "new work" after the current practices agreements were concluded. The IWA did not appeal the Weldwood decision, but it made its displeasure with the award known to CONIFER during collective bargaining in 2000. At a negotiation meeting on June 21, 2000, the IWA began to explain its disagreement with the award, which, according to minutes of the meeting, Harvey Arcand, then National Vice-President, explained as, "so, Blasina says (a) does not exist. If you tell us (a) and (b) exist, we do not have a problem in the North." However, further discussion was cut off by Dave Gunderson, Executive Director of CONIFER, who advised that CONIFER was not happy with the award either, and would not be relying on it in future. This was confirmed by a letter from Mr. Gunderson to Dave Haggard, National President, IWA-Canada, dated July 1, 2000 and referenced, "Blasina Arbitration (Weldwood-Quesnel, November 1999):

> Conifer agrees that the interpretation being placed on the language of the collective agreement, i.e. that the letters being signed under Clause (b) eliminates the application of Clause (a), was not the intention of the parties in 1986.
>
> In order to address your specific concern we hereby provide you assurance that the understanding regarding contracting out achieved in 1986, and the related principles associated with the development of language under Article XVI Section 7, (a) and (b) will continue to apply and be administered accordingly.

¶ 21 The present parties do not dispute the following principles:

1. the principles of Article XVI(7)(a) and (b) apply into the future;
2. work performed by employees in the bargaining unit in 1986, remains bargaining-unit work and is protected from contracting out;
3. work that was identified as having been contracted-out pursuant to the February 24, 1987 Letter Of Understanding or Supplement, may be contracted-out, according to whether it was listed under the total contract list or the overlap list; and,
4. with respect to new or future work, i.e. coming into existence post February 24, 1987, and that is not de minimus in nature,

    (a) if its performance is assigned to the bargaining-unit, it will be protected from contracting-out; but,

    (b) if it is contracted-out, either totally or with overlap, then the same principles will apply as if it had been included in the Contracting Out Practices Supplement.

IV

¶ 22 Mr. Colville holds a hybrid job operating both the Wagner log-loader and the Cat 966 log-loader. His counterpart in the bargaining-unit is Peter Priestman. Both jobs are subject to the Interior Sawmill Industry Job Evaluation Program. The Wagner is a larger and more-cumbersome machine, primarily used to unload logging trucks arriving at the mill yard. It can seize the entire truck load within its grapple. When not unloading logging trucks, Mr. Colville operates the Cat 966. Utilizing the Cat 966, he spreads sample loads for the scalers to scale, and he sorts out logs that are too big for the

sawmill and stockpiles these into log decks; he does yard clean-up; sometimes he feeds the mill i.e. takes logs from the log decks and delivers them onto the sawmill infeed system; and, he loads logging trucks, i.e. he collects the logs that have been delivered for Soda Creek, but are too big to be suitable, and loads these onto logging trucks, presently for delivery to Williams Lake. Mr. Priestman's duties would be similar.

¶ 23 All logging is contracted-out, and Riverside operates a separate "Woodland, Cariboo Division" ("Woodland Division") which manages the extraction and delivery of logs to its mills in the region. The contractors are provided specifications so that processing and selection can take place in the bush, with a view to particular delivery to each of Riverside's four production lines - the one at Soda Creek, and the three at Williams Lake. Logging for Soda Creek is primarily performed west of the Fraser River, and lodgepole pine is the primary product. Sometimes logs larger than "spec" will be included in truck loads destined for Soda Creek. These will be separated by the log-loader operators if observed at the time of delivery, or later when feeding the sawmill; or, sent back by the debarker operator in the mill. These larger "reject" logs are then stockpiled and shipped to Williams Lake. When from fifteen to thirty "loads", i.e. truck loads, are accumulated, the Company will arrange for a logging truck to come to the mill yard, and a Soda Creek log-loader operator will load it utilizing the Cat 966. Mr. Colville stated that thirty truck loads would amount to four days work.

¶ 24 Mr. Colville started operating log-loaders in the mill yard in 1979. He recalled first being required to load logging trucks in August of 1982. He recalled that the logs were being shipped from P&T to West Fraser Mills Ltd. ("West Fraser") across the road. Mr. Colville testified that in 1982, P&T was not storing logs for West Fraser. In other words, these were P&T logs which were sold or traded to West Fraser. Mr. Colville recalled that the truck logger hauling the logs was Gordy Wheeldon. Mr. Wheeldon kept a diary, an excerpt from which was produced in evidence. Mr. Wheeldon hauled fourteen loads on August 16, twelve loads on August 17, eleven loads on August 18, fourteen loads on August 19, and he hauled for 3-1/2 hours on August 23. All hauling was recorded as hauling from P&T to West Fraser. Mr. Colville testified that he did not do all of the log-loading, but that the work was shared with another bargaining-unit log-loader operator, possibly Reg Hill or Larry Hill. Mr. Colville was certain that all of the log-loading was done by bargaining-unit personnel.

¶ 25 Mr. Colville recalled that in 1985 P&T had started manufacturing "bug kill" wood, and the debarking of these logs was presenting some unusual difficulty. In approximately September 1985, P&T shipped two loads of "bug-kill" logs to a machine manufacturer in Oregon in order to test or experiment on the processing of these logs with its equipment. Mr. Colville loaded the trucks with the Cat 966.

¶ 26 Mr. Colville also recalled that in late 1985 or early 1986 he loaded two loads of "long pulp" logs. This was reject wood, unsuitable as saw logs, which P&T therefore sold. Mr. Colville recalled that the truck which came into the yard was a self-loader i.e. it had a small crane with which the driver could have loaded the truck himself. Indeed Mr. Colville suggested to his foreman, Frank Geenson, that the driver load himself, but Mr. Geenson directed Mr. Colville to do it, telling him it was his job.

¶ 27 The above incidents of log-loading being performed in the mill yard at P&T, all occurred prior to the introduction of any contracting-out protection in the collective agreement. Whatever log-loading was done in the mill yard, it was done by the bargaining-unit.

¶ 28 P&T made no mention of log-loading in the mill yard at the time of negotiation of the Contracting Out Practices Letter Of Understanding and Supplement. Had such work been contracted-out, one might expect that P&T would have adverted to it, just as it did with the contracting-out of yard maintenance work. Since the yard maintenance that had been contracted-out was considered significant

enough to be listed as a contracting-out practice in the February 1987 documents, then the log-loading that was done in the mill yard was probably sufficient to be recognized as "work that is performed by employees in the Bargaining-Unit."

¶ 29 Further, it is unlikely that P&T omitted to mention log-loading in the mill yard based on a presumption that it was logging work included in the "logging" exemption in Clause VII of the Contracting Out Practices Letter Of Understanding. Employers in the forest industry have traditionally considered the logging aspect of the industry to include all work associated with the extraction of the wood in the bush to the delivery of the logs to the mill. In Weldwood, supra, Bob Norman, Manager of Human Resources and Organization Development, was quoted as testifying, "Prior to the logs being unloaded at the mill site, that's logging." In the present case, Mr. Fisher testified that the industry has consistently taken the position that the demarcation line between logging and manufacturing is at the scales in the mill yard; "Once it crosses the scales, it's ours. Before that, it's not." In Re Slocan Group (Quesnel Division) -and-I.W.A.-Canada, Local 1-424 and National Office, [2002] B.C.C.A.A.A. No. 197, June 20, 2002 (D.C. McPhillips), Arbitrator McPhillips noted at pp. 13-14:

> Section VII of the Letter of Understanding states that "the application of contracting out restrictions does not apply to logging...." It is agreed to by witnesses for both sides that logging has an industry meaning and it means those activities which occur "outside the scales" of the mill. This is consistent with the usage in the "Timber Harvesting Contract and Subcontract Regulations" under the Forest Act which in the Interpretation Section states that "phase", when used in relation to a timber harvesting operation, means felling, bucking, yarding, skidding, processing, decking, loading, hauling, unloading, non-mill or non-custom dryland sorting or booming...." Therefore, the industry understanding or usage of the term "logging" would include the hauling of logs from the bush to the mill. This was also one of the other conclusions reached by Arbitrator Blasina in Weldwood of Canada Ltd. (Quesnel Division) No. A-311/99, November 16, 1999 about which Mr. Gunderson wrote the Union.

¶ 30 The above conclusions do not obviate further discussion however. The Union's primary submission was that the past practice at Soda Creek preceding the February 24, 1987 Letter Of Understanding was that any log-loading of logging trucks which was done in the mill yard, was exclusively performed by bargaining-unit log-loader operators, and therefore could not be contracted-out. However, if it were concluded that the measure of such earlier log-loading was too minimal to be considered a practice, then there was additional log-loading of logging trucks by bargaining-unit employees in the mill yard after February 24, 1987 which could be said to amount to "new work". The parties agree that Article XVI(7)(a) would continue to apply after the February 24, 1987 Contracting Out Practices Letter Of Understanding and Supplement, and that "new work" which is assigned to the bargaining-unit would then be protected from contracting-out.

¶ 31 The Company did submit that log-loading in the mill yard by bargaining-unit log-loader operators is new work; but the critical point was its submission that the log-loading it contracted-out was "different" work. This, the Company submitted, was because contractors were utilized to load only those logs that were temporarily stored at Soda Creek, but really belonged to Williams Lake, i.e. were destined for the Williams Lake mill. The Company submitted that the logs were still the responsibility of Riverside's Woodland Division and had not yet been delivered to the mill for which they had been destined. According to the Company, the contracted-out log-loading was different work from any that had been done, or was more recently being done by bargaining-unit employees, and therefore was not protected from contracting-out by Article XVI(7)(a) of the collective agreement. The Company also submitted that the "logging" exemption in the Contracting Out Practices Letter Of Understanding

applied in the circumstances of this case.

V

¶ 32 In approximately 1989, P&T shut down its dimension mill and switched to small-log production only. The sawmill could take logs up to 17 inches at the butt, but targeted for a maximum of 15 inches. The ideally suited log was 18 feet long, and cut to 15 inches at the butt. However larger logs could sometimes be delivered, including logs from which anything greater than 15 inches in diameter was cut still leaving a residual, manufacturable, and valuably marketable log. These logs were separated, stockpiled, and sold or traded; and therefore, bargaining-unit log-loader operators continued loading logging trucks in the mill yard whenever required.

¶ 33 Mr. Colville recalled that for two consecutive years, during or shortly after spring break-up, P&T sold or traded peeler logs to the Weldwood plywood plant. He estimated that about fifty loads were loaded each year. Mr. Colville also recalled that in the early 1990's, over about a two year period, P&T traded logs with the Lignum mill in Williams Lake and sent over about 100 loads per year. Mr. Colville also recalled that one year P&T shipped approximately 60 loads of fir peeler logs to a mill on the coast. All these would have been shipments of big wood, i.e. logs that were too large for the sawmill; and the trucks were loaded by bargaining- unit log-loader operators utilizing a Cat 966. The logs had all belonged to P&T and would have been already weighed and scaled at the mill site.

¶ 34 Although Mr. Colville had testified that in 1982, P&T had not been storing logs for West Fraser, he recalled that there were two occasions when West Fraser logs were stored at the mill site. Mr. Colville asserted, "That wood never crossed the Company's scales.", meaning it did not belong to P&T. Mr. Colville could not recall when these events took place, but he remembered that the logs "...were stored at the very top in the culvert yard which is right across from the West Fraser yard." He recalled that these were "regular saw logs" which were banded together, and that the bargaining-unit log-loader operators used the Wagner to place a whole truck-load at a time. Mr. Colville estimated that they loaded from two to three hundred loads in all.

¶ 35 Mr. Colville took a leave of absence commencing in September, 1996. He took a secondment as the Education Co-ordinator for the government-funded Forest Workers Education Program. He returned to the mill on May 23, 1999. In the meantime, in 1997, Riverside had purchased the mill, which became its Soda Creek Division.

¶ 36 The Company continued the process of separating large logs that would not pass through the small log mill. These logs were stockpiled, and were now all forwarded to Riverside's Williams Lake Division. Bargaining-unit log-loader operators continued with the work of loading logging trucks in the mill yard. The logs in question had all been cut for delivery to Soda Creek. They were weighed, off-loaded, scaled, and decked in the mill yard. The Company has continued to have its log-loader operators perform this log-loading work to the present. Mr. Colville estimated that this amounts to about 100 loads a year. None of this work has been contracted-out.

¶ 37 However, after its acquisition of the Soda Creek Division, Riverside began storing logs there for delivery to Williams Lake during spring break-up. The log storage area at Williams Lake was insufficient for its needs, and Williams Lake had had to lease two properties to store some of its inventory. That was no longer necessary.

¶ 38 These logs that were then stored at Soda Creek had been cut and processed in the bush particularly for delivery to Williams Lake; these were Williams Lake logs, to be forwarded to Williams

Lake to supply its production needs during spring break-up. The logs were weighed at Soda Creek and scaled, and off-loaded by the bargaining-unit log-loader operators, and placed into cold decks. In terms of working with the logs, the work had passed over to the bargaining-unit; however, as far as Riverside's Woodland Division was concerned, they considered themselves responsible for the logs until their final delivery to the Williams Lake mill yard. Lewis Bluda, Riverside's Trucking Co-ordinator and Road Maintenance Superintendent, Woodland Division, was asked when the Woodland Division ceased to have responsibility over the logs. He replied, "As far as we're concerned, we're responsible for the logs until we can take them to the mill where we can use them." It was Riverside's Woodland Division which solicited tenders for the re-loading of these logs and contracted-out that work, and the expense came out of its budget. At the same time, the storage of the logs in its mill yard had inescapably become part of the business of Soda Creek.

¶ 39 There was a considerable amount of evidence adduced through Mr. Bluda regarding Riverside's contracted-out logging operations, the specie, size, and storage of the Williams Lake logs at Soda Creek, and regarding the contracting-out of their re-loading for final delivery. It would appear from the evidence that the Williams Lake logs in storage at Soda Creek were generally stored in one area; however, whether stored in one area, or more, the logs were not intermixed with Soda Creek logs. The logs were segregated in storage, and were recognized as being stored on behalf of and intended for delivery to Williams Lake during spring break-up.

¶ 40 It was Riverside's Woodland Division which had beforehand stored Williams Lake logs at the two leased sites, and presumably had arranged for the re-loading there, and which would later arrange for the contractors to re-load the logs at Soda Creek. Mr. Bluda expressed four reasons for the contracting-out; less risk of breakage, safety, efficiency, and availability of equipment. With respect to less risk of breakage, in theory it makes sense that because of the design of the Butt'n Top, one would expect less manipulation of the logs, and hence less risk of breakage; however, the evidence did not disclose that in practice breakage was a problem or more problematic when the Cat 966 was utilized. The safety concern was not clearly explained, and it would not appear from the evidence that this need have been a material factor. With respect to efficiency, one might expect that the Butt'n Top would be more efficient because it does not have to travel when grappling and loading logs; however, there was evidence of an occasion when the Butt'n Top and the Cat 966 were timed, and no marginal and substantial difference was noted.

¶ 41 It is the availability of machinery which appears to have been the paramount consideration. The overwhelming amount of log-loading now being done in the bush - Mr. Bluda estimated 80 to 90 per cent - is done with Butt'n Tops. This equipment is expensive, and is idle during spring break-up, and hence the contractors would get no return on their investment during at least 2-1/2 months out of the year. The contractors therefore competed against one another for the log-loading work. The availability of machinery was in substance an economic factor, and Mr. Bluda testified it was less costly to have the work done by a contractor with a Butt'n Top. This was disputed by the Union which argued that the Company had done a comparative cost study in which it included the rental cost of a Cat 966, although it already owned such equipment. In addition, the Union submitted that there was a spare Cat 966 available. However the Company countered that the spare Cat 966 was needed to be kept in reserve, and that the working Cat 966 was being contemporaneously utilized. The evidence was insufficient to allow one to knowledgeably second guess the economic argument, or to narrow it within particular parameters. However, it can be concluded as a finding of fact that Riverside's decision to contract-out was taken in good faith, and for perceived valid business reasons.

¶ 42 In 1998, Riverside contracted with Melia Holdings Ltd. and Echofar Enterprises Ltd. for log-loading. In 1999, 2000, and 2001, Riverside contracted with A.I. Contracting Ltd., Clusko Logging Enterprises Ltd. and Hytest Timber Ltd. respectively. Mr. Bluda testified that there would have been at

most 500 truck loads of Williams Lake logs stored at Soda Creek at any one time. Riverside normally arranged for three logging trucks to be utilized, whereas with respect to the log-loading done by bargaining-unit operators, one truck would be made available.

¶ 43 For 2002, Williams Lake logs were no longer stored at Soda Creek. Williams Lake had purchased an "ATI", which Mr. Bluda described as "a long-reach loader". The ATI enabled Williams Lake to stack logs higher onto the cold decks. In other words, by extending its vertical capacity, it was able to overcome its limited horizontal capacity. Mr. Bluda testified that Williams Lake could now store another 50,000 cubic meters of wood in its yard which meant it would have enough logs to get through spring break-up. Therefore there was no contracted-out log-loading at Soda Creek in 2002.

¶ 44 During the early part of spring break-up in 2000 or 2001, there was some delay in getting a contractor to Soda Creek. Mr. Colville recalled that for one week, before the contractor came on site, "...we loaded 20 foot logs that were decked for Williams Lake Division...." Three trucks were provided, and when the contractor arrived on site he took over and carried on with the work.

¶ 45 In 2001, at the end of spring break-up the contractor finished loading 20 foot logs in the morning, and Mr. Colville took over loading the logging trucks with 18 foot oversized logs for Williams Lake. In addition, there were a couple of occasions where Mr. Colville would place a couple of logs onto a truck to help the contractor who was falling behind; but this was done on his own initiative.

¶ 46 Although it was 1998 when a contractor was first used to load logs at the Soda Creek, no grievance was filed until March 12, 2001. The Union was first informed by Mr. Colville when he returned to the mill in May 1999. Mr. Fisher spoke to management, and understood that it would not happen again, and spring break-up was almost over. In 2000 Mr. Fisher again spoke to the Company, and tried to persuade management that contracting-out did not make sense. However the arrangements had already been made, and again Mr. Fisher was left with the understanding it would not happen again. Mr. Fisher put the Company on notice that if it did, it would be grieved. In 2001, Mr. Colville first attempted to file an anticipatory grievance upon hearing that the Company would be contracting-out again, but the Company would not accept the grievance. He therefore waited until the contracting-out had already commenced before filing his grievance on March 12. The failure to grieve before 2001 does not assist as a guide to interpretation. At best it would support an estoppel against a claim by the Union for damages preceding that year. However, the Union has not sought such remedial relief.

¶ 47 The Union came to the arbitration with the understanding that the contracting-out had caused the displacement of a log-loader operator which resulted in a chain of displacements concluding with a lay-off of one employee. Upon inquiry, it appears that a bargaining-unit employee may have been laid-off at the end of spring break-up in 2001. However, no one was identified, and a connection between the asserted lay-off and the contracting-out was not established.

VI

¶ 48 The following authorities were cited by counsel: Weldwood, supra, Slocan Group (Quesnel Division), supra; Re Alcan Smelters & Chemicals Ltd. -and-Canadian Association of Smelters & Allied Workers, Local 1 (1987), 28 L.A.C. (3d) 353 (H.A. Hope, Q.C.); Re Slocan Group (Plateau Division) -and-IWA-Canada, Local 1-424 (Grievor: G. Gull), [1996] B.C.C.A.A.A. No. 139, February 29, 1996 (A. Brokenshire); D.J.M. Brown & D.M Beatty, Canadian Labour Arbitration, (Canada Law Book Inc., 2002) at para. 5:1300; Re Slocan Forest Products Ltd. (Radium Division) -and-IWA-Canada, Local 1-405, [1997] B.C.C.A.A.A. No. 253, April 28, 1997 (Joan I. McEwen); appeal dismissed, [1997] B.C.L.R.B.D. No. 252, BCLRB Letter Decision No. B252/97: July 31, 1997; Re Petro Canada

Explorations Inc. -and-Energy and Chemical Workers Union, Local 686, Unreported: March 15, 1983 (H.A. Hope, Q.C., M. Hunter, I. Thorn); and, Re Government of British Columbia -and-B.C. Government Employees' Union (Grievor: D. Hall), Unreported: February 14, 1991 (M.I. Chertkow).

¶ 49 Article XVI(7) is again cited for easy reference:

> Section 7: Contractors
>
> a) The Company will not contract out any work that is performed by employees in the Bargaining Unit at the effective date of the agreement.
>
> b) Current practices in operations shall be agreed on with the local union in writing. Until such time as agreement is reached the above clause a) only will apply. (sic.)

Article XVI(7)(a) protects from contracting-out, "any work that is performed by employees in the Bargaining Unit...." In broad collective bargaining in 2000 between the IWA Provincial Bargaining Committee and CONIFER, it was agreed that they had intended Article XVI(7)(a) to have future effect. The essence of Article XVI(7)(a) therefore is to protect from contracting-out any work that has been performed by employees in the bargaining-unit, whether it was performed before the current practices agreement, or whether it was "new work" performed after.

¶ 50 Prior to the February 24, 1987 Contracting Out Practices Letter Of Understanding and Supplement, there was some sporadic loading of logging trucks done at the mill. In August of 1982, for some five or six days, 51 or so loads of logs were shipped to West Fraser, possibly on a sale or trade; in 1985 two loads of "bug kill" logs were shipped to Oregon for a machine manufacturer to test its equipment; and in late 1985 or early 1986, two loads of "long pulp" were shipped out on a sale or trade. All the logs had originally been delivered to P&T, belonged to P&T, were scaled at P&T, and decked in its log yard. All the logs were loaded by bargaining-unit log-loader operators. In sum, whatever log-loading was done in the mill yard, it was done by bargaining-unit employees; and, in 1987, P&T made no effort to specify such work as eligible for contracting-out.

¶ 51 In addition, on two occasions, P&T had stored on its property logs which belonged to West Fraser and were not scaled at P&T. Again, bargaining-unit log-loader operators loaded the logging trucks to ship these across the road to West Fraser. This time the Wagner was used instead of the Cat 966. Some 200 to 300 loads were loaded. This evidence was not seriously in dispute, and its ambiguity rested in an inability to pin-point when these events occurred. At least we know that these occurred before September 1996, when Mr. Colville left on his leave of absence, and possibly before 1987.

¶ 52 In the ten years between 1987 and the purchase of the mill by Riverside in 1997, the amount of log-loading in the mill yard increased, and was less sporadic. This was largely as a result of P&T closing its dimension mill in 1989 and specializing in small log manufacturing, thus requiring the sorting and reshipment of oversize logs. During the interim between 1989 and 1996 there were two years in each of which about fifty loads of peeler logs were shipped to the Weldwood plywood plant in Williams Lake; and there were two years over each of which about one-hundred loads were shipped to the Lignum mill. These were large logs, too big for the small log mill, which were sold or traded. All the logs had been shipped to P&T, belonged to P&T, were scaled at P&T, and decked in its log yard. All the logs were loaded by bargaining-unit log-loader operators. Again, whatever log-loading was done at the mill, it was done by bargaining-unit employees.

¶ 53 From Riverside's acquisition in 1997 to the present, bargaining-unit log-loader operators have continued to sort, stockpile, and load logs that were too big for the small log mill. The logs belonged to Soda Creek; and, instead of being sold or traded to another company, the logs were now sent to Williams Lake. The loading of these logs has never been contracted-out.

¶ 54 During the hearing, the vernacular sometimes used was that logs "belonged" to Soda Creek, or to Williams Lake, or were "destined" for Soda Creek or Williams Lake. The latter expression is the more accurate. All the logs actually belonged to Riverside, and were destined for either Division according to processing specifications undertaken in the bush.

¶ 55 However, since 1997, Riverside has also stored at Soda Creek logs which belonged to Williams Lake. Although the final destination was not Soda Creek, these logs were scaled there, and unloaded and decked by bargaining-unit employees, i.e. log-loader operators presumably utilizing the Wagner. These were logs intended for delivery to Williams Lake during spring break-up, and were decked apart from Soda Creek logs although in the same general log yard at the mill site. These logs were shipped to Williams Lake during the spring break-up of 1998, 1999, 2000, and 2001. Contractors were retained to load these logs.

¶ 56 In sum, pre-1987, bargaining-unit employees performed whatever log-loading was done at the mill site, and this continued thereafter until 1998 when Riverside began retaining contractors to load those logs which were destined for Williams Lake during spring break-up, but temporarily stored at Soda Creek. Was this different work?

¶ 57 In Slocan (Plateau Division), supra, Arbitrator Brokenshire held at p. 13 "...that it is the definition of the work being done that matters when deciding if a contravention of the Agreement has occurred." The expression, "work", according to usual dictionary definitions is taken to encompass physical or mental exertions, for a purpose or for the attainment of an object. Such definitions are of limited use in a case such as this. In Slocan Forest Products (Radium Division), supra, Arbitrator McEwen found that "pioneer blasting", i.e. the drilling and blasting associated with road construction, was an integral part of road construction, and different work from the "utility" drilling and blasting which was performed by bargaining-unit employees. She held at pp. 15-16, supra:

> Counsel for the Union argued that some, or indeed many, of the tasks used in blasting and drilling common to both utility and pioneer drilling. (sic) While that may be so, it does not, in my opinion, detract from the fact that the character of the work being performed - when viewed in its totality - is substantially different in each case. Just as the fact that members of the utility crew may from time (sic) operate a chain saw or fell a tree does not mean that they are performing logging work, so the fact that they from time to time blast small rock outcroppings or finish roads in valley bottoms does not mean that they are performing work which is inextricably connected to road construction work.

Arbitrator McEwen concluded "...that the utility blasting historically performed by bargaining unit personnel is substantially different from pioneer blasting in several important respects." (supra, p. 16; underling added for emphasis). She concluded at p. 16, supra:

> Given that it has been established that pioneer blasting is qualitatively different from utility blasting, and that it has not been established that pioneer blasting has been historically performed by bargaining unit members, I can only conclude that no breach

> of the Collective Agreement has occurred. (underlining added for emphasis)

The B.C. Labour Relations Board upheld this award upon review in its Letter Decision No. B252/97 on the basis that the award turned on findings of fact, and it therefore deferred to the arbitrator's assessment.

¶ 58 A distinction can therefore be drawn between similar work according to the contextual circumstances in which it is performed. The performance of similar tasks using similar equipment does not guarantee that the work will be considered the same. The expressions, "substantially different" or "qualitatively different", may be conjunctive or interchangeable. In any event, these cases require arbitral judgment. Whenever a collective agreement provides any measure of protection from contracting-out, that would be a contractually-binding concession which the union has obtained from the employer as part of the give-and-take of contract negotiations. The arbitrator's duty is to uphold the collective agreement, but that responsibility is abdicated if the arbitrator simply defers to one party's opinion, despite its good faith. Equally, sound economic reasons for contracting-out are not an answer if the collective agreement has been breached.

¶ 59 In Petro Canada Explorations, supra, the union grieved the contracting-out of various projects for the replacement and installation of lighting fixtures. The union submitted this was maintenance work normally performed by employees in the bargaining-unit. Arbitrator Hope held at pp. 16-17, supra:

> The first question is whether "maintenance work normally performed" implies an element of exclusivity or whether it implies a manning approach to work assignment. For instance, is it sufficient for the Union to adduce evidence that a similar project has been done by the bargaining unit or is it necessary to show that when the task has arisen in the past it has been performed normally by the bargaining unit? Certainly the evidence does not disclose that the projects which form the subject matter of the three major grievances were performed in any predominant sense in past circumstances by members of the bargaining unit.
>
> The work of the maintenance staff includes skilled trades work requiring journeymen qualifications. The work of a craft or trade itself cannot be a basis for a claim of exclusive jurisdiction under the language of this Agreement. It begs the question for the Union to say that all electrical work done by journeyman electricians is protected by the contracting out provision.
>
> The question is not whether the category or specie of work is within a particular trade or has been done by that trade but whether the project or specific work assignment is of a nature normally done by members of the bargaining unit as opposed to being done by others.

¶ 60 In Petro Canada Explorations, supra, the collective agreement prohibited the contracting-out of "maintenance work normally performed at the Plant". Appended to the collective agreement was a Letter Of Understanding which established a protocol according to which the company would communicate to the union its intent to use contract labour. In addition the practice had been to contract-out project work; and, project work was not "maintenance work normally performed at the Plant". Arbitrator Hope accepted that the work in dispute was project work, and that the company had followed the communication protocol, at p. 4, supra:

> The parties have implemented the procedural aspect of that Letter of Undertanding by devising a form for contracting out projects wherein the Employer notifies the Union of all projects with details of the nature of the work, the name of the contractor, the number of contract employees involved and the estimated duration of the work. That process was followed in the four projects in issue.

It was in that context that Arbitrator Hope held at p. 20, supra:

> Viewed as projects as opposed to the specie or category of work involved, they are of a kind which has been assigned to the bargaining unit or to contractors, depending on the circumstances as viewed by management.

¶ 61 In the Government of B.C. case, supra, the grievor was employed as a Building Maintenance Worker at the Fort Steele Heritage Park. While he was on lay-off, the employer contracted-out the restoration of the historic Government Building and the construction of a new building, the International Hotel. The collective agreement prohibited the contracting-out of "any work presently performed by employees ... which would result in the laying off of such employees." Arbitrator Chertkow made the following findings of fact, at p. 5, supra:

> After careful consideration of all of that evidence, I have concluded that the other buildings upon which building maintenance workers have worked, being either new construction or reconstruction to any significant degree, were much smaller structures than the historic Government Building and the International Hotel. They all had no more than 2 ft. or 4 ft. foundations. None of them approximated the size and scale of work done on the two buildings, the contracting out of which is the subject of these proceedings. I am also persuaded on the evidence that reasonably large projects in recent years have also been contracted out without objection from the union.

Arbitrator Chertkow after referring to the passage from Petro Canada Explorations, supra, pp. 16-17 cited above, held at p. 10, Government of B.C., supra:

> I agree with the reasoning of Mr. Hope. The issue is not whether the specie of work is presently performed by Mr. Hall in construction and reconstruction of buildings, but whether the two specific projects, the construction of the new International Hotel and the reconstruction of the historic Government Building, are projects of the size and scope normally performed by members of the bargaining unit as opposed to being done by others.
>
> ...The evidence further persuades me that the bundle of tasks actually performed by building maintenance workers,... are not predominated by new construction and reconstruction of major projects like the two in the instant case.

¶ 62 In the Petro Canada Explorations case, supra, the parties had negotiated a Letter Of Understanding which provided a protocol for contracting-out projects. Project work as such was particularly understood to be exempted from contracting-out protection. In other words the very project defined the work, and the projects in question were not the "maintenance work normally performed" by the bargaining-unit. Similarly in the Government of B.C. case, the restoration and construction work was regarded as a project, and the type of restoration and construction work were not considered "work

presently performed by employees".

¶ 63 Article XVI(7)(a) is mandatory; "The Company will not contract-out any work that is performed by employees in the bargaining unit...." Article XVI(7)(a) was written for the benefit of the employees. Article XVI(7)(b) on the other hand was written for the benefit of the employers. The Contracting Out Practices Letter Of Understanding and Supplement do not list "project work" per se, although some items which are specifically mentioned would quite likely be project work, e.g. "construction contracting".

¶ 64 The focus of Article XVI(7) of the collective agreement is upon "work"; specifically, "any work that is performed by employees in the bargaining unit". The Contracting Out Practices Letter Of Understanding and Supplement listed work which could be contracted-out. They listed specific items or areas of work. Projects were not generically included. Therefore, if the project argument is to have sway in this case, it would be because the contracted-out project was for work which was substantially or qualitatively different from the otherwise similar work performed by the bargaining-unit; e.g. construction contracting as opposed to maintenance-related work. The project argument does not reduce to an expedient for avoiding the requirement for substantial and qualitative difference.

¶ 65 Particular care must be taken here to focus on the "work". The very contracting-out, it should be recognized, will itself be a substantial and qualitative difference, which could distract attention from the real issue and thus lead to the effective annulment of the agreed contracting-out protection. One must compare the "work that is performed by employees in the Bargaining Unit" with the work that is performed by the contractor. It is here that the question of substantial or qualitative difference takes hold.

¶ 66 In his written argument, Counsel for the Company submitted:

> On the facts in this case, neither the Grievor nor other employees of the Bargaining Unit are able to operate a Butt'n Top. The use of the Butt'n Top includes a sorting process which results in greater efficiency and less breakage. Although Employees of the Bargaining Unit may be able to perform some of the tasks involved with loading, these tasks form only part of the overall project that is the loading of stockpiled logs for the Williams Lake Division. This is a separate and distinct project of a different scale. The only time that Soda Creek logs have been loaded for removal from the Soda Creek yard has been when specific logs were sorted out of loads that were brought in for use in the Soda Creek mill and the logs were either oversized and would not fit into the mill configuration or they were upgraded to a higher value and shipped to the coast or other locations. This loading work did not involve the more complicated sorting process that is involved with the loading of logs for the Williams Lake Division.

¶ 67 Firstly, one would not think that the use of the Butt'n Top defined the project. There is no serious dispute that the Cat 966 was capable. Indeed it has been and continues to be utilized to load over-size logs, and Cat 966's are still being used in the bush. If there was a project such that the contracted-out work would be substantially and qualitatively different, then presumably the work could have been contracted-out even if the very same equipment might have been used. The Butt'n Top was merely the piece of equipment utilized to carry out the log-loading. It is the log-loading which is "the work", and it is the log-loading of those Williams Lake logs which were stored at Soda Creek for later delivery to Williams Lake, that might be said to constitute a project. However, the issue still remains: was the contracted-out log-loading substantially or qualitatively different?

¶ 68 Bargaining-unit log-loader operators have loaded logging trucks at the mill site. This case concerns log-loading at the mill site. By 1998 when the contracting-out first started, bargaining-unit log-loader operators had loaded logs for shipment out of the mill site, including logs too big for the small log mill, whether for sale or trade, stored for another company (West Fraser), or experimentation by an equipment manufacturer. The process of sorting oversize logs for reshipment to Williams Lake specifically would have begun a year earlier when Riverside acquired the mill. By 1998, whether the logs were originally destined for Soda Creek or for delivery to Williams Lake during spring break-up, these logs all belonged to Riverside, and all were weighed and scaled at Soda Creek; had been off-loaded and decked by bargaining-unit log-loader operators; and had been stored at the mill site, albeit in separate log decks. The Williams Lake logs would have been of generally different specie from the logs which had been destined for Soda Creek, and of generally different size, but these were not circumstances which would make any significant difference to the task of log-loading as otherwise experienced by the log-loader operators. Granted, the logs remained under the administrative control of Riverside's Woodland Division; however, once unloaded at the Soda Creek mill site, their temporary storage made no difference of substance to the work of reloading them onto logging trucks. That the logs were destined for Soda Creek, or that the Woodland Division retained a measure of control by arranging for their re-shipment to Williams Lake, were complications which did not substantially or qualitatively alter the work of log-loading in the mill yard from that which was already being done by employees in the bargaining-unit.

VII

¶ 69 The Company has asserted that the log-loading was excluded from contracting-out protection because of the "logging" exemption contained in Clause VII of the Contracting Out Practices Letter Of Understanding. The term "logging" should be given the meaning intended in the forest industry; i.e. generally expressed as referring to work "prior to the logs being unloaded at the mill site". In this case the logs were scaled and off-loaded at Soda Creek; however, from the beginning their intended destination for manufacturing was at Williams Lake. The Company would therefore refine the definition by extending "logging" to a mill site, when the site was only a temporary storage place en route to the intended point of final delivery. The Company's underlying theory appears to be that the contracted-out log-loading constituted an integral part of the transportation plan of moving the logs from the bush to the manufacturing mill.

¶ 70 In the Slocan (Quesnel Division) case, supra, the company had in 1988, when independent contractors went on strike, re-rigged two yard trucks and purchased two logging trucks to haul logs from the bush to the yard. The company continued to use the two new trucks for hauling after the strike ended. The drivers were two sawmill employees who were paid according to the Sawmill Job Evaluation Program. One truck was damaged in an accident in 1992, and used afterward for yard work, and the frame of the other broke in 1998. The drivers did not return to log-hauling, so that all such work was again being done by contractors. The union argued that this was a breach of Article XVI(7), and emphasized that there was no mention of log-hauling in the 1987 there-applicable Contracting Out Practices Letter Of Understanding and Supplement. Arbitrator McPhillips however concluded that the "logging" exemption contained in Clause VII of the Contracting Out Practice Letter Of Understanding applied. He dismissed the grievance. Arbitrator McPhillips sated at pp. 16-17 of Slocan (Quesnel Division), supra:

> There is one area of the extrinsic evidence that is problematic and it supports the Union's position at least to some degree. The position of truck driver is a "yard position" and covers a variety of duties and trucks in the yard. Prior to 1998, there were six truck drivers in the operation, including Mr. Durrand, and since 1998, the number

> has declined to four or five depending on the work load. The fact the drivers were always paid the sawmill truck driver rate (which is very close to the rate of Group 11 of the Logging Category Wage Rates) causes some concern but it does not change the activity of log hauling into part of the yard work. Similarly, the change to the list of functions in the job evaluation of the truck driver in 1998 to include "hauling logs from bush to yard" is not determinative. That change acknowledges that this had been one of the functions the Employer could request the truck drivers to do but, in and of itself, it does not mean that this is not a "logging" function. It must be noted that when these drivers were assigned to perform log hauling they worked with the contractors, under their supervision and within their schedules. They were clearly operating in the "logging" segment of the industry and the work they were doing was logging work even though they were sawmill employees and paid as such.

¶ 71 The exemption for "logging" applies to logging work. There may be similar functions which are characterized differently because they are performed in different circumstances: Slocan Forest Products (Radium Division), supra, and Petro Canada Explorations, supra. For example, bucking can be done in the bush or the mill yard. When done in the bush it is part of logging, and when done in the mill yard it is part of sawmill production. The work environment appears to be a critical circumstance. Work done in the bush is "logging"; work done at the mill site is not. The Company recognizes such a distinction because of course log-loading of logging trucks is almost always done in the bush, and Cat 966's have been and are still being utilized there; and yet, the Company has never asserted that the log-loading which the bargaining-unit log-loader operators did do, was "logging". Also, the earlier unloading and stacking of those logs destined for Soda Creek, was part of the same transportation plan as the later reloading. Indeed, even the sorting and later loading of those logs originally destined for Soda Creek but in fact shipped to Williams Lake because of their size, might be considered de facto "logging", according to the Company's definition. The Company's theory is logical, but selective.

¶ 72 In Weldwood, supra, log processing was done in the bush, transferred to the mill, and returned to the bush. When done in the bush it was logging; when done at the mill it was sawmill production. In Slocan (Quesnel Division), supra, sawmill employees drove logging trucks to the bush, picked up their loads, and delivered the logs to the mill; they were sawmill employees, but they were logging. In these cases, the union was effectively claiming work in the bush as sawmill work; here, the Company is claiming work at the mill as logging.

¶ 73 In the present case, the contracted-out log-loading in question was done at the mill. The logs had already been received and off-loaded by bargaining-unit personnel and stored in the mill yard. The work environment was a sawmill mill yard. The particular work itself was not substantially different from that which bargaining-unit log-loader operators did. The work was simply not "logging"; and indeed, although the Butt'n Top operators would be logging contractors or employees of logging contractors, they were clearly not operating in the "logging" segment of the industry.

¶ 74 The grievance, filed by Mr. Colville is in substance a Union policy grievance. Article XVI(7) of the collective agreement is intended to provide a measure of work protection to the bargaining-unit, for which the Union is the exclusive bargaining agent. The Company has breached Article XVI(7)(a) by contracting-out log-loading at the mill site, and the Union is entitled to remedial relief for the breach during spring break-up of 2001. I will order the Company to pay damages to the Union, but leave that matter to the parties pending my retention of jurisdiction. Therefore, it is declared and ordered that:

1. the grievance is upheld;

2. the Company is ordered to compensate the Union in damages as a result of the Company's breach of Article XVI(7)(a) of the collective agreement; and,

3. I retain jurisdiction with respect to the matter of damages.

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