

Case Name:

**Slocan Group v. Industrial Wood and Allied
Workers of Canada, Local 1-424**

IN THE MATTER OF An Arbitration
Between
Slocan Group (Quesnel Division) (the "employer"),
and
I.W.A. - Canada, Local 1-424 -and- National Office
(the "union")

[2002] B.C.C.A.A.A. no. 197
109 L.A.C. (4th) 133
Award no. A-150/02

**British Columbia
Collective Agreement Arbitration
D.C. McPhillips, Arbitrator**

Heard: (Prince George, B.C.) May 23 and 24, 2002.
Award: June 20, 2002.
(37 paras.)

(Contracting Out Log Hauling Grievance)

Appearances:

Thomas A. Roper, Q.C., for the employer.
Sandra I. Banister, for the union.

AWARD

¶ 1 The parties agree this Board has jurisdiction to determine this matter but disagree as to what precisely the scope of that jurisdiction is. The Union asserts that in order to deal with this dispute the Board must be an "Interpreter" under the Right of Reference provisions in the Collective Agreement. The Employer's position is that the Board is simply an arbitration board which must determine the meaning of the provisions of a Letter of Understanding between these specific parties. The parties have further agreed that if this Board considers itself to be an Interpreter, this "interpretation" would be limited to the Slocan Group's Quesnel Division.

¶ 2 The dispute involves the Company's decision in 1998 to discontinue using two of its yard employees to haul logs to the mill. The Union asserts that as this hauling of logs continued to be done by independent contractors this constituted a violation of the contracting out provisions of the Collective Agreement.

FACTS

¶ 3 The facts are not greatly in dispute. Slocan Group (Quesnel Division), formerly Quesnel Forest Products ("Q.F.P."), has generally had its logs transported to the mill by independent contractors. It is further agreed that on occasions between 1977 and approximately 1984 or 1985, the Company would have one or two of its trucks from the yard go out and haul logs to the mill alongside the independent contractors. A number of drivers, including Messrs. Nelson, Durand, Croy, Park and Thibeault, performed the log hauling functions during that period.

¶ 4 In 1986, a major labour dispute occurred in the forest industry and "the Coast" was down for 4 1/2 months. The most critical issue for both sides was the contracting out of work. The employers were concerned about flexibility in a changing industry and the I.W.A. was concerned about protecting bargaining unit work. In the Northern Interior, the shut down was much shorter than on the Coast. The dispute ended in the Northern Interior reasonably quickly when the parties agreed to the following provision dealing with contracting out:

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.

¶ 5 How this language was arrived at is very relevant to our dispute. The Council on Northern Interior Forest Employment Relations ("Conifer") is a voluntary society that represents most of the northern interior forest companies, including the Slocan Group. The Executive Director of Conifer since 1977 has been Dave Gunderson. Conifer provides collective bargaining services, labour relations advice and training to its members, and administers the benefits plans. Conifer does not represent all the Companies, however, and some prime licensees, the most notable of which are Weldwood, Canfor and Carrier, are not in the association.

¶ 6 Harvey Arcand, who is presently the Secretary/Treasurer of the I.W.A.-Canada, was the President of Local 1-425 (Williams Lake) in 1986 and he has been in the industry for 37 years. At the time, Frank Everitt was the President of Local 1-424 and Neil Menard was the National Officer assigned to those two locals.

¶ 7 Mr. Arcand testified that negotiations in 1986 in the North reached an impasse immediately and almost all the mills were shut down. The I.W.A. then very quickly worked out an agreement with Balfour Guthrie on the basis that the work which was already being contracted out there could continue. Shortly thereafter, Mr. Everitt called Mr. Arcand to a meeting at the Hotel Vancouver, sometime between July 22 and 26, with Tim Kerr (Lignums), George Kelly (Lakeland Mills) and Bob Lunde (Tahkama Forest Products), all of whom were on the Board of Directors of Conifer. Those individuals expressed to the I.W.A. their concern that an agreement would be relatively straightforward for one mill such as Balfour Guthrie but was far more difficult when the agreement had to cover many different operations. They indicated they needed some means to establish an inventory of what work was

contracted out in each operation but they did not want to be on strike while this was being done.

¶ 8 Potential wording, which ultimately became Article 7(a) and (b) of the Collective Agreement, was drafted on a "napkin" at the hotel meeting with the understanding that "Current Practices Letters" would be established in each operation. That deal was then approved by the I.W.A. Provincial Bargaining Committee.

¶ 9 The Union next turned its attention to Weldwood Forest Products which, as noted, was not a member of Conifer. The I.W.A. and Weldwood met on July 28 at the Chateau Granville. The Company asked the Union about the meaning of the "Conifer language" and the Union indicated that they never intended to prevent the contracting out of work which had always been done in an operation. Mr. Arcand testified the Company stated it was concerned the Union would use the contracting out language in the Conifer Agreement to featherbed, to require overtime and to get all the contractors (not just logging) into the Union. The Union assured Weldwood this was not the intention. Bob Norman, who was the Manager of Industrial Relations for Weldwood and negotiated on behalf of Weldwood in 1986, testified that the focus of the negotiations from the Company's perspective was on work "inside the scales" and there was great concern that the agreement not affect their logging operations in any way. Mr. Norman explicitly stated to the Union that the contracting out provision applied "inside the scales" and that logging was excluded and Mr. Arcand agrees that was said to the Union. Mr. Norman testified that Section VII of the Letter of Understanding reached at Weldwood (and which was later used as a 'template' in other operations) records that agreement.

¶ 10 In the course of the discussion in that July 28 meeting, the issue of the "River Drive" at Weldwood's Quesnel operation also arose. The River Drive was a process whereby the logs were dumped in the water and taken down river to the mill. The notes of the meeting indicate the following comments were made:

Company: How does it affect method changes. Something changes the way we do business. For example: The River Drive. What would be the effect if we were to change it.

Union: We believe the River Drive would be unaffected.

Company: How does the wording apply to Technological Change?

Union: We are not dealing with Technological Change.

Company: What about methods imposed by tech change?

Union: Unaffected by the wording.

Union: For example if we talk about the logging employees in Quesnel. We are talking about those people on the pond feeding the mills and you change your business not to have a River Drive and you contract the trucking - we think that's o.k. Further explanation might be you eliminate a boom boat on the pond and that employee and then a while later you have a contractor running a boat we are going to be in a fight. However, you eliminate the boat because the pond is gone and you truck your logs to a dryland sort - that's o.k.

Technological Change and job elimination or reduction, we have been buying. This is ongoing and part of the Industry.

¶ 11 On August 7, the Union and Weldwood met again. The Union emphasized that it wished to protect the work of its members and not solely positions or jobs. The parties agreed to go to Burns Lake to conclude a Current Practices Letter as well as sign a Letter of Understanding for Babine Forest Products. Everyone involved flew to Burns Lake the next day and a meeting was held at the Fire Hall where a number of issues, such as protecting jobs versus work and the adding of another shift, were addressed. The Company again indicated to the Union it had concerns about the Union "lassoing" or "looping" in contractors in the bush. The Union told the Company this Agreement did not apply to logging and the contracting out language only applied "inside the scales". Mr. Arcand testified this comment was made because there was no unionized logging in this operation unlike on the Coast where contracting out of logging operations had been a major issue in both the 1979 and 1983 negotiations.

¶ 12 The parties then developed a Current Practices Letter and a list was created setting out all the jobs which were either contracted out completely or where there was an "overlap", that is they were performed both by contractors and bargaining unit members. The parties then went on to Houston and Williams Lake and repeated the same process at the Weldwood operations in those locations.

¶ 13 Canfor and Northwood had stayed out on strike during this period and so the labour dispute did not end completely in the Northern and Southern Interior until December. Once that occurred, the Union met formally with Conifer in Prince George. Mr. Gunderson testified he had no knowledge of the content of the negotiations between the I.W.A. and Weldwood and had never received any minutes or had any other communications with Weldwood in that regard other than receiving the "template" of the Weldwood Letter of Understanding "in October or November of 1986". Mr. Gunderson testified that after reviewing it he and his bargaining committee felt the template would be acceptable to Conifer.

¶ 14 Mr. Arcand, Mr. Everitt, Mr. Menard, Mr. Kelly, Mr. Kerr, Mr. Gunderson and Robin Rogers (an "evaluator" for Conifer in the Northern Interior) met to discuss the formal agreement in January, 1987. At the Company's request, the Union reiterated their understanding of the "napkin agreement" struck at the Hotel Granville. The parties then agreed to embark on meetings at each operation to conduct an "audit" of contracting out practices. They began at Tahkama Forest Products and at each operation the Union reiterated the terms of the "napkin agreement". A list of jobs at that site would be reviewed and a Letter of Understanding based on the Weldwood template would be signed for each operation.

¶ 15 The meeting with Quesnel Forest Products occurred on February 25, 1987. The Letter of Understanding which was signed that day states as follows:

LETTER OF UNDERSTANDING

BETWEEN: QUESNEL FOREST PRODUCTS
A Division of Slocan Forest Products Ltd.

of the first part

AND: INTERNATIONAL WOODWORKERS OF AMERICA
Local 1-424, A.F.O. C.I.O., C.L.C.

of the second part

RE: CONTRACTING OUT PRACTICES

As provided for in Article _____ (sic), Clause (B), the following represents the current contracting out practices at Quesnel Forest Products. 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

II. Building Maintenance and Improvement

Structure maintenance
Scale repairs
Kiln maintenance

III. Office Maintenance and Improvement

Office Maintenance and Repairs

IV. Production Overload

Mobile equipment overload (eg. log and lumber inventory, equipment rental)
Primary production overload (eg. purchase of dunnage, equipment rental)
By-product overload (eg. chip & hogg hauling)

V. Maintenance

Overload equipment services and trades (eg. belt splicing, and replacement, D.C. drive service & repair, blower system repairs, strapping repairs, compressor & hydraulic systems, mechanical & electrical repairs)

Mobile equipment maintenance (eg. warrantees, radiator repairs)

Plant and equipment maintenance (eg. warrantees, kiln carts, glass repair & replacement, fire protection systems, steam cleaning, chain saw repairs)

VI. Special Services

Camera/monitor repairs, security 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.

DATED THIS 25 DAY OF February, 1987.

¶ 16 As requested, local management arrived for the meeting at Q.F.P. with a list of the jobs where contracting out was an issue. The list was divided into two columns, entitled "total contract" and "overlap". The Union had representatives from the local executive as well as from each of the areas in the mill present at the meeting. Mr. Arcand took notes and the parties went through the list in detail and made comments about each of the duties discussed. Many changes were made to the list until a final agreement was reached by the parties. The list agreed to at Quesnel Forest Products stated:

CONTRACTING OUT PRACTICES

TOTAL CONTRACT	OVERLAP
Paving	Clean up log yard & log decks
Back hoe work	Concrete work
Septic services	Yard maintenance
Scale servicing	Scale repairs
Garbage collection	Kiln repairs & servicing including calibration
Mobile sweeper	Painting
Switch & rail repairs	Buildings-renovation & repair
Lunchroom cleaning	Office maintenance & repairs
All natural gas work	Hauling chips & hogg
Sand blasting	Mobile equipment overload work eg. log inventory, lumber inventory
Off site reloading	Belt splicing & replacement

Custom drying & sawing	Dunnage & strips
Belt vulcanizing	Equipment rental eg. Wagner
Chrom work cylinders & planer parts	D.C. drive service & repair
Machinist work	Blower system repairs & maintenance
Tires	Chain saw repairs
Motor rewinding	Fire extinguishers
Washing filters	Overload trades
Courier service	Major mechanical eg. breakdowns, shafts
Radio maintenance & repairs	Strapping repairs & maintenance
Coveralls	Electrical (line work, trouble shooting, renovations)
Engineering & drafting	Compressor (servicing & overhaul)
Technical services & expertise (eg. non-destructive testing, computers)	Hydraulic system (servicing & rebuilding)
	Barker rebuilding
	Radiator repairs
Scale operation including samples and scaling	Machinery & equipment warrant work
	Kiln carts (welding & fabrication)
Bearing Babbitting	Glass repair & replacement Fire protection systems Steam cleaning Camera/monitor repairs Security

¶ 17. The next events relevant to this dispute occurred in 1988. In that year, the independent contractors went on strike. As a result, the Company took two of the trucks from the yard and re-rigged them for logging and also bought two new trucks to haul logs. The Company then began to haul its own

logs with the four trucks. Within a short period, the original two trucks were returned to the yard but the two new trucks continued to be used for log hauling, even after the contractors' very short strike had ended. The two trucks that continued to haul logs were driven by Al Durand and Albany Boudreau. The evidence is that Mr. Durand and Mr. Boudreau worked side by side with the contractors and worked according to the schedules that the contractors were on. Mr. Durand and Mr. Boudreau took their trucks home at night and were included on the seniority list with the independents to determine what order their trucks were loaded. During the "spring breakup" between March and the end of June each year, the two drivers would return to the yard and work along with the other truck drivers, driving the mobile equipment, including the clean up truck, the hay rack trucks and the log trucks. Throughout the time they worked hauling logs, Mr. Durand and Mr. Boudreau were paid the truck driver rates under Article XXVII - Sawmill Job Evaluation and not the wage rates under the Logging Category in Supplement No. 1.

ARTICLE XXVII - SAWMILL JOB EVALUATION

Section 1:

- a) The Parties to this Agreement mutually agree to implement one job evaluation program for the sawmilling sector in accordance with the principles and procedures set out in a manual dated December 1971, hereinafter referred to as the B.C. Northern Interior Sawmill and Poleyard Job Evaluation Manual as amended effective April 1st, 1995. The application and administration of the Program shall be in accordance with the provisions of Supplement No. 6 to this Agreement.
- b) The process of job evaluation will be conducted in accordance with the provisions of the B.C. Northern Interior Sawmill and Poleyard Job Evaluation Plan which shall include the wage curve. The manual and guidelines for manual interpretation, existing and/or new Benchmarks, and existing grading on record shall serve as a basis for subsequent evaluation.
- c) All categories and records shall stand as presently rate matched (job analysis) and/or evaluated in the Northern Interior operations involved in the B.C. Northern Interior Sawmill and Poleyard Job Evaluation Plan, except where requests are submitted for evaluation or re-evaluation consistent with the principles and procedures of the Northern Interior Sawmill and Poleyard Job Evaluation Plan.

Section 2:

The point range and increments for the twenty-eight (28) groups in the Sawmill and Poleyard Wage Curve are as follows:

Group Level	Effective July 1, 1997			Effective July 1, 1998		Effective July 1, 1999	
	Points	Increment	Rates	Increment	Rates	Increment	Rates
1	0-60	-----	\$19.86	-----	\$20.26	-----	\$20.67
2	61-70	0.08	19.94	0.08	20.34	0.08	20.75
3	71-80	0.11	20.05	0.11	20.45	0.11	20.86

4	81-95	0.13	20.18	0.13	20.58	0.13	20.99
5	96-115	0.10	20.28	0.11	20.69	0.11	21.10
6	116-140	0.17	20.45	0.17	20.86	0.18	21.28
7	141-165	0.12	20.57	0.12	20.98	0.12	21.40
8	166-195	0.22	20.79	0.23	21.21	0.23	21.63
9	196-230	0.18	20.97	0.18	21.39	0.19	21.82
10	231-270	0.18	21.15	0.18	21.57	0.18	22.00
11	271-320	0.20	21.35	0.21	21.78	0.22	22.22
12	321-370	0.22	21.57	0.22	22.00	0.22	22.44
13	371-420	0.21	21.78	0.22	22.22	0.22	22.66
14	421-470	0.21	21.99	0.21	22.43	0.22	22.88
15	471-520	0.24	22.23	0.24	22.67	0.24	23.12
16	521-570	0.27	22.50	0.28	22.95	0.29	23.41
17	571-620	0.23	22.73	0.23	23.18	0.23	23.64
18	621-670	0.24	22.97	0.25	23.43	0.26	23.90
19	671-730	0.23	23.20	0.23	23.66	0.23	24.13
20	731-790	0.27	23.47	0.28	23.94	0.29	24.42
21	791-850	0.25	23.72	0.25	24.19	0.25	24.67
22	851-910	0.28	24.00	0.29	24.48	0.30	24.97
23	911-970	0.28	24.28	0.29	24.77	0.30	25.27
24	971-1030	0.27	24.55	0.27	25.04	0.27	25.54
25	1031-1090	0.58	25.13	0.59	25.63	0.60	26.14
26	1091-1150	0.58	25.71	0.59	26.22	0.60	26.74
27	1151-1210	0.63	26.34	0.65	26.87	0.67	27.41
28	1211-1270	0.64	26.98	0.65	27.52	0.66	28.07

Section 3:

- a) The base rate in all Wage Supplements shall be that set out in Section 1e) of Article V - Wages, and shall be the minimum rate.
- b) Incumbents in job categories for which the wage rate is reduced as a result of job evaluation (hereinafter referred to as 'Red Circled Jobs') shall continue at the original rate.

* * *

SUPPLEMENT NO. 1

* * *

Logging Category Wage Rates

Group No. 1	\$20.10	\$20.50	\$20.91
Labourer			
Bull Cook			
(Pays Board)			
Flunky			

(Pays Board)
 Watchman

Group No. 2	\$20.26	\$22.78	\$23.24
Tree Planter			

* * *

Group No. 11	\$22.33	\$22.78	\$23.24
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Head Cook (Board Supplied) (30 men and over)
 Rock Driller - W.C.B. Ticket (Grade Construction)
 Scaler (Licensed)
 Towboat Operator
 Truck Driver - Trailer Rig (8 to 11 foot bunks)
 Truck Driver - Low Bed
 Cat Operator - D7 (Grade Construction & Logging)
 Skidder Operator - Soft Tracks/with Grapple

* * *

¶ 18 In 1992, Mr. Boudreau's truck was damaged in an accident and taken back into the yard. The vehicle was repaired but, thereafter, the truck was used only in the yard. Mr. Boudreau filed a grievance and there is some dispute between the witnesses as to the nature and resolution of the grievance. In any event, the minutes of the grievance meeting indicate that it was agreed that if the truck went back "in the bush", Mr. Boudreau would drive it but other than that, the truck was to be treated "like any other truck".

¶ 19 Mr. Durand continued to haul logs in his truck until February, 1998. In February of that year, the frame of his truck broke and the "truck was parked". Mr. Durand was instructed to report for duties in the yard and was told the Company was not going to fix the truck. Mr. Durand used his seniority to obtain work on another truck and bumping proceeded down the line. After the spring breakup that year the contractors went back into the bush but Mr. Durand did not return to log hauling and that situation has continued up to the present time. Mr. Durand and the Union filed grievances asserting that this constituted contracting out of the log-hauling work and that this was prohibited by Article 7 of the Collective Agreement. That grievance is now before this Board.

¶ 20 The parties put into evidence the job description for the truck driver position. The job description for the position which was in effect from 1975 to 1998 contains the following information:

Plant Number	458		
Location	Quesnel		
Job Title	Truck Driver		
Date Prepared	Apr. 25/75	Points _____	Grade _____
Date Revised	Points		Grade
Revision Number			

1. JOB FUNCTION

- (1) Hauling lumber to and from outside storage areas to mill.

- (2) Hauling logs from storage area to mill yard storage area.
- (3) Hauling waste to landfill.
- (4) Hauling ties from various tiemills to sawmill.
- (5) Hauling gravel & misc material as required.

¶ 21 In 1998, at the request of Mr. Durand, the job description was reviewed by the parties under the formal evaluation process in place and the revised document states as follows:

Plant Number	458
Location	Slocan Group - Quesnel Division
Job Title	Truck Driver
Date Prepared	Apr. 25, 1975 Points 381 Grade 13
Date Revised	July 6, 1998 Points 510 Grade 15

Name of Person Interviewed _____ No. of Incumbents _____

2. JOB FUNCTION

Hauling lumber to and from outside storage areas to mill.

Hauling logs from storage area to mill yard storage area.

Hauling gravel and miscellaneous material as required.

Hauling logs from bush to yard.

Hauling logs from mill to mill.

Hauling hog to burner.

Hauling waste to landfill.

* * *

¶ 22 The parties also placed in evidence a letter from Mr. Gunderson to the Union dated July 1, 2000 with regard to a decision in the industry dealing with a dispute between the Union and Weldwood of Canada Ltd. (Quesnel Division), [1999] B.C.C.A.A.A. No. 479. In a decision dated November 19, 1999, Arbitrator Blasina had stated, inter alia, that the restriction on the contracting practices arrived at in 1986 applied only to matters as they existed then and would not apply to work created after 1986. The Union was not pleased with Arbitrator Blasina's conclusion on this point and brought up the matter with Conifer. Mr. Gunderson wished to assure the Union that this 1986 Agreement applied to work developed by the Employer within the bargaining unit after 1986 and wrote to the Union as follows:

RE: Blasina Arbitration (Weldwood-Quesnel, November 1999)

Dear Dave:

Conifer agrees that the interpretation being based 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 intent 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.

DECISION

¶ 23 The issue in this case is how the log-hauling from the bush is to be treated given the language of Article XVI - Section 7 of the Collective Agreement and Section VII of the Letter of Understanding signed between these parties on February 25, 1987. Once again, those provisions state:

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.

LETTER OF UNDERSTANDING RE: CONTRACTING OUT PRACTICES

* * *

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.

¶ 24 These two provisions must be read together. In 1986 and 1987 the parties agreed to limit the contracting out of bargaining unit work (as opposed to jobs) but that limitation was subject to the terms of a Letter of Understanding and a Current Practices Agreement negotiated at each operation which was affected.

¶ 25 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.

¶ 26 On its face, the restrictions on contracting out set out in the Collective Agreement and the Letter of Understanding do not have any application to the log hauling activities in question here. Section VII of the Letter of Understanding clearly states that logging is to be exempt from these provisions. In that regard, the language is clear and unambiguous.

¶ 27 The Union has submitted that the logging exception has to be read to not apply to logging performed by bargaining unit employees at the time. If that was the case, however, the Letter of Understanding - Section VII, which only applies to Company operations, would have no application to logging at all. If that were the case, the logging exemption would not make any sense and have no meaning. The exception in Section VII of the Letter of Understanding only has meaning if it is applied to logging activities which are undertaken by the Company.

¶ 28 In my view, there is also extensive extrinsic evidence which generally supports this conclusion. The first is the context of these provisions and how they were negotiated: Northern Interior Lumbermen's Association, November 18, 1958 (Carrothers); Council of Northern Interior Forest Employment Relations, May 3, 2000 (Munroe). Mr. Gunderson testified that throughout the 1986-87 negotiations, the parties were dealing with mill practices and logging was never discussed by the parties. The focus of the discussions, certainly from the Employer's perspective, was manufacturing or mill sub-contracting. There was never any discussion of restrictions relating to activities occurring outside the scales of the mill. That is also consistent with the evidence provided by Mr. Norman concerning the negotiations at Weldwood. It appears from Mr. Arcand's evidence that the Union never specifically considered the logging operations either in any of the negotiations. The focus for the Union was on protecting the bargaining unit's work in the mill. As a result, it cannot be concluded that the parties mutually agreed during any of the bargaining that work done in the logging phase of the industry was to be affected by these contracting out provisions.

¶ 29 There is also the process by which the list of "Contracting Out Practices" was established at each operation and, specifically, at Quesnel Forest Products. Although the Employer drew up the draft list (as was done at each operation), there was extensive discussion between the parties concerning each of the items thereon. Log hauling does not appear in either column (either total contract or overlap) on the list which indicates that the parties were not addressing this task because it was outside the scope of the discussion. It is important to note that "inventory transfer", which is the process of transferring the logs from one mill site to another, is included in the overlap column so the matter of truck driver duties was obviously canvassed. It also cannot be logically concluded the log hauling was within the scope of concern but was left off the overlap list through inadvertent error resulting from the fact no one remembered that log hauling had been done by members of the bargaining unit between 1977 and approximately 1985. If that was the case, the log hauling function would have been listed in the total contract column as everyone certainly was aware that logs were being hauled to the mill. However, log hauling was not included in that list either and the inescapable conclusion is that the parties were addressing mill functions only and log hauling was considered by everyone to be part of logging operations and not affected by those discussions.

¶ 30 The Board also rejects the argument of the Union that the contra proferentem rule, which holds that ambiguous terms are interpreted against the interests of the party who wrote them, applies in these circumstances: Medis Health and Pharmaceutical Services Ltd., 93 L.A.C. (4th) 118 (Armstrong);

Skeena Cellulose Inc., 95 L.A.C. (4th) 289 (McDonald); Eli Lilly & Co., 161 D.L.R. (4th) 1 (S.C.C.). First of all, there is no ambiguity present in the language. Second, in this case the Employer did prepare the initial list of work to be considered but there was a full and very detailed discussion between the parties of each of the items with additions, deletions and amendments made. The final list was clearly a mutual effort and resulted in a joint document and the contra proferentem rule is not a helpful as an aid to interpretation in these circumstances.

¶ 31 It also appears that the resolution of the Boudreau grievance in the mid-90's supports the Company's position. When Mr. Boudreau's truck was taken off the log hauling operation and he was put on other trucks in the yard, the log hauling continued to be done by independent contractors. Yet, his grievance did not get resolved on the basis that this was contracting out and that he had a right to continue log hauling. Rather the Company and Union simply agreed that if the truck did go back to log hauling, Mr. Boudreau would go with it.

¶ 32 There are a number of other points to be addressed. First, the evidence concerning the "River Drive" discussions at the Weldwood operation is not particularly helpful. It appears this was an "anomalous" situation as those parties were dealing with the upcoming elimination of that activity (technological change). However, and in any event, the comments were part of discussions the Union had in negotiation sessions with Weldwood. That issue was never specifically addressed between the Union and either Conifer or Quesnel Forest Products and, therefore, no mutual intention between those parties can be derived from any discussions which may have occurred during the Weldwood negotiations.

¶ 33 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. Durand, 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.

¶ 34 At the end of the day, the Union is really requesting this Board in this grievance to rectify the Contracting Out Practices list made at Quesnel Forest Products on February 25, 1987 and add "log hauling" to the "overlap" column on the right hand side. However, there is no evidentiary basis of mutual intent such that one could conclude a mutual mistake was made in these circumstances and that that document does not accurately reflect the actual agreement of the parties. That is what is required before it would be appropriate to apply the doctrine of rectification: *Vernon Fruit Union -and- Okanagan Federated Shippers Association*, B.C.L.R.B. No. 66/76, September 15, 1976; *Rose v Pim* [1953] 2 All E.R. 739 (C.A.); *Canadian Park and Tilford Distilleries*, 36 D.L.R. (2d) 632; *Emergency Health Services Commission*, 86 L.A.C. (4th) 27 (Ready); *British Columbia Hydro and Power Authority*, 63 L.A.C. (4th) 86 (Germaine). Chairman Paul Weiler of the B.C. Labour Relations Board observed in *Vernon Fruit*, supra, at p.29:

That remedy [of rectification] does not permit a judge - nor would it permit an arbitrator - to vary the actual agreement between the parties, even in order to bring this agreement into line with the mutual intentions and expectations of the negotiators. Instead, it simply allows for the correction of the document in which the agreement is expressed, so as to ensure that that document accurately reflects the precise agreement which in fact was reached by the negotiators and ratified by their principals.

¶ 35 Finally, the Board rejects the Union's alternate submission that the doctrine of estoppel should apply in this case: Canadian Forest Products Ltd. (Polar Division), [1993] B.C.C.A.A.A. No. 169, June 16, 1993, (Albertini); City of Penticton, [1977] 1 Can. L.R.B.R. 13 (B.C.L.R.B.). There was no representation made at any time by the Employer that it was forgoing any of its contractual rights. The Company simply operated in a way which was consistent with what it considered to be its rights, specifically, that it could arrange its log hauling activities as it saw fit on the basis that the contracting out restrictions did not apply to log hauling.

¶ 36 In conclusion, the relevant provisions of the Collective Agreement, the Letter of Understanding and the Current Practices List are clear and unequivocal that logging and its constituent parts, including log hauling, is exempt from the restrictions on contracting out. The extrinsic evidence is also generally supportive of this position but it is the language of the agreements that is ultimately determinative in this matter.

AWARD

¶ 37 For all the reasons, the grievance is dismissed.

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