

Cited as:
Slocan Group (Re)

IN THE MATTER OF An Arbitration

Between
Slocan Group - Plateau Division (the Company), and
IWA Canada, Local 1-424

[1996] B.C.C.A.A.A. No. 139
Award no. A-61/96

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

Heard: (Vancouver, B.C.) February 13, 1996.
Award: February 29, 1996.
(14 pp.)

Appearances:

Thomas A. Roper, for the Company.
Camran A. Chaichian, for the Union.

AWARD

¶ 1 The arbitration was heard in Vanderhoof, B.C. on February 13, 1996. The parties agree the Board is properly constituted and has jurisdiction to hear and rule on the matter in dispute. The questions to be answered are:

¶ 2 1. Did the Company breach a term of the Agreement (Article XVI, Section 7) when lumber was loaded onto rail cars in Prince George, B.C. by people who were not employees of the Company?

¶ 3 2. If the Company did breach the terms of Article XVI, Section 7 of the Agreement, is compensation payable to any employee of the Company?

¶ 4 Mr. Gull is the Grievor but in fact there are other Company employees who are members of the Company's car loading crew who will be affected by the outcome of this arbitration case.

¶ 5 Witnesses were called, sworn and examined.

Background

¶ 6 The Company operates a sawmill a few miles west of Vanderhoof, B.C. The lumber produced

is sold and shipped to the markets of the world. There is not one specific customer. To meet the various circumstances the lumber is loaded onto rail cars or transport trucks at the mill, by mill employees. Some of these rail or truck shipments go to their destination without being unloaded and reloaded while in transit. Other shipments go to interim storage areas away from the sawmill. As sales are made, lumber from the appropriate non-mill storage is reloaded and shipped to the buyer.

¶ 7 In January 1994 the Company had set up an out-of-mill storage location in Prince George, B.C. This was a new storage area and was situated about 100 kilometers from the mill. When the lumber from that storage area was reloaded onto rail cars and shipped to its purchasers the work was done on a contract basis by people who were not employees of the Company's sawmill.

¶ 8 The sawmill car loading crew contends that work should have been done by them and that the terms of the Agreement have been breached.

Union Evidence

¶ 9 The Grievor, Gary Gull, testified he had been a car loader at the sawmill for twelve years before recently becoming a maintenance helper.

¶ 10 Before July 1995 the witness and other car loaders were paid for rail car loading by way of a bonus system that paid a pre-determined amount of money for each thousand board feet of lumber loaded by members of the car loading crew. That system had been in effect for all the years the witness had worked as a car loader before July 1995. The bonus system of payment was terminated in July of 1995.

¶ 11 The witness testified that in all his time as a car loader no cars had been loaded at the mill on a contract basis. The witness said that in November 1994 lumber shipments from the mill decreased from about seven or eight cars a day to two or three cars a day. This caused the need to stockpile lumber in the mill yard.

¶ 12 When two or three cars were all that were required to be loaded the car loading crew was given the option of working on other mill work and being paid on the recognized job rates or they could go home.

¶ 13 In January 1995 the crew's supervisor, who was the "shipper", told crew members storage room in the mill yard was nearly full and therefore he would be finding storage space in Prince George. He was asked by crew members (maybe Mr. Gull) if the mill car loaders would get a chance to load in Prince George. The answer was, "We will cross that road when we get there." At a later time the shipper came to the car loading area of the mill and was gathering up car loading tools. When asked why he was getting the tools the shipper said he was taking them to Prince George to train people. When asked if the mill car loaders could load the lumber in Prince George the answer was, "No, there was a contract to do it." Mr. Gull said that while the non-mill employees were loading the lumber in Prince George the mill car loaders were doing some car loading along with other mill jobs. He did not know who the people were who were loading in Prince George but they were not members of the mill bargaining unit.

¶ 14 During cross examination the witness gave details of how the loading bonus was utilized as a part of the crew's earnings. The witness agreed that he understood rail cars were not available in November 1994 and he knew lumber was stockpiled in the mill yard. It was also Mr. Gull's

understanding poor market conditions were a factor in the stockpiling. The yard did fill up and if other storage was not found the mill would have to shut down. This would affect about two hundred and thirty employees. The witness reiterated that all loading of lumber onto rail cars and trucks at the mill had been done by mill employees during the twelve years he had been a car loader.

¶ 15 After a period of time in January and February 1995 shipments from the mill picked up and over a bit of time the volume of car loading returned to normal. He agreed the lumber that was shipped to storage in Prince George was loaded at the mill by mill employees.

¶ 16 The witness, when asked, agreed that lumber from the mill was shipped to other storage areas in British Columbia and Alberta. Shipments to those storage and reloading areas were always loaded at the mill by bargaining unit people whether the means of transport be rail cars or trucks. Mr. Gull said those loading and shipping methods were also used by Westar, the mill's previous owner.

¶ 17 Storage areas away from the mill which were familiar to the witness were in Edmonton, Christina Lake, Prince Rupert and Vancouver. The witness said the mill crews had always made the initial loading of lumber at the mill but had not reloaded away from the mill.

¶ 18 Mr. Chaichian's questions following Mr. Gull's cross examination elicited answers which stated the lumber transported to Prince George from the mill was hauled by truck where it was loaded onto C.N.R. rail cars. These were the same cars that would have been loaded at the mill if it had not been for lack of storage space at the mill. While Mr. Gull knew of storage and reload areas away from the mill, this was the first time C.N.R. cars that normally would have come to the mill had been reloaded elsewhere.

Company Evidence

¶ 19 Keith Jackson, who is the Company's Shipping/Sales Coordinator, had worked for the Company since 1977 and as Shipping/Sales Coordinator since 1985. The mill produces, on average, 1.2 million board feet of lumber per day. The lumber is manufactured by close to 250 employees. There are car loading crews, sometimes one and sometimes two, composed of a forklift operator and two car blockers (car loaders). Truck loading is done by a forklift operator.

¶ 20 The witness stated that in the fall of 1993 lumber markets had weakened and the Company was unable to sell all of its production. The unsold inventory was stockpiled in the mill yard. This stored inventory in the mill yard grew to 35 million board feet. There was no more room, so the options were to find off-mill storage or close the mill. A search at Prince George found a suitable site.

¶ 21 Copies of monthly shipping reports were introduced to the hearing. These reports show pertinent data regarding day by day shipments of lumber from the mill in number of rail cars and footage of lumber, hours worked by car loaders and number of off-site cars shipped. Incidental notes on these forms show that by March 14, 1994 mill inventories had reached the maximum. Truck shipments to the Prince George storage/reload were started. The forms further show the last truck shipment to the Prince George reload was made on April 7, 1994. Shipments from the Prince George storage/reload started on May 16, 1994. In May 29 rail cars were shipped, in June 10 cars, and in July 6 cars. The last car was shipped on July 22, 1994. The witness testified regarding the use of off-site storage/reloads. He enumerated a number of locations the Company has used as off-site reloads and is still using. This practice of off-site storage and reloading goes back as far as 1985 or

further. There has not been a grievance processed before the one concerning Prince George. Mr. Jackson said that both rail and truck shipments had been sent to reloads.

¶ 22 In cross examination the witness confirmed that to the best of his knowledge there had not been reloading onto C.N.R. cars except for the Prince George incident. The Prince George reload has not been used since 1994.

¶ 23 The witness agreed that if more storage had been available at the mill the lumber would not have been trucked to Prince George and would have been loaded on rail cars at the mill at some time.

¶ 24 (Note: Mr. Gull cited 1994-1995 as the period of the circumstances leading to and implementation of the Prince George car reloading. The correct time period is 1993-1994.)

UNION ARGUMENT

¶ 25 Union Counsel reminded me of the contractual importance of Article XVI, Section 7: Contractors - in the Agreement. This, he said, was an article of the Agreement which had been hard fought for in negotiations. Arbitrators must be careful not to erode the hard gained rights. That would have serious results on bargaining unit jobs.

¶ 26 Counsel argued that Article XVI, Section 7 of the Agreement declares that work which was being done by the mill employees at the effective date of the Agreement would not be contracted out. The loading of C.N.R. cars had been done by mill crews for at least twelve years prior to that work being done in Prince George. Lumber at other reloads had been loaded differently.

¶ 27 A company cannot take bargaining unit work away from the mill and have it done by contractors. The provision in Article XVI, Section 7 of the Agreement is there to protect the status quo.

¶ 28 The bonus system of payment to car loaders had been in effect for many years when the car loading in Prince George was done. The crew members lost money by not being allowed to load the Prince George stored lumber. They had asked if they could go to Prince George each day loading was required and had been refused. Therefore, they had been paid lower job rates on general mill jobs. In spite of the crew's willingness to load lumber in Prince George the Company took loading tools from the mill to Prince George and trained people to use them.

Company Argument

¶ 29 Company counsel argued that the case before me has nothing to do with the car loaders' bonus system or other matters. It is totally concerned with whether the Company broke a term of the Agreement when it loaded rail cars in Prince George with non-bargaining unit loaders.

¶ 30 The fact that Mr. Jackson took tools from the mill to be used on the Prince George reload was not of significance. What is of significance is the work that was done. Work done by employees who are in the bargaining unit when rail cars and trucks are loaded is the first loading onto a common carrier of the products of the Company's sawmill and planer. Loads of lumber handled after the first loading at the mill is not bargaining unit work. Lumber owned by the Company for many years had been reloaded at reload facilities without complaint from mill employees. The reloading of lumber onto rail cars in Prince George was no different than the way Company lumber has been handled on a

contract basis at locations such as Edmonton, Christina Lake, Prince Rupert, New Westminster and Vancouver.

¶ 31 Counsel referred to wording in a letter of understanding dated December 7, 1987 and signed by the Union and the Company (Exhibit 2). He argued that the preamble to the letter under the heading of "Contracting Out Practices" defines what work is done by both contractors and mill employees in Section I. Counsel also drew attention to Section II of the letter of understanding which is identified as: Work Contracted Out Completely. In Section II on page 4 of the letter a listing of a work activity says: Lumber transportation from mill yard, i.e. truck and rail. Counsel argued that the wording in that job listing clearly contemplates lumber handling away from mill premises will be done by contract.

¶ 32 Mr. Roper and Mr. Chaichian provided Briefs of Authorities and spoke to their contents while arguing the positions of the parties concerned in this arbitration.

Decision

¶ 33 I have considered the evidence brought forth at the arbitration hearing, read and studied the cases contained in the Briefs of Authorities and listened to the well-delivered arguments of counsel.

¶ 34 After so doing I find the issue or question before me is clear and not complicated. The Union's case is that there was a breach of Article XVI, Section 7 of the Agreement which was in force between the Union and the Company. The Union contends the Company was in violation when it reloaded lumber onto C.N.R. rail cars in Prince George. There is no argument as to whether that reloading took place. I place reliance on information contained in the Company's shipping reports which were provided as Exhibit 5 to establish the time the stored lumber was reloaded. The lumber was transported from the mill to Prince George by truck. The trucks were loaded at the mill by the regular truck loading crew. That loading of lumber and the hauling to Prince George has not been brought before me as a complaint. What has been presented is the reloading of the lumber at Prince George. However, to establish the complete time frame of the exercise I note truck shipments started on March 14, 1994 and ceased on April 7, 1994. Reloading of lumber commenced on May 16, 1994 with the last carload shipped on July 22, 1994.

¶ 35 Article XVI, Section 7 of the Agreement says:

¶ 36 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.

¶ 37 At times the meaning of contract language becomes confounded because of a misplaced punctuation mark or wording that can be read in more than one way. When that is the case ambiguity is created and the intent of the language must be determined. I find the language of Article XVI, Section 7 to be clear and non-ambiguous and that paragraph b) is written in proper form in relation to paragraph a).

¶ 38 Union counsel properly reminded me of the importance of this section of the Agreement. I fully agree that Section 7 is very important in the determination of the parties' rights covered by the Agreement. While it does say what the Company cannot do, it also confines those restrictions to contracting out work performed by employees in the bargaining unit at the effective date of the Agreement.

¶ 39 The mill car loaders are employees in the bargaining unit. The first question I must answer is what work was being done by the car loaders at the effective date of the agreement. After I reach a decision on that question I can consider whether there has been a violation by the Company of Article XVI, Section 7 of the Agreement. Evidence also shows that lumber shipped from the mill on trucks was loaded by bargaining unit employees. This evidence establishes as fact that lumber loading at the mill was work performed by employees in the bargaining unit.

¶ 40 The lumber loaded by mill crews was and is transported to many destinations throughout the world. Some are interim destinations where it is rehandled into storage areas where it is kept until the Company finds markets for it. The lumber is then reloaded and shipped to the next destination by rail, truck and ship. The work of reloading away from the mill has been done on contract by people who are not employees in the bargaining unit. This practice is one used for at least twelve years.

¶ 41 The evidence adduced by the Union and the Company at the arbitration hearing shows mill crews have not, at any time, done reloading of lumber away from the mill premises.

¶ 42 It is the Union's position that mill car loaders have always loaded C.N.R. rail cars and therefore when C.N.R. rail cars were loaded in Prince George that work was work that was being performed by employees in the bargaining unit at the effective date of the Agreement. The mill car loaders are employees in the bargaining unit. The first question I must answer is what work was being done by the car loaders at the effective date of the agreement. After I reach a decision on that question I can consider whether there has been a violation by the Company of Article XVI, Section 7 of the Agreement. Evidence also shows that lumber shipped from the mill on trucks and rail cars was loaded by bargaining unit employees. This evidence establishes as fact that lumber loading at the mill was work performed by employees in the bargaining unit at the effective date of the agreement.

¶ 43 The lumber loaded by mill crews was and is transported to many destinations throughout the world. Some are interim destinations where it is rehandled into storage areas where it is kept until the Company finds markets for it. The lumber is then reloaded and shipped to the next destination by rail, truck and ship. The work of reloading away from the mill has been done on contract by people who are not employees in the bargaining unit. This practice is one used for at least twelve years.

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¶ 46 The terms of Article XVI, Section 7 b) have been met when the letter of understanding dated December 7, 1987 was signed by the Union and the Company.

¶ 47 The job listing in Section II - Work Contracted Out Completely - which is useful to the case at hand is:

Lumber transportation from mill yard, i.e. truck and rail.

¶ 48 The dictionary meaning of the word "from" is varied and among those variations the meaning is defined as: out of; toward another place, noting transmission, withdrawal, removal, departure, etc.

¶ 49 The Union has not contended the hauling of lumber to Prince George contravenes the Agreement. It is my conclusion that the parties concerned have, for a long period of time, recognized the Company's contractual right to transport lumber from the mill to other destinations by the use of contractors. Included in the transportation of lumber from the mill, or in other words away from the mill, the lumber has been reloaded and reshipped to markets throughout the world. What then can make the reloading in Prince George different from reloading in any other location that the Company has used? The Union, contends the difference is the reload in Prince George was onto C.N.R. rail cars and it is the mill car loaders' work to load C.N.R. cars. I do not recognize that contention as being valid.

¶ 50 My decision is that it is the definition of the work being done that matters when deciding if a contravention of the Agreement has occurred.

¶ 51 The work being done by employees in the bargaining unit on the effective date of the agreement and in particular by car loaders or car blockers was the initial loading of rail cars at the mill with lumber produced by the Company's sawmill. The loading of cars at any other location was not being done by mill car loaders, nor had those crews loaded cars away from the mill at any time in the past. The matter of the cars loaded at Prince George being C.N.R. cars has no significance in the determination of whether the Company contravened the Agreement when the lumber was loaded in Prince George.

¶ 52 When the Union and the Company signed the letter of understanding dated December 7, 1987 they agreed lumber transportation from the mill yard, i.e. truck or rail, would be done by non-bargaining unit people on a contract basis.

¶ 53 The reloading of lumber onto rail cars in Prince George in May, June and July 1994 was a component part of lumber transportation from the mill yard.

¶ 54 The Company was not in violation of Article XVI, Section 7 a) or b) of the Agreement when lumber from the mill was reloaded in Prince George in 1994.

¶ 55 The grievance fails.

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