IN THE MATTER OF AN ARBITRATION

Between:

Slocan Group (Plateau Division)

(the "Company" or "Employer")

and:

IWA Canada, Local 1-424

(the "Union")

Concerning a Grievance of the Union Plant Committee

Arbitrator	**Alex Brokenshire**
For the Company	**Thomas A. Roper**
For the Union	**Sandra Caffrey**
Date of Hearing	**February 14, 2003**
Date of Award	**March 12, 2003**

The Arbitration hearing was held in Vanderhoof, B.C. on February 14, 2003.

The question before the Board was formulated following the parties' opening presentations. It is:

1) Is the Company in violation of a term or terms of the Collective Agreement which is in force between the parties when payment to employees is made at the rate of time and one half of regular rate when they regularly come to work on Sunday and continue to work into the midnight production shift.

I

Ms. Caffrey outlined the Union's case. She submitted that the calculation of premium pay to employees who come in to work before midnight on Sunday and continue to work into the regular Monday production shift (12:00 midnight to 8:00 a.m.) should be paid at

the rate of two times (2) regular rate for the hours worked on Sunday rather than the one and one half (1½ X) rate presently being paid by the Company.

She substantially based that contention on the Union's construance of Article VII: Section 1: Paragraphs a) and b) of the Collective Agreement. These read as follows:

Section 1:

a) The regular hours of work shall be eight (8) hours per day and forty (40) hours per week, Monday to Friday inclusive.

b) Overtime will be paid at rate and one half for all hours worked in excess of eight in a day, and for Saturday and/or Sunday, with the following exceptions.

Double straight time rates shall be paid for the following:

i) Hours worked in excess of eleven (11) hours per day.

ii) Hours worked on Sunday by employees who also have worked five (5) shifts during the preceding six (6) days.

iii) Item ii) above shall not apply to employees who work on Sunday as a regular scheduled day.

iv) For the purpose of this provision a Statutory Holiday shall be considered as a shift worked.

Ms. Caffrey described shifts worked in the Company's sawmill and planer. She said a graveyard maintenance crew worked midnight to 8:00 a.m. – Monday to Friday. They had one half hour for lunch, thereby working seven and one half hours and receiving eight hours pay at the straight time rate.

In July 2002 the Company commenced a graveyard production shift. That shift commenced at midnight and continued to 7:00 a.m. – Monday to Friday. One half hour was taken for lunch thus the people working that shift work six and a half hours and were paid for eight.

Certain tasks had to be carried out before the new graveyard production shift started after the operation had been down.

Prior to July 2002 there was no production graveyard shift working from midnight Sunday to 8:00 a.m. Monday. That circumstance provided a blank operating period which allowed the graveyard maintenance and clean-up crews to carry out the necessary preparations for the start-up of the Monday 8:00 a.m. production shift

The preparation for production start-up required the following tasks to be done:

- Start machines to see they ran O.K.
- Electrician check and clean equipment such as scanners.
- Test start the chipper system.
- Light the burner so it would be hot before the production shift started.

These tasks, and maybe some others are assigned to be done before the first production shift starts at Sunday midnight.

Employees assigned to the pre-start-up work report at different times ranging from 9:00 p.m. to 11:00 p.m. and continue working until the end of the first production shift at 8:00 a.m. Monday. For this work employees are entitled to some premium pay.

Ms. Caffrey said the dispute centres on how much that premium pay should be.

The Company has employees paid time and one half regular rate for hours worked on Sunday before midnight if they continued to work to the end of the contiguous Monday production shift which ends at 7:00 a.m. on Monday.

The Union contends those hours should be paid at double time. That contention is rooted in the Union's reading of Article VII: b) ii).

Ms. Caffrey said that Letters of Understanding between the Union and the Company confirm that the working of overtime is not mandatory. These letters also set out the call out preference for those employees who are asked to work overtime.

Ms. Caffrey anticipated the Company would rely on Article VII: b) iii) of the Agreement which says hours worked on Sunday do not attract double time if those hours are a regularly scheduled day. The Union's position is the regular scheduled days are midnight to 8:00 a.m. Monday to Friday and hours on Sunday are not part of a regular schedule. The voluntary overtime hours worked are in addition to the regular schedule.

Ms. Caffrey commented that if the Company contends an employee's regular schedule starts at that employee's reporting to work time, say 9:00 p.m. on Sunday, the pay received should be:

9:00 p.m. to midnight –	pay 3 hours @ 1½ X =	4½ hours
Midnight to 5:00 a.m. –	pay 5 hours @ 1 X =	5 hours
5:00 a.m. to 8:00 a.m. –	pay 3 hours @ 1½ X =	4½ hours

Total payment is equivalent to 14 hours at straight time.

14 hours arrived at by this alternative way has the same end point as paying:

> 9:00 p.m. to 12:00 midnight Sunday = 3 hours @ double time is the same as 6 hours straight time.
>
> 12:00 midnight to 8:00 a.m. Monday = 8 hours at straight time – total payment would be equivalent to 14 hours at straight time.

The Union says the Company is trying to eliminate Sunday premium pay.

Ms. Caffrey considered it likely the Company would introduce a decision made by Mr. H. Allan Hope in 1982 when he acted as the interpreter in a case that embodied circumstances similar to those present here. She said there were some differences

regarding the facts of the two cases. She also said there had been a subsequent decision by another interpreter that would be introduced by the Union for consideration.

II

Mr. Roper, Company Counsel, opened by saying that the "facts" of this case are not at issue. However, the Company disagrees with the characterization of the facts by the Union in its attempt to get double time pay.

He drew attention to two interpretations which were made regarding shift extension, caused by early start on Sunday and overlapping into Monday.

He contended that an interpretation made by Arbitrator H. Allan Hope in 1982 must stand unless changed in contract bargaining between the parties. This has not happened. It is questionable as to whether I, as Arbitrator in the instant case, can decide differently than Arbitrator Hope.

The Company and the Industry is concerned that contract interpretation is being assailed.

A second interpretation made by Arbitrator Thomas Berger in 1975 also is supportive of the Company's position. Arbitrator Berger's interpretation has stood the test of time for many years.

The Hope interpretation was made arising from a dispute between North Cariboo Forest Labour Relations Association – and – International Woodworkers of America, Local 1-424 and 1-425.

The Berger interpretation was made between companies represented by Interior Forest Labour Relations Association – and – International Woodworkers of America Locals 1-405, 1-417 and 1-423 pursuant to the terms of the British Columbia Southern Interior Master Agreement.

Mr. Roper said that to win its case the Union must show clear contract language supporting its position that double time should be paid. It also was necessary to show that the Hope and Berger interpretations do not apply to this dispute.

The Union relies on the wording of Article VII: Section 1: b). However, when this is read carefully it is shown that overtime is paid at time and one half. Double time is paid for certain exceptions.

He disagreed with the Union's position that Sunday work attracts premium pay and the concerned employee is also paid time and one half for hours worked in excess of eight which are contiguous with the Sunday hours worked.

The Hope and Berger interpretations show that such hours worked are part of Sunday's regular scheduled day and are therefore deprived of double time by the language of Article VII: Section 1: iii).

The Union may argue that the Letters of Understanding show employees are not forced to work overtime. They also show a preference list for employee call-ins. The Company maintains that, regardless of the Letters of Understanding, it maintains the right to assign employees to work that needs to be done if no employee voluntarily answers a call-in. Mr. Roper said the content and application of the Letters of Understanding do not have to be dealt with in the instant arbitration case.

The cited interpretations will address whether or not the hours worked before midnight on Sunday are a part of a regularly scheduled day. That period has been regularly scheduled since July, 2002.

III

Ms. Caffrey called three witnesses in support of the Union's grievance.

The first called was Curt Helland, who is Vice-Chair of the Plant Committee. He has been employed at this operation since 1984 and has done a number of jobs. He is presently a millwright apprentice.

He said that graveyard production shift hours were midnight to 7:00 a.m. Employees have a one half hour lunch break, work six and one half hours and are paid eight hours' pay at straight rate.

No graveyard production shift – midnight Sunday to 7:00 a.m. Monday had been worked at the mill for many years.

Some crews had regularly worked the graveyard shift from midnight Sunday to 8:00 a.m. Monday. A clean-up crew and a maintenance crew were scheduled and worked Monday midnight to 8:00 a.m. Monday to Friday.

In July 2002 the Company started up a graveyard production shift starting at 12:00 midnight Sunday.

The start-up of that production shift made it necessary to do some work before midnight which was preparatory to the start of the graveyard production shift.

One employee who was doing such work complained to the Union that he was being paid at time and one half when he thought he was entitled to double time. Mr. Helland looked into that complaint and found there were several other employees who were coming in to work before midnight on Sunday and then continuing to work the graveyard shift. Because of this he filed a "Plant Committee" grievance.

One of the pre-production tasks entailed the stripping and lighting of the waste burner. This was required so the burner would be ready to receive waste when the graveyard shift started. This job was done by the Clean-up/Chainsaw Operator.

The relief operator at "A" mill started machinery to see it was functioning correctly. Also a loader operator came in to haul waste to the burner. The relief operator does not work every Sunday, the loader operator does; he works from 10:00 p.m. Sunday to 7:00 a.m. Monday. He is paid time and one half for the first two hours of work. Since the graveyard Monday shift started up in July, 2002 an apprentice electrician has come in early to check scanners and other electrical equipment. Initially he was paid at double time for the hours worked before Sunday midnight but now is paid time and one half.

Two millwrights usually come in before midnight Sunday. They are working in the planer and continue to work into the graveyard shift.

There are a number of maintenance people from various trades who work overtime on the weekends. Those wishing to come to work on weekends on mill maintenance sign a posted list. When call-ins are needed for weekend maintenance the employees who have signed the list are called. They are paid double time for such work.

Before the commencement of the weekend production shift in July 2002 the person on the "chainsaw" job lit the burner during the non-production shift (12 midnight – Sunday – 8:00 a.m. Monday). Since July 2002 the chainsaw operator is given first chance to come in before midnight Sunday and light the burner.

Under cross-examination Mr. Helland confirmed his testimony that trades people who sign the call-in list and are called and work on the weekend are paid double time for hours worked. Those who do not sign the call-in list are not called. He says this means that weekend overtime work is voluntary on the part of the employees.

He agreed that employees such as the clean-up/chainsaw operators and the clean-up/ramrod operators who come to work before Sunday midnight and continue into the midnight production shift, are not drawn from a call-in list. There is a requirement that

preparatory work be done before Sunday midnight to allow the start-up of the midnight production shift The incumbents of the clean-up/chainsaw and clean-up/ramrod operators are in that category. They regularly but not always work on Sunday and continue working the midnight shift.

The lighting of the burner is one of several jobs that has to be done to allow the shift to start.

When asked, the witness reiterated that overtime work was voluntary and could be refused by employees, even to the point that the mill would have to shut down.

Sergio Cocovaz, who is classified as a clean-up/ramrod operator, gave evidence of work he did before and after the start of the July 2002 midnight production shift.

He had been employed at the mill on a regular basis for about six years. He attained his job classification in the mill by answering a job posting which was put up throughout the mill. After gaining the clean-up/ramrod job he carried out the duties required. At other times, before being the clean-up/ramrod operator he said he had worked on the "blow down" crew. Periodically the mill was cleaned end to end and blowing down of sawdust, etc., was part of that clean-up. He possesses a First Aid Certificate and from time to time provided first aid coverage to mill employees in different parts of the mill.

His testimony is that he was paid double time for all hours worked on Saturday and Sunday before July 2002.

Since that time it has been necessary to do certain tasks before midnight Sunday to enable the introduced midnight production shift to start-up.

One of the jobs to be done was lighting the burner. He explained how that was done. That and other jobs required him to start work at 9:00 p.m. on Sunday and the continue working through to the end of the midnight production shift. For the hours worked on Sunday since the start of the July 2002 production shift he has been paid time and one half of the regular rate.

He said when the July 2002 shift was starting the Company asked him if he would come to work at 9:00 p.m. Sunday. The Company knew he could do the job so he was asked and agreed to come in three hours early.

Since that time he has come in at 9:00 p.m. Sunday unless he was unable to do so. In that case he would phone and so advise.

The witness in cross-examination said the mill could run for a time without the burner being operational. However, it had to run eventually to dispose of waste.

Gerry LePage who is a "Sawmill Relief Operator" told the hearing that prior to working in his present job he had been an oiler in the sawmill. In that capacity he had worked some weekends. He had signed the call-in sheet like other maintenance people who wanted Saturday and/or Sunday work. For this work he had been paid double the straight time rate.

When the midnight production shift was starting in July 2002 he was a Sawmill Relief Operator. Mill supervision asked him if he was interested in coming to work before midnight Sunday and continuing to work the midnight shift.

The early start would provide a period of time when he would check the operational equipment to make sure it was in running order. He agreed to come to work before midnight on Sunday. He did this for probably four weeks. He was then told by his supervisor that he was being paid at time and one half the regular rate. He considered his pay should be double time so he advised he supervisor he did not want to continue coming in before midnight. This declination did not cause any problem for him. He did not know if someone else checked the equipment. He also said that during the four weeks of early reporting he was working a lot of overtime and he couldn't say what premium he had been paid for the four weeks of early start.

Mr. Roper asked the witness how the pre-operation equipment check was being done. Mr. LePage replied that he had seen supervisors doing it. This is work that should be done by members of the bargaining unit. The matter had not yet been grieved.

IV

Mr. Roper called Don Simpson who was the first and only Company witness.

Mr. Simpson has been employed by the Company since 1989.

Before becoming Maintenance Superintendent in 1999 he worked as the "Quality Control Supervisor in the sawmill and planer.

The witness enumerated the jobs which were required in preparation of the weekend midnight production shift. Those cited were clean-up/chainsaw, clean-up/ramrod operator, loader operator, electrician and planer millwright. These employees were required in all cases to assure a proper start-up of the midnight production shift.

He testified that the early start was a regular requirement. The production shift was needed. It was not "going away". When asked, Mr. Simpson said that in the past supervisors had, on the weekends, checked the safety lock-outs of motor control centres and other safety lock-outs.

Mr. Simpson said that after Mr. LePage had stopped coming in early, supervisors have continued with their lock-out checks and also work done by weekend maintenance crews.

When shown a paper (Exhibit 7) the witness identified it as being a record of time worked by the clean-up/chainsaw and clean-up/ramrod operators. Shown is their overtime worked on Sunday prior to the start of the production shift. Exhibit 8 is a sheet showing overtime worked by the log loader.

Mr. Simpson testified that scheduled maintenance shifts on Saturday were paid time and one half and the scheduled Sunday shifts were paid at double time.

A heavy duty mechanic in the mobile shop was scheduled to work 11:30 p.m. Sunday to 7:30 a.m. Monday. He has been paid straight time as long as the witness could remember. During the spring break-up the log yard Wagner operators work evening

hours when the frost stabilizes the ground. They are paid straight time rates and time and one half after eight hours' work. This is a circumstance of long-standing.

In cross-examination, Mr. Simpson agreed with Ms. Caffrey's suggestion that he was not usually in the mill when the midnight Sunday production shift started so therefore he could not know what supervisors were doing at that time. He said he only knew what the foremen told him. He did not dispute Mr. LePage's testimony. Mr. Simpson, when asked, said that response or lack thereof by employees to come to work for the midnight shift preparation had not posed a problem. This was important work. It would not be acceptable if employees declined to work on their regular scheduled shift.

V

Ms. Caffrey opened the Union argument by drawing attention to the contract wording as set out in Article 7: Section 1 a) and b). She said for many years the regular hours of work had been defined as eight hours in a day; forty in a week, Monday to Friday.

The introduction of the graveyard production shift on the weekend created overtime opportunities which are in addition to the regular work hours. Therefore the exemption from paying double time to employees who work on Sunday as a regularly scheduled day is not in effect. The hours worked before Sunday midnight and which are contiguous with the hours worked on the production shift after midnight, should be paid double time under the terms of the Collective Agreement.

The Contract also says double time is to be paid for hours worked on Sunday, if the employee works five shifts during the preceding six days.

The concerned employees have met or surpassed those requirements by at times working a shift on Saturday making six shifts in the preceding six days. They should be paid two times regular rate.

The fact that employees can and do refuse to work overtime on the weekends shows that these shifts are not regularly worked shifts within the meaning of the contract and therefore do not exempt the company from paying them at double time for the hours they work on Sunday which overlap into the midnight production shift.

Ms. Caffrey read from the Company's record of overtime worked by several employees throughout the operation (Exhibits 7, 8, 9 & 10). They are in to work on regular Sunday shifts and are paid two times the regular rate of pay for the jobs they do in many cases. The only difference in amount of overtime being paid is the double time paid to the aforementioned employees and the time and one half rate paid to the employees who come in prior to and continue on the midnight production shift. For those hours they have received time and one half of rate.

Ms. Caffrey argued that the Company's practice of differing the overtime paid to the employees who are considered to be a part of the midnight shift while starting early and others who perform work on Sunday is wrong.

She said the company's position in this grievance should be rejected based on the wording of the agreement.

That wording states that the regular hours of work shall be eight in a day and forty in a week, Monday to Friday inclusive. This is more than a benchmark, it prescribes what the regular schedule shall be. A shift longer than eight hours in a day is not permissible to be scheduled on a regular basis over certain periods of time.

In support of that argument she provided a Brief of Authorities which contained an interpretation decision by Arbitrator Donald R. Munroe in the matter of a dispute between Pinette and Therrien Mills Ltd. and International Woodworkers of America, Local 1-425 and dated August 19, 1986.

She spoke at some length regarding the Munroe interpretation which she said showed that the Company could not correctly regularly schedule more than eight hours in a day.

The Company could schedule a regular eight hour shift on Sunday which would be exempt from the double time provisions of the contract.

However, in the instant case the argument for the exemption of the payment of double time should be rejected. It should be concluded that employees have worked "hours on Sunday" and must be paid two times the regular job rate for such hours worked.

The Union presented an alternative argument. It was: employees who start work on Sunday and overlap into and complete the midnight production shift should be paid time and one half for the hours worked on Sunday and time and one half for the hours worked over eight in the shift that started on Sunday. If the Company were to argue that this method of payment was "pyramiding" it would not be a valid argument. The Union's alternative claim for pay is based on the application of the contract language that provides for Sunday premium pay and also the language that dictates that overtime at rate and one half for all hours worked in excess of eight in a day will be paid.

I have very carefully read the cases contained in the Union's Brief of Authorities.

In anticipation of Mr. Roper making argument involving two previous contract interpretations, Ms. Caffrey contended the Arbitrator should not accept those interpretations as being applicable in the case before him. The facts were not the same.

The cited interpretations are:

1) North Cariboo Forest Labour Relations Association

   – and –

   International Woodworkers of America, Locals 1-424 and 1-425

   Arbitrator: H. Allan Hope

   Award Date: April 26, 1982

2) Companies represented by Interior Forest Labour Relations Association

   – and –

International Woodworkers of America
Locals 1-405, 1-417 and 1-423
Arbitrator: T.R. Berger
Date of Hearing: October 30, 1975

In closing Ms. Caffrey drew attention to the wording of Article VII: Section 6 which says:

> "It is agreed between the parties that if three (3) hours or less are necessary after midnight Friday or on a Statutory Holiday to complete the shift which commenced on Friday afternoon, or the afternoon preceding the Statutory Holiday, time worked after midnight to complete this shift will be paid at straight time."

The parties to the agreement had negotiated that language. No similar or identical language appears in the contract regarding hours worked on Sunday. Therefore, there is nothing in the Agreement that allows the Company to be relieved of paying double time to the employees who have processed the grievance which is before this Board of Arbitration.

VI

Mr. Roper opened argument by saying the Company's position in chief was short.

He provided a Brief of Authorities which, along with other decisions of arbitrators, contained the interpretations made by Arbitrator Hope and Arbitrator Berger to which Ms. Caffrey had spoken.

Mr. Roper argued that the Hope interpretation was binding on "Conifer" members. The name Conifer is a contraction of "Council On Northern Interior Forest Employment Relations". The Association has been active for many years and was formerly named the

"North Cariboo Forest Labour Relations Association". Arbitrator Hope's interpretation was provided prior to the legal change to "Conifer" in 1987.

Mr. Roper argued that the Hope interpretation was binding on the parties because it was made on their request. The employees concerned with this grievance are members of IWA, Local 1-424 and the Company is a member of what is now known as Conifer. While the Union is of the opinion that the facts in this case are different than those considered by Mr. Hope the Company maintains the facts are the same. Therefore, the language of the contract: Article XV Interpretations and Arbitrations, Section 1: e) supports the Company's position that the Hope interpretation is the missive which dictates the proper application of pay to the employees who have processed this grievance now being arbitrated.

Article XV: Section 1: e) reads as follows:

> "The decision of the Interpreter shall be final and binding upon the Parties of the first and second parts."

Counsel submitted that the Union was trying to convince me that the Hope interpretation was not the measure in the present case by utilizing the Munroe interpretation as a "straw man". It was based on the introduction of a new work schedule consisting of nine hours a shift, five days a week for a work schedule that produced forty-five hours of work per week.

In the present case the Company is not establishing a new schedule. It is regularly scheduling overtime work on Sunday. This makes a distinct difference between the Hope and Munroe interpretations. Evidence provided by witnesses at this hearing (Sergio Cucovaz) established as fact that he and others were regularly working the Sunday overtime as a regular feature of their work.

Mr. Roper said that employees who are called in for the first shift of the week are working the Monday shift, starting early and as such are properly paid time and one half for working those Sunday hours.

—do not.

→ critical to Plateau's 02/05/04 question. On applicable rate only if he goes home early from [redacted] Monday shift. ∴ WHAT RATES

This differs from the employees who are working a sixth shift in the week by working on Sunday or Saturday. Under those circumstances they qualify for double time payment.

Counsel orally reviewed the Hope interpretation. He concluded that portion of his argument by saying that the Hope interpretation was in force between the Company and the Union. The facts on which Mr. Hope had ruled were basically the same as those in the present case and therefore it was not open to me to make a different decision than that made by Mr. Hope.

In citing interpreter Berger's 1975 Southern Interior findings Counsel noted Mr. Berger had based much of his decision on the regularity with which an employee expects to go to work on specific days.

Counsel spoke to the Union's alternative position of paying time and one half for hours worked before Sunday midnight and then again paying time and one half for hours worked after eight work hours had been completed.

He argued that to pay in that manner was pyramiding hours that had been paid at overtime rates.

In any event, the Hope interpretation establishes the way wages must be paid in this case. This being the case there is no need to get to consideration of the Union's alternative position.

Ms. Caffrey responded briefly by saying while interpretations can be the determining factor in some subsequent cases, that is also not always so. Facts can differ and other arbitration decisions can have a bearing on new decisions. She said other cases in the Union's Brief of Authorities should be considered by me while reaching my decision in this case.

She was surprised by the Company's position that I did not have the right to look at a decision which differed from Mr. Hope's interpretation. She had not been cognizant of that position until Mr. Roper's closing argument.

My notes show that Mr. Roper, more or less in passing, did mention that notion in his opening presentation.

VII

The basic facts in this case are not in dispute.

Before July 2002 the Company did not run production shifts on Saturday or Sunday. That left the weekend open to effect repairs in the operation as needed. It also allowed available employees to carry out certain tasks in preparation of the regular start of the Monday production day shift.

In July, perhaps on July 2, 2002, the Company started operating a Sunday midnight production shift. That shift has continued to operate to the present time.

This made it necessary to do the pre-start-up preparations before midnight Sunday rather than after midnight as was done when the first production shift worked in the week was Monday day shift.

This change, in the Company's opinion, made it necessary to schedule incumbents of certain positions to come to work before Sunday midnight, carry out the pre-operating shift preparations, do other work and then continue to work to the end of the midnight production shift.

For the hours worked before Sunday midnight they have been paid time and one half times straight rate. The Union contends these hours should be paid at double time rate. That contention is based on the wording of Article VII – Hours of Work and Overtime Section 1: b) ii. It says:

> "Double straight time rates shall be for the following:
>
> ii) Hours worked on Sunday by employees who have worked five (5) shifts during the preceding six (6) days."

The Company contents that the employees who regularly light the burners before midnight Sunday along with other employees who do preparation work for the midnight shift are exempted from the payment of double time by the wording of Article VII Section 1: b) iii. It says:

> "iii) Item ii) above shall not apply to employees who work on Sunday as a regularly schedule day."

Failing in reaching agreement with the Company the Plant Committee lodged a grievance on August 21, 2002. A copy of the Grievance Form was provided by the Union at this arbitration hearing. It is marked Exhibit #4 and reads as follows:

> "The Company is asking maintenance and clean-up people to come in on Sundays to light the burner and pay 1½ of rate rather than 2.
>
> Redress Requested
>
> Maintenance work on Sunday is a 2 X rate.
>
> Company's Reply
>
> They feel it is an extension of Monday's shift therefore the rate is 1½."

The Grievance Form as processed makes reference only to maintenance and clean-up people who come in to work to "light the burner".

During the arbitration hearing mention of other job incumbents was made in the presentation of evidence and discussion and argument that ensued.

In this case it is the amount of payment made to certain employees that is in dispute. It is not who those employees are.

That being the case I will utilize the wording of the Grievance and decide if maintenance and clean-up people who come in to work on Sunday to light the burner are to be paid one and one half or double time for the hours they work on Sunday.

Both the Union and the Company provided me with Briefs of Authorities. I have read all of the cases provided and have re-read three of them. These are interpretations made by three different interpreters. All are based on Collective Agreements in British Columbia's forest industry. The wording in those agreements in the Articles interpreted is the same or substantially the same as the wording in the current agreement between the parties in Arbitration: Slocan Forest Products Ltd. – Plateau Division – and – IWA Canada C.L.C., Local 1-424. That wording, as previously cited, is found in Article VII – Hours of Work and Overtime, Section 1.

The three interpretations to which I have alluded are between:

(1) Company's represented by Interior Forest Labour Relations Association

– and –

International Woodworkers of America
Locals 1-405, 1-417 and 1-423

Interpreter: Thomas R. Berger.

Date: October 30, 1975.

The question which was asked was:

> "Can Albert Vanderlaan, Tom Knight and Warren Irwin be said to 'work Sunday as a regularly scheduled day', in terms of Article VIII, Section 1(b) (iv) of the 1974-1975 British Columbia Southern Interior Master Agreement."

Mr. Berger referring to the cited Article of the Agreement said:

> "It is clear that if Vanderlaan, Knight and Irwin work on Sunday "as a regularly scheduled day" they are only entitled to receive rate and one-half. That is what the Company is paying now. If, on the other hand, when they work on Sunday it is not 'a regularly scheduled day', then assuming they have worked five shifts during the preceding six days, they are entitled to double straight time rates pursuant to Article VIII, Section 1(b)(ii).

> The work these men do consists of starting up the boilers on Sunday so that the shift that begins at 12:01 a.m. on Monday can go ahead. The evidence is that each of them does this work on a regular basis."

Union Counsel argued that it was unlawful under the Lord's Day Act of Canada to employ the men to fire up the boilers on Sunday. That, rather than it being a "regularly scheduled day" was an unlawfully scheduled day.

Mr. Berger disagreed with that position and said:

> "It is my view that a "regularly scheduled day" is a day when an employee expects routinely to go to work. It may be unlawful for the Company to employ him to work on that day, but it is still "a regularly scheduled day.
>
> The Collective Agreement does not provide that these employees shall receive double straight time rates on Sunday. The regularity of their Sunday has nothing to do with the question whether it is lawful or unlawful. It has simply to do with the question whether they go to work routinely on Sunday or on an emergency basis."

Mr. Berger's interpretation confirmed the Company's contractual right to consider the work on Sunday to be a regularly scheduled day and therefore pay at one and a half times regular rate was correct.

(2) North Cariboo Forest Labour Relations Association

– and –

International Woodworkers of America
Locals 1-424 and 1-425

Interpreter: H. Allan Hope.

Date: March 16, 1982.

Interpreter Hope defined the basis of the dispute which led to the request for his interpretation by writing as follows:

> "In this arbitration the parties seek the interpretation of a provision of the Collective Agreement as it applies to employees who work a 42-hour week. On their first shift each week they commence work at 10:00 p.m. on Sunday and work a ten-hour shift through into Monday at 8:00 a.m. They then revert to an eight-hour shift commencing at 12:01 a.m. for the following four days of the week. The purpose of the unusual Sunday shift is that the employees report in advance of the full crew to prepare the mill for start-up at midnight. It is a situation that arises where a mill shuts down for a Saturday and Sunday or for a Sunday and then commences operations with a midnight start-up. The employees who report for the start-up process receive pay at the rate of time and one-half for the first two hours but the Union argues that they are entitled to receive double time. The arbitration is raised pursuant to a provision of the Collective Agreement, a master agreement negotiated on behalf of a number of employers, providing specifically for the resolution by arbitration of disputed interpretations of the Agreement..."

Interpreter Hope said the provision requiring interpretation was Article 7 (1)(b). He set out the wording of that part of the Collective Agreement as it was then written.

A comparison with today's Agreement shows the wording has remained the same. That wording has been set out earlier in this award.

Mr. Hope, in his interpretation, reviewed the submissions made by the parties with references to the pertinent sections of the Collective Agreement and the decisions of other arbitrators and concluded by writing.

> "I have already mentioned the provision that makes it clear that the Employer can schedule a shift over two calendar days. In my

view the language used means that an employee who is scheduled to work on a Sunday as part of his regular work schedule cannot claim the higher premium. The language cannot be stretched to require that the work scheduled to be performed on Sunday consist of a full eight hours as part of a five-day schedule in order to fall within the exemption.

I am fortified in my interpretation by an arbitration award published by T.R. Berger, now the Honourable Mr. Justice Berger of the Supreme Court of British Columbia, who was functioning in the role of Interpreter of the Master Agreement between Interior Forest Labour Relations Association and the International Woodworkers of America in what is called the Southern Interior Master Agreement. In that award, published on October 30, 1945, Mr. Berger, as he then was called, was required to interpret a similar provision in the Southern Interior Master Agreement. He confronted a factual situation similar to the one before me. In disposing of the argument that employees were not working on Sunday as a "regularly scheduled day" as contemplated in the exception in Article 7(1)(b)(iii) he said, "It is my view that a "regularly scheduled day" is a day when an employee expects routinely to go to work."

The Union urged that Mr. Berger was not called upon to deal with the arguments advanced by the Union in this arbitration and the matter was disposed of on more narrow grounds. A reading of the award discloses that the contract language and the factual circumstances were precisely similar to the dispute before me and the reasoning addresses squarely the principle issue in interpretation confronted by me. I agree with the interpretation of Mr. Berger and, in any event, I disagree with the interpretation urged by the Union."

I will now determine whether one or more of the three interpreted awards set out above are helpful or determinative in reaching the decision in the case before me.

Before doing so I make this statement regarding the other arbitration awards provided to me by the Union and the Company.

In the process of arbitration each case has facts, circumstances, character, different contracts and at times a singular effluvia which affect the decision. While I found the cases presented to be interesting I did not find them to be of great value in the formulation of my decision.

Interpreter Munroe was asked to interpret two questions. They were:

1. Did the Company have the right to establish a nine-hour shift for a four-week period in November/December, 1985?

2. If the answer to that question is "yes", did any of the employees, on an individual basis, have the right to decline, without penalty or discipline, to work the ninth hour of the shift schedule?

Based on the information and arguments presented by the parties regarding the circumstances in that mill, Mr. Munroe's answer was "no". He referred the second question back to the parties for case-by-case determination.

The questions referred to Mr. Munroe were to do with the Company's right to introduce a nine-hour shift for four weeks.

The question before me asks, "Is the Company in violation of the Collective Agreement by paying time and one half of regular rate rather than double time to employees when they regularly come to work on Sunday and continue to work into the midnight production shift?".

That distinct difference renders Mr. Munroe's conclusion to be a matter apart from the case before me.

Mr. Berger's interpretation in 1975 was made based on the Southern Interior Master Agreement. The basic facts considered were very similar, if not identical, to those that are present in the present arbitration. Mr. Berger's decision has been set out above.

Because of the setting of that case, a different area of the Forest Industry and a different collective agreement, I find it to be very helpful but not determinative in the case before me.

Interpreter Hope in 1982 made a decision which was based on the Collective Agreement between the North Cariboo Forest Labour Relations Association – and – International Woodworkers of America Local 1-424 and 1-425.

IWA Local 1-424 holds certification for the employees of Slocan Group (Plateau Division) and the Slocan Group operation is a member of what was North Cariboo Forest Labour Relations Association, now Conifer.

As set out earlier, Mr. Hope considered and interpreted a situation that was at least similar and at most identical regarding basic facts as those that are present in the case before this Board. I tend to consider them to be close to being identical as two separate sets of basic facts can be.

As we know, Mr. Hope ruled that employees who regularly are scheduled to work hours on Sunday before midnight and when those hours are contiguous with the hours of the shift that begins at midnight the correct pay was time and one half the regular rate for the hours worked before Sunday midnight.

Article XV, Section 1: e) of the Collective Agreement between the Parties reads as follows:

> e) The decision of the Interpreter shall be final and binding upon the Parties of the First and Second Parts.

The interpretation was made in 1982. Since that time a number of contracts have been negotiated between the concerned parties. No evidence was provided that would show

any of those negotiations produced results that nullify or change Mr. Hope's interpretation.

It is my conclusion that interpretation remains in full force and effect.

That being said, consideration must now be given as to whether the findings of the interpretation are applicable to the Slocan employees who come in to work before midnight Sunday to prepare the mill for the start of the midnight production shift. The grievance that led to this arbitration was processed on behalf of maintenance and clean-up people who come in on Sundays to light the burner. My decision will address that grievance but it will also be applicable to the incumbent employees of other mill jobs who come to work on Sunday to prepare for midnight shift start and continue to work the midnight shift.

The deciding factor enunciated by Mr. Hope as to whether the pay for those Sunday hours should be paid at time and one half or double regular rate is predicated on the meaning of "regular scheduled day". Those words appear in Article VII, Section 1: iii) of the Agreement which says:

> iii) Item ii) [double straight time rates] shall not apply to employees who work on Sunday as a regular scheduled day.

Evidence given my a Union witness during the hearing confirmed that the affected employees were not called in from a voluntary call-in list. They knew they were coming in to work on a regular basis unless there was a personal reason that prevented them from doing so.

Interpreter Hope borrowed words from Interpreter Berger's decision which I conclude correctly identify the meaning of a "regularly scheduled day".

I fully subscribe to the words used by Mr. Hope and Mr. Berger when they wrote:

> "It is my view that a regularly scheduled day is a day when an employee expects routinely to go to work."

The affected employees who start work before midnight Sunday in preparation of the midnight production shift expect routinely to go to work according to the evidence provided at this hearing.

It is my decision that in keeping with Interpreter Hope's award the hours worked on Sunday before midnight and continuing after midnight are a "regular scheduled day". Therefore, the employees who work in that way are not entitled to double straight time rate for the hours worked before midnight. They are entitled to time and one half straight time rate.

The answer to the question set out at the beginning of this awarded is "No".

No response is required regarding the Union's alternative position. My decision is based on Interpreter Hope's award which, in reality, legally instructs the parties how payment of wages should be made in the present case.

The Grievance fails.

Signed this 12 day of March, 2003.

A. Brokenshire

A. Brokenshire
Arbitrator