Case Name:

Slocan Forest Products v. Industrial Wood and Allied Workers of Canada, Local 1-424 (Alexander Grievance)

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

[1993] B.C.C.A.A.A. no. 338
Award no. A-330/93

British Columbia
Collective Agreement Arbitration
K. Albertini, Arbitrator

Heard: (Quesnel, B.C.) October 29, 1993.
Award: November 12, 1993.
(28 paras.)

(Alexander Grievance)

Appearances:

Francis Watters, for the employer.

David Pidgeon, for the union.

AWARD

¶ 1 This is a contracting out dispute. The union is grieving the failure of the Employer to call in a bargaining unit employee to work on a Saturday with a contractor engaged to perform a major clean up of the Employer's log yard. The Union takes no issue with the contracting out of the major clean up.

¶ 2 The parties agree that the Board is properly constituted and has jurisdiction to decide the issues in dispute.

¶ 3 The Employer operates a sawmill in the Quesnel area employing members of the Union in the standard sawmill classifications. One part of the operation is the Pine Crest log yard where logs are received, sorted, and stacked in preparation for cutting at the mill. There are at least two employees regularly employed at the log yard. Kelly Kirkham is a Log Stacker Operator and as such operates a loader and stacker on alternate weeks. Brian Croy is a Truck Driver Loaderman and his duties include the regular clean up of debris in the yard. He uses a loader to accumulate the debris, load it into a dump truck which he drives to another location and buries the debris.

¶ 4 In addition to Croy's regular clean up of debris in the log yard a contractor, Joe Kopetski Ltd. is called in for overload work and to perform an annual major clean up of the yard. The annual major clean up is described by Ellen Worobetz, Payroll Clerk as a rebuilding of the yard. There is no dispute that the work involved is substantial and that there are time constraints on when it can be done. To accommodate both, Kopetski brings in a large loader and at least four trucks, with that crew the major clean up is usually completed in one day.

¶ 5 Kopetski performs other work at the mill including snow removal, sanding, major building projects, loading debris (in addition to the log yard), and cleaning up after emergencies such as a fire. When engaged in those duties his work force works along side bargaining unit employees and there is no evidence of any problems.

¶ 6 Kopetski's crew was present at the mill one week before the incident which gave rise to this grievance. On or about October 10 the Employer scheduled its maintenance crew to work over the weekend but the need for a first aid attendant was overlooked. The maintenance supervisor called a bargaining unit employee in on an overtime basis. He was required to stay on site so the maintenance supervisor had him clearing debris in the log yard. With the debris piled up the maintenance supervisor then called Kopetski and had a truck dispatched to haul the debris away. The truck arrived, the bargaining unit employee loaded the truck and it left. When Croy heard that a colleague had been called in on the Saturday, cleaned up debris in the log yard and loaded a contractor's truck he grieved. Worobetz, after reviewing the facts, concluded that the grievance should succeed and paid Croy four hours of overtime rates. Her reason for allowing the grievance was that Croy should have been the employee called in for the Saturday work, he regularly worked in the log yard; the maintenance supervisor had made a mistake.

¶ 7 The incident which gave rise to this grievance occurred on October 17, 1992. Kopetski was engaged to perform the annual major clean up of the log yard. It appears by the evidence that one loader and at least four trucks were involved. The work was performed on a Saturday and no bargaining unit employees were called in to work with Kopetski's forces.

¶ 8 Croy was going to grieve the Employer's failure to call him in that Saturday but found that he could not. He had declined an earlier offer of overtime to drive a logging truck on the Saturday and, therefore, could hardly claim that he had been denied the opportunity to perform work at overtime rates. Ted Alexander, the grievor in this case, did file a grievance.

¶ 9 Alexander had replaced Croy for nine months in 1991 when Croy was off due to illness or injury and there is no dispute that if a valid claim is established, Alexander is the appropriate bargaining unit employee to benefit. The Employer denied the grievance relying on the provisions of the Collective Agreement, a Letter of Understanding which sets out the limitations on the Employer's right to use contractors, the minutes of the meeting which establish those limitations, and its past practise.

¶ 10 The relevant language in the current Collective Agreement is found in Article XVI, Section 7 which reads:

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. The current practises and 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.

I understand the language has remained the same since it was negotiated in 1986.

¶ 11 In furtherance of Subsection (b) the parties agreed that each operation (the Employer was a member of an Association at the time) would conclude a Letter of Understanding setting out the "current practises in operation". Once the Letter of Understanding was executed the parties were bound by its content.

¶ 12 With regard to this Employer a meeting was held on February 25, 1987. Attendees included representatives from the Employer, the Local, the Plant Committee, another Local of the Union, and an employee from the mechanical shop. The Employer had prepared a list of its current practises involving contractors and the discussion centred around that list. Minutes were taken of the meeting, they were distributed to all attendees, changes were made but they did not include the log yard and will not be mentioned, all agreed with the minutes.

¶ 13 As a result the Letter of. Understanding was produced which sets out two types of current practises: "total" and "overlap". The words are self explanatory, the areas of work which were totally contracted out by the Employer, prior to the effective date of the Agreement, were on one list and those areas that involved both contractors and bargaining unit employees were on the other. "Clean up log yard and log decks" is on the overlap list. The body of the Letter of Understanding reads as follows:

RE: CONTRACTING OUT PRACTICES

As provided for in Article _____, 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 employee's 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 and hogg hauling)

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

Mobile equipment maintenance (eg. warranties, radiator repairs)

Plant and equipment maintenance (eg. warranties, kiln carts, glass repair and 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.

The Letter of Understanding has been re-signed with each succeeding Collective Agreement since 1986 and is still in force.

¶ 14 The relevant language in the minutes of the February 25 meeting includes:

(2) log yard cleanup is normally done, including hauling away, by IWA members. A contractor comes in for overload every two or three months.

¶ 15 It is the Employer's position that the above reflects its past practice with regard to the cleaning of the log yard. Worobetz, who has been employed with the Employer since 1977, first in the bargaining unit, from 1979 to 1988 as Personnel Supervisor, and in her current position since 1988 testified that for years before the Letter of Understanding was signed it used bargaining unit employees to regularly clean up and truck debris from the log yard. Contractors were only used when the work became too much for the regular crew and for the annual major clean up. The Employer has never, according to Worobetz, used bargaining unit employees on a major clean up and the Union has never raised the issue until now.

¶ 16 The Union, on the other hand, claims that this is the first opportunity it has had to challenge the Employer's practise or, alternatively, if there were other occasions when an eligible employee could have been called in, he was not aware of it. The Union refers to the 1991 clean up which was done on July 4 and/or 9, one was a Tuesday the other a Thursday. Presumably all bargaining unit employees were working so there was no claim available.

¶ 17 Also, for a period of time prior to and after 1986 no claim was available. In 1985 the Employer removed the box from the log yard dump truck and converted that truck to log hauling until 1990, when the box was returned. During that period debris was hauled by the larger hogg hauling trucks and the employee in the log yard could not claim for not being called in to haul debris when he had no truck.

¶ 18 It is Croy's evidence that prior to the box being removed, Kopetski would be called in to haul debris "if we were overloaded but we would work with him ... if our truck was available we would work with him - if our loader was free, we would use it." Croy maintains that on major clean ups Kopetski would use four of his trucks, but "we were always included."

¶ 19 Kirkham's evidence is that he's been involved in the clean up of the log yard, he has loaded trucks with debris on weekdays and weekends, and prior to 1986, when Kopetski's trucks were in the log yard, he loaded them.

¶ 20 Alexander was not able to provide evidence of past practise. His evidence centred around the Employer's alleged failure to call him on October 17, 1992. The parties agree that the practise prior to 1986, or February 25, 1987 as argued by the Employer, with regard to major clean ups answers this dispute. If I find that a bargaining unit employee has worked with a contractor during a major clean up, the grievance succeeds., If not, the grievance fails.

¶ 21 The evidence of Worobetz conflicts with that given by Croy and Kirkham. The latter say they have, Worobetz says they have not. As is often the case, the Union has no documents to support its claim. The Employer, on the other hand, adduced a number of purchase orders and/or invoices the presence of which only confirm that major clean ups have been contracted out to Kopetski. The dates of the purchase orders and/or invoices are set out below:

January 7/87	Purchase Order	Wednesday
(with note "to be started Jan 7/87")		
January 8/87	Invoice	Thursday
January 3/87	Purchase Order	Wednesday
January 5/87	Invoice	Friday
November 7/88	Invoice	Monday
November 10/88	Purchase Order	Thursday
July 14/89	Invoice	Friday
July 20/89	Purchase Order	Thursday
May 24/90	Purchase Order	Thursday
May 26/90	Invoice	Saturday

July 4/91	Invoice	Thursday
July 9/91	Invoice	Tuesday
July 18/91	Purchase Order	Thursday
October 16/92	Purchase Order (with note: "to be done October 17/92")	Friday
October 17/92	Invoice	Saturday

¶ 22 The Employer relies upon the January, 1987 major clean up saying that is was before the February 25 agreement date and reflects the past practise. As can be seen by the above, the dates confirm that major clean ups were performed but most of them were on regular working days, except for October 17/92 (which is the subject of this grievance) and possibly May 26/90. All other dates be they a purchase order or invoice fall on Monday to Fridays. The January 8/87 invoice confirms the job was to start that day, but it was a Wednesday. In the absence of any evidence to the contrary, I find that the practise shown on the documents is indicative of the practise prior to 1987.

¶ 23 On that basis the evidence of Croy and Kirkham that they worked with Kopetski on major clean ups becomes convincing. First, there is no dispute that they did work with contractors when the work was considered "overload." Also, there was no evidence that the regular log yard employee was moved out the yard when a contractor was brought in a regular working day. I recognize there was no box on the log yard dump truck from 1985 to 1990 so the practise of working with the contractor, as per Croy's and Kirkham's evidence, may have been suspended. The one Saturday job in 1990 is not determinative because of the uncertainly of whether the log yard dump truck had been restored to its log yard duties.

¶ 24 The Union's claim is not to prevent or minimize the Employer's right to use a contractor for the major clean up of the log yard. It seeks to maintain the past practise, as alleged by the Union, to have the regular log.yard employee work with the contractor on those occasions. Croy and Kirkham each with over twenty years at the mill have testified that they have worked with the Kopetski's crew during major clean ups. In a case like this I think their evidence satisfies the initial onus carried by the Union to prove its case.

¶ 25 The original Letter of Understanding and the minutes of the February 25, 1987 meeting do not assist the Employer. The Letter of Understanding shows "clean up log yard and log decks" as being in the "overlap" list. The minutes state "log yard clean up is normally done, including hauling away, by IWA members - a contractor comes in for overload every two or three months." There is no reference to major clean ups. There is nothing in either the Letter of Understanding or the minutes that indicate that major clean ups of the log yard are considered "total contract" work. If the regular log yard employee has been accepted as having worked with the contractor on overloads, the only difference in a major clean up is the amount of work. Almost all of the invoices show up to four trucks being used by Kopetski and, as stated earlier, most of the work appears to have been performed on regular working days. Accordingly, it is reasonable to conclude that the regular log yard employee worked with the contractor. If that were not the case there would have been some evidence of him being reassigned during the major clean up.

¶ 26 While the evidence, from either party, is less than perfect I am required to make a decision. On the evidence presented, I am satisfied that the grievance should succeed. Accordingly, Alexander, who was the eligible employee that day is entitled to his four hours pay at overtime rates.

¶ 27 I believe it is appropriate to state that my conclusion in this case is on the narrow point

advanced. The grievance concerns the regular log yard employee working with the contractor on major clean ups. It is not intended to impose any new limitations on the Employer's right to contract out.

¶ 28 For the above reasons, the grievance is allowed.

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