

Cited as:

**Slocan Group, Quesnel Division v. Industrial Wood and Allied
Workers of Canada, Local 1-424 (Florell Grievance)**

IN THE MATTER OF An Arbitration
Between
Slocan Group, Quesnel Division (the Company), and
IWA Canada, Local 1-424 (the Union)

[1999] B.C.C.A.A.A. No. 529
Award no. A-360/99

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

Heard: November 3, 1999.
Award: December 21, 1999.
(62 paras.)

Concerning the Grievance of Glen Florell

Appearances:

Michael Wagner, for the Company.
Sandra Caffrey, for the Union.

AWARD

¶ 1 The arbitration hearing was held in Quesnel, B.C. on November 3, 1999. The parties agree the Board is properly constituted and has jurisdiction to hear and rule on the matter in dispute.

¶ 2 Witnesses were called, sworn and provided evidence regarding Mr. Florell's grievance.

¶ 3 In her opening statement, Ms. Caffrey said the Union's position in this grievance is the Company has violated Article XVI - General Provisions of the July 1, 1997 - June 30, 2000 Agreement between the Company and the Union.

¶ 4 The section of Article XVI which the Union claims has been breached is Section 7: Contractors; paragraph (b).

¶ 5 The Union further contends the Company has also violated the terms of the Letter of Understanding signed by the Company and the Union on October 10, 1997.

¶ 6 Ms. Caffrey said the Company had shut down its Quesnel Division in the summer of 1998. While the mill was closed the Company took delivery of five Kiln Carts that had been fabricated by a contracting Company. The Union contends Company millwrights who were laid off because of the mill shutdown were capable of fabricating those kiln carts and should have done that work. The Company cannot lay off employees and then, assign work they can do to contractors. This would "fly in the face" of a deal struck by the parties and set out in the Letter of Understanding which must be read together with the pertinent section of the Agreement.

¶ 7 Michael Wagner opened by saying the facts in this case are not in dispute.

¶ 8 On July 7, 1998 the Company knew it needed kiln carts to be built. In keeping with past practice the contract for the fabrication of ten kiln carts was awarded to a contractor. The Company said kiln carts in recent years had been done exclusively by contractors. The contract was awarded on July 7, 1998. On July 20, 1998 the mill was shutdown and remained down until August 4, 1998. The reason for the shutdown was the market for softwood lumber had become very weak and continued operation of the mill for that period of time could not be carried on.

¶ 9 The Company made a decision that during the shutdown no employees would work except on essential jobs such as security.

¶ 10 When the order for the ten kiln carts was placed there was no specific date of delivery enunciated. However, five were delivered to the Company on July 31, 1998. The last five were also delivered within the mill shutdown period. Mr. Wagner contended there was no causal relationship or connection between the mill shutdown and the fabrication, on a contract basis, of the ten kiln carts. Therefore, there was no breach of the Agreement or the Letter of Understanding. If there had been no contracting out the mill shutdown would have taken place.

¶ 11 Mr. Wagner further stated the purpose of the "contracting out" language in the Agreement and the Letter of Understanding was to prevent attrition of positions within the bargaining unit. If there were no positions lost there was no breach of the contract.

Issues

The issues are :

1. Whether or not the Company was in violation of Article XVI - Section (b) of the Agreement or the terms of the October 10, 1997 Letter of Agreement when a contractor fabricated kiln carts while Company millwrights were on layoff between July 20 and August 4, 1998.
2. Are Company millwrights who were off work during the period of July 20, to August 4, 1998 entitled to be paid any wages.

Agreement

Article XVI - Section 7 (b) reads as follows :

- 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.

¶ 12 In keeping with the previously cited Article and Section of the Agreement the Company and the Union agreed to the "current practices in operations" and in a Letter of Understanding dated February 25, 1987 put the agreement in writing.

¶ 13 Appended to that letter is a page headed "Contracting out Practices". Under two column headings: Total Contract and Overlap are listed a number of job titles.

¶ 14 Under the "Total Contract" heading twenty five jobs are listed.

¶ 15 Under the "Overlap" heading thirty-two jobs are listed. One of the jobs listed as an overlap job; one that would be done by Company employees or by contract is: Kiln Carts (welding and fabrication).

¶ 16 The 1987 Letter of Understanding was brought forward and was re-signed by the concerned parties on October 10, 1997.

¶ 17 It is worthy of note that on February 25, 1987, the day the 1987 Letter of Understanding was signed, the Union and the Company held a joint meeting to discuss and arrive at the terms of the Letter of Understanding. Minutes of that meeting have been provided by the Company. There is no disagreement as to their validity. Two minutes specifically refer to kiln carts.

They read as follows:

Kiln Carts (welding and fabrication)

- Day to day maintenance is done in-house.
- Fabrication is done in-house or by contract depending on the size of the job.
- Machinist work on carts is all contract.

A specific question about kiln carts was asked. The carts are not a big priority so they get contracted out depending on what welders and other maintenance people are involved in. It's an ongoing situation - work is done on carts every Friday.

¶ 18 The first paragraph of the current and past Letters of Understanding reads as follows:

Re: Contracting Out Practices

As provided for in Article XVI Section 7, Clause (b) the following represents the current contracting out practices at Slocan Group, Quesnel Division. It is understood that the work on this list is currently performed by both contractors and bargaining unit employees. Contracting out of work on this list will not result in the loss of a bargaining unit employees' position.

Union Evidence

¶ 19 The grievor, Glen Florell was called and gave evidence.

¶ 20 He confirmed that he had been employed by the Company as a millwright since May, 1993. He said there had been three recent mill shutdowns, at Christmas 1997 running past the 1998 New Year, one in the Spring of 1998 and the July 20, 1998 two week shut down.

¶ 21 During the first two cited shutdowns no production had taken place but both Company millwrights and contractors had worked at the mill site. During the July 20 - August 4, 1998 shutdown work by millwrights had been limited to one day of work installing a motor on the edger and one millwright would work every second day to monitor, machinery required for Mill safety.

¶ 22 He explained that kiln carts were wheeled dollies which were loaded with lumber and then pushed on a track by a loader to the dry kiln. The kiln carts required constant repair. He said that in addition to repairing them he had built two. They were badly damaged so he rebuilt them.

¶ 23 He said that during the mill July 20 - to August 4, 1998 mill shutdown a contractor, Riverview Steel, built ten kiln carts at its shop and then delivered them to the mill.

¶ 24 When questioned by Company Counsel Mr. Florell said he had been aware a shutdown was coming on July 20, 1998. He was told the reason for that shutdown was the market was flooded. The Company's quota [to the United States] had been filled and therefore production had to be curtailed. It was for the same reason the 1997 Christmas and the 1998 Spring shutdowns took place.

¶ 25 The witness agreed the monitoring of machinery for safety was the checking of such things as the compressor that provided air for the mill sprinkling system.

¶ 26 Mr. Florell denied knowing that forty kiln carts had been fabricated by contractors in 1997. He said he had lost time in 1997 but had not filed a grievance.

Company Evidence

¶ 27 Dave Gunderson, who is the Executive Director of Conifer, testified that his responsibilities in that capacity encompassed negotiating collective agreements, the administration of benefit plans and training programs along with other related duties.

¶ 28 He was acting as a negotiator when the 1986 - 1987 Agreement was signed. He identified the 1987 Letter of Understanding as being the document that flowed from that Agreement regarding

"contracting out" at the Slocan Group; Quesnel Division Mill. He said kiln carts had been discussed and that job had been placed in the dual or overlap column. Showing both company employees and contractors did some work on kiln carts.

¶ 29 When questioned by Ms. Caffrey the witness said 1986 had been a strike year with contracting out being a prime issue. It was agreed there would be no contracting out in each operation until current practices were defined. That definition was reached and set out in the 1987 Letter of Understanding.

¶ 30 When asked, he said Section 7(b) of Article XVI of the Agreement allows the Company to exclusively do work listed in the "overlap" column of the Letter of Understanding.

¶ 31 Tim Spencer, the Maintenance Superintendent at the Company's Quesnel Operation testified that when there was a need for fabrication of kiln carts that work was done by a contractor. To his knowledge since his arrival at the Quesnel Mill in January 1997 the fabrication of kiln carts had exclusively been done by contractors. It was his understanding that also had been the case prior to 1997. In 1997 forty kiln carts had been fabricated by a contractor. None had been done by Company employees. Maintenance work on the carts had been done by Company employees. No grievances regarding this work had been processed in 1997. In 1998 there was a need to get more carts built and on July 7, 1998 arrangements were made to have Riverview Steel fabricate and deliver ten kiln carts. This was in keeping with the practice of contracting out the construction of the carts. Company employees had the skills to do that job but did not have the time because of other duties. Mr. Spencer said that because of softwood quotas it was required to pay more export tariffs after the quota limits had been reached. Therefore, it had been necessary to take about five weeks per year of down time. The Company's head office made the decisions relative to the shutdowns which were company wide. In the July 20 - August 4, 1998 shutdown, head office decided no one would work except on jobs that were absolutely needed to be done. The witness said that if the shutdown had not taken place the fabrication of the ten carts would have been done on contract. Running the mill takes up the time of mill employees.

¶ 32 When questioned by Ms. Caffrey, Mr. Spencer said that in the Christmas 1997 and the Spring 1998 shutdown some work had been done by company millwrights. However, the Company's head office had decided that during the July 20 - August 4, 1998 closure no work would be done. He agreed that the Union had not been told Riverview Steel would be fabricating kiln carts in that period of time. He also agreed that Riverview Steel had, at the time they got the ten cart contract, been asked to build them as soon as possible without incurring any extra expense. He was unsure of the delivery date, it could have been July 31 or August 1, 1998.

¶ 33 Ken Pettiplace is the manager of the Quesnel operation. He testified the July 20 - August 4 mill shutdown was market driven by the United States quota for softwood lumber. He confirmed the Company head office had instructed that during the two week shutdown no work would be performed in the mill.

¶ 34 Ms. Caffrey asked if the work done by millwrights in the replacing of the motor on the edger would have been in keeping with the no work during shutdown instruction from head office. The witness said that strictly speaking it was not. He also gave the same answer when asked if the fabrication of the carts by the contractor also would be contrary to head office instructions. He said, when asked, that he was aware of an upcoming plant shutdown some time in April and some time after mid April and before July 1, 1998 he had given notice of the closure to mill employees.

Union Argument

¶ 35 Ms. Caffrey said this grievance concerned an important matter, contracting out of work.. In 1986 this was a strike issue and the wording of Section 7, (b) of Article XVI of the Agreement and the Letter of Understanding that followed the signing of the Agreement attested to the importance.

¶ 36 The facts of this grievance are simple. Just before the mill shutdown in July of 1998 the Company determined it needed ten kiln carts. A contract was awarded to an outside company that built the carts during the month of July. From July 20, to August 4, 1998, Company millwrights were laid off. They were capable of fabricating the kiln carts.

¶ 37 Ms. Caffrey argued the language of the Agreement and the Letter of Understanding is written with the purpose of not allowing employees to be laid off while work they were capable of performing is done on a contract basis. That, she argues, is what is meant when the Letter of Understanding says: "contracting out of the work on this list will not result in the loss of a bargaining unit employees' position".

¶ 38 The welding and fabrication of kiln carts is listed on the job sheet attached to the Letter of Understanding. Ms. Caffrey said when the carts were built by a contractor that action amounted to the loss of bargaining unit employees' positions; millwrights.

¶ 39 The Company does not have the right to contract out work when employees are on lay off. When the Company failed to recall millwrights from lay off to build the kiln carts it was in violation of the Agreement and the Letter of Understanding.

Company Argument

¶ 40 Mr. Wagner agreed there was little if any difference between the parties regarding the facts in this case.

¶ 41 The Company recognized early in July 1998 that new kiln carts were required. In keeping with past practice ten carts were ordered from an outside contractor. A market driven two week long mill shutdown took place on July 20, 1998. While the mill was down kiln carts were delivered to the mill.

¶ 42 Mr. Wagner submitted there was no causal link between the lay off of mill millwrights and the fabrication of the kiln carts. Nor was there a loss of any bargaining unit employees' position. Therefore, there had been no breach of the agreement or the Letter of Understanding. None of the millwrights would have been working during the mill shutdown whether or not kiln carts were being fabricated. The outside contractor under all circumstances in 1998 would have fabricated the carts.

¶ 43 Counsel reiterated there was no causal link between the market driven mill shutdown which caused the lay off of all employees, except those required for essential services, and the fabrication of the ten kiln carts. He presented a brief of authorities and drew attention to cases which, he said, buttressed that premise.

¶ 44 He further argued the Company had no control over when the contractor would build the

carts other than asking it be done as soon as possible without incurring additional cost.

¶ 45 Mr. Wagner also argued that the Union had failed to prove the contracting out of ten kiln carts resulted in the loss of bargaining unit positions.

¶ 46 That combined with the lack of any causal link between the fabrication of the carts and the mill shutdown should lead to a dismissal of the grievance.

¶ 47 I have read with interest the cases contained in the briefs of authorities provided by Ms. Caffrey and Mr. Wagner. It is always interesting and helpful to read and consider decisions of other arbitrators in cases that are similar to the one under consideration. No matter how similar cases are each one has individual facts and circumstances that must be fully considered as the arbitrator arrives at his or her decision.

Award

¶ 48 The Union and the Company both emphasized the importance of the issue of "contracting out". Any of us who have been in or adjacent to the forest industry in British Columbia will be in full agreement with that assertion.

¶ 49 That importance led to the inclusion of contract language in the agreement in Article XVI; Section 7 and also to the formulation of the 1986 Letter of Understanding, originally signed by the parties on February 25, 1997. That letter has been brought forward and re-signed on October 10, 1997. The term of the current agreement is July 1, 1997 - June 30, 2000.

¶ 50 In the listing of jobs on the sheets headed "Contracting out Practices" which are appended to the Letter of Understanding the job of "Kiln Carts (welding and fabricating) is shown in the overlap column. This means Company employees or contractors are sanctioned to do that work.

¶ 51 Evidence given at this hearing establishes as fact that at least in the last few years the maintenance of the carts has been done by Company employees and the fabrication of carts has been done by contractors. Mr. Florell testified that on one or two occasions he had worked on carts that were in such bad shape he salvaged the wheels and some other parts and fabricated new kiln carts. The capability of company tradespeople to fabricate new kiln carts is recognized. However, evidence shows the division of cart maintenance and cart fabrication has been well established. The fabrication has been done by contractors. In 1997 forty carts were built by contractors. The obvious question that arises is why Mr. Florell would process a grievance when the contractor built ten carts in 1998.

¶ 52 The company's mill at Quesnel is subject to the softwood lumber tariff Agreement between Canada and the United States. That Agreement establishes quotas which control the amount of lumber that can be exported from Canada to the United States each year before additional tariffs are imposed. When these quotas were filled the company took market driven production shutdowns in its operations to control inventories pending the next quota dates becoming effective.

¶ 53 The Company's Quesnel Mill took a shutdown at Christmas time of 1997. That closure extended into the first part of January, 1998. In the Spring of 1998 the mill again was closed because of the lumber quotas.

¶ 54 During both of those shutdowns no production work was done but there was mill maintenance performed.

¶ 55 When the July 20 - August 4, 1998 market driven shutdown was planned some time before the first of July 1998, the Company's Senior Management decided no work other than that which was essential to the security and safety of the operations would be done.

¶ 56 When the contractor who was awarded the fabrication contract for the ten kiln carts built some of them and delivered all of them within the shutdown period Mr. Florell considered he should have been recalled to work at the fabrication of the new kiln carts.

¶ 57 I do not agree with that contention. I conclude the Company was not required to call back Company tradespeople to do that work. The mill shutdown was totally market driven. To use a term that appears in a number of past arbitration decisions, there was no causal link between the fabrication of the kiln carts and the mill shutdown which in turn caused Mr. Florell and other Company employees to be laid off from July 20 to August 4, 1998.

¶ 58 I also conclude the contracting of the kiln cart fabrication did not result in the loss of any bargaining unit employees' position.

¶ 59 When the mill resumed operation on August 5, 1998 the bargaining unit tradesperson's positions were intact. None had been lost. The Company is not in violation of Article XVI, Section 7 of the Agreement or the terms of the October 10, 1997 Letter of Understanding.

¶ 60 The millwrights who were laid off during the July 20 - August 4, 1998 mill shutdown, in the circumstances of this case, were not entitled to be recalled or retained on strength for the purpose of fabricating kiln carts. They are not entitled to be paid wages for that period of time.

¶ 61 Mr. Florell's grievance fails.

¶ 62 Ms. Caffrey requested that I retain jurisdiction in this case pending final settlement. I acquiesce to that request but hope the parties do not have difficulty in the finalization of this award.

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