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**Slocan Group, Quesnel Division and IWA-Canada, Local 1-424
(Durand Grievance)**

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

[1998] B.C.C.A.A.A. No. 133
Award no. A-55/98

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

Heard: February 26, 1998.
Award: March 20, 1998.
(13 pp.)

Appearances:

Frances R. Watters, for the Company.
Sandra Caffery, for the Union.

AWARD

¶ 1 The arbitration was heard in Quesnel, BC on February 26, 1998. The parties agree this Arbitration Board is properly constituted and has jurisdiction to hear and rule on the matters in dispute.

¶ 2 The issue in this case is: Was Allan Durand entitled to work the afternoon shift on April 14, 1997 for which Keith Thompson was scheduled and therefore was he entitled to overtime wages for those hours?

I

¶ 3 The concerned parties had agreed to a "Statement of Facts". 1 was provided with a typed copy of that statement.

¶ 4 No witnesses were called. Union and Company representatives presented their client's positions on this matter through oral submissions and argument. In addition both representatives provided meagre

briefs of authorities. Both commented that there is very little case history available which is germane to the case at hand.

¶ 5 From reviewing and considering the position of the parties in this dispute it is evident that there needs to be common understanding of the meaning of the clauses of the Collective Agreement which are pertinent to the case and to future similar circumstances so they do not lead to an ongoing potential for future grievances and arbitrations.

¶ 6 However, this does not leave me, as the arbitrator, free to impose a resolution of my choosing which is inconsistent with the terms of the Collective Agreement or the Labour Relations Code (the Code).

¶ 7 Part 8 of the Code in Section 82 says:

Purpose of Part

82. (1) It is the Purpose of this Part to constitute methods and procedures for determining grievances and resolving disputes under the provisions of a collective agreement without resort to stoppages of work.
- (2) An arbitration board, to further the purpose expressed in subsection (1), shall have regard to the real substance of the matters in dispute and the respective merit of the positions of the parties to it under the terms of the collective agreement, and shall apply principles consistent with the industrial relations policy of this Code, and is not bound by a strict legal interpretation of the issue in dispute.

II

¶ 8 The provided statement of facts shows the Slocan Group, Quesnel Division, operates a lumber manufacturing complex composed of two sawmills, planer mills, log yards, etc. It is located at Two Mile Fiats in Quesnel, BC.

¶ 9 Approximately 250 production employees work at the mill complex. IWA Canada, Local 1-424 is certified to represent these employees. A collective agreement is in place.

¶ 10 Mr. Durand's grievance arises from a scheduling dispute related to the time frame of on or about April 14, 1997. At that time the Company was operating on a two shift basis.

¶ 11 These shifts were:

- (1) Day Shift : Monday to Friday, with hours of 7:00 am. to 3:30 p.m.
- (2) Afternoon shift : Monday to Friday, with the hours of 4:00 p.m. to 12:30 a.m.

¶ 12 Four truck drivers were scheduled to work on the two shifts set out above. On day shift, the grievor, Allan Durand, who was the truck driver with most seniority and Gary Norrish with the next highest seniority were scheduled to work.

¶ 13 For afternoon shift Balbir Bining who was the third on the truck driver seniority list and Keith Thompson, fourth on the truck driver seniority list were scheduled to work.

¶ 14 April 14, 1997 was a Monday. Prior to the start of day shift on that day Gary Norrish phoned the Company and advised he could not report for his scheduled shift because of illness.

¶ 15 This left the operation short one truck driver on that day shift. To fill this required position for that shift the Company called the next most senior truck driver. This was Balbir Bining. Mr. Bining declined acceptance of the work. At the hearing the Company and the Union agreed that it was a recognized practice in that mill that employees, when asked to work overtime, had the option of accepting or declining the overtime work.

¶ 16 Through the illness of Mr. Norrish and the declination of Mr. Bining to work the day shift on April 14, 1997 these two employees were not available to fill the day shift truck driver requirement so the company moved on to the next alternative which was to call Keith Thompson, next in seniority, and offer him the chance of working the day shift. Mr. Thompson accepted the work. There is no dispute that Keith Thompson was correctly called in for the day shift. Time sheets entered at the arbitration as Exhibit 2 show he was paid overtime rates for the eight hours worked on day shift. The rate of pay was three hours at time and one half of the regular rate and five hours at double the regular rate.

¶ 17 Oral submissions made and entries on the time sheets establish the fact that Keith Thompson, after completing day shift continued to work through afternoon shift at straight time pay. That afternoon shift was the time he had been previously scheduled to work and he continued to work afternoon shift the remainder of the week. This also was in keeping with previous scheduling. A letter of understanding signed by the Union and the Company was entered as Exhibit 3. The subject of the letter is cited to be "Overtime Clarification", and in the first section of the letter it says:

It is understood that overtime will be given in order of seniority on the following basis:

First: Operator

For the purposes of the Letter of Understanding "Operator" is deemed as the person doing that specific job on the day in question (or on the last regular scheduled shift when determining week-end overtime).

¶ 18 Later in the Letter of Understanding the following is stated:

... Overtime that is an extension of the shift shall be given in line with seniority as above, to employees on that shift. Overtime for employees who are called into work will be given in line with seniority as above...

¶ 19 Sandra Caffery, the Union representative, submitted and argued that the Company had erred in paying Keith Thompson at overtime rates on day shift on April 14, 1997. In support of that submission she cited Article VII, Section 1, a) and b) of the Collective Agreement. This section in part reads as follows:

Article VII - Hours of Work and Overtime

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 (8) 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 (II) hours per day. . . .

¶ 20 Ms. Caffery submitted that when Keith Thompson worked the day shift on April 14, 1997 he had not worked in excess of 8 hours that day and therefore should have been paid at straight time. She argued that what actually had been done by the Company was it had changed Keith Thompson's shift to day shift from afternoon shift. Therefore, no overtime was payable for that shift and any premium pay attracted by the change of shift should be paid in conformity with the terms of an agreement regarding local issues which had been negotiated between the Union and the Company in 1988.

¶ 21 Item 14 in the previously cited Letter of Agreement reads as follows:

14. In the 1988 negotiations on local issues, the parties agreed that the Company may change an employee's shift, but if the Company does not give 24 hours notice of the shift change it must pay overtime (time and one half) for the hours worked.

¶ 22 The Union submitted that when Keith Thompson worked day shift on April 14, 1997 this constituted a change of shift for him whether or not the Company chose to call it an overtime shift rather than a change of shift. This then put two scheduled truck drivers on day shift and afternoon shift became one driver short. To fill that shift vacancy it was necessary to have one of the now designated day shift truck drivers, Allan Durand or Keith Thompson, carry on after the regular day shift. This would be in excess of eight hours that day and overtime rates would be payable.

¶ 23 It was further submitted that the terms of the Letter of Understanding would then come into force and the overtime on the afternoon shift, should then have been provided to the most senior operator doing the specific job on that day. Two operators were doing the specific job on that day: Allan Durand and Keith Thompson. Allan Durand is the senior of the two. He should have been given the opportunity of working the afternoon shift and being paid the appropriate overtime rates for his hours worked. Those rates would be time and one half for the first three hours worked on afternoon shift and double time for the remaining five hours of the eight hour afternoon shift.

¶ 24 Ms. Caffery submitted on behalf of the Union that Mr. Durand should now be paid the appropriate amount of wages that he did not get because he was not allocated overtime work on the afternoon shift of April 14, 1997.

¶ 25 Company Counsel, Frances Watters, submitted that while the facts are straight forward the case itself is not simple. On the face of the matter, to say overtime rates are payable after eight hours of work seems to be understandable. But to accept that statement in its simple form and to apply it without consideration of the total picture would create a host of problems which would create issues between the parties. Company counsel asked the arbitrator to give a ruling in this case that would resolve this case and minimize the occurrence of future problems in similar circumstances.

¶ 26 The Company's position is overtime hours are hours worked outside regular scheduled hours at

either end of a shift providing a minimum of eight hours is worked.

¶ 27 Citing the contract language set out in Article VI, Section 1, paragraphs a) and b) Ms. Watters said when paragraphs a) and b) are read together it is clear that an extension of a shift must mean an extension of regular hours. Keith Thompson worked eight hours on the afternoon of April 14, 1997. That was his regular shift. In keeping with contract language, as in paragraph b) of Section 1 of Article VII of the Agreement, the hours worked on day shift were in excess of the regular hours worked that day. Therefore, the hours worked on day shift attracted overtime rates of pay. Counsel submitted that the Letter of Understanding (Exhibit 3) did not provide assistance in this case. It says the senior operator doing a specific job on the day in question will be given overtime work that is an extension of that day. Really what is meant is extension of the shift, not the day. The Letter of Understanding does nothing more than state the obvious. It says that where overtime is required as an extension of a shift the senior operator on the specific job would continue doing it beyond the end of the regular shift. [Rather than call someone in or give the work to a more junior person who was on shift].

¶ 28 Counsel addressed the Union's contention by saying that the Company had the contractual right to change an employees shift without penalty providing twenty-four hours notice was given. However, Mr. Thompson's shift had not been, nor should it have been changed. He had worked the April 14, 1997 day shift which for him was an overtime shift. He then worked his regularly scheduled afternoon shift at his regular straight time rate of pay. To do as suggested by the Union, give the afternoon shift to Allan Durand, would provide two inequities. It would cause the company to pay overtime rates for two shifts rather than one and second it would deprive Keith Thompson of working his scheduled afternoon shift. If this were to become the method of allocation of work there would be grievances processed in protest of such action.

¶ 29 There was considerable discussion, mostly arising from questions by the arbitrator, related to "what if" scenarios. Combinations of partial shifts worked, overtime of varying hourly periods and other circumstances that could arise were discussed.

¶ 30 The Briefs of Authorities presented, as previously noted by the parties, were few in number and the cases contained were understandably related to the pertinent collective agreements. While these cases were interesting and maybe helpful in a minor way I have decided the resolution of the grievance which is before me lies within the language of the Collective Agreement between the parties and a workable application of that language.

III

¶ 31 My decision in this case must be based on an understanding of the meaning of words contained in the Agreement and also of procedures and schedules that flow therefrom.

¶ 32 Article VII, Section 1, paragraphs a) and b) is the part of the Collective Agreement that governs the resolution of Allan Durand's grievance.

¶ 33 Definition of the word "day" is required. Paragraph a) uses that word when it says: "The regular hours of work shall be eight (8) hours per day.. .". Paragraph b) says: "Overtime will be paid at rate and one-half for all hours worked in excess of eight (8) in a day.. . Paragraph b) further states: "Double straight time rates shall be paid for the following: 1) Hours worked in excess of eleven (11) hours per day..."

¶ 34 The word day has meanings which are many and varied, therefore, it necessary to view the word

within the environment in which it is used. We are considering its use within the language of a labour agreement. In Article VII, Section 1, of that Agreement the word is used without any descriptive addition. It does not say calendar day, twenty-four hour day, regular day or anything else, it simply says "day".

¶ 35 Webster's New Twentieth Century Dictionary gives many meanings of the word "day". The ones that are applicable to the case at hand say: "In industry, the number of hours devoted to labor [labour]; as, an eight hour day".

¶ 36 The dictionary further says:.. "(b) among landsmen, a days work is regulated by the custom and, in recent years, largely by the action of unions,... generally covered by a period of eight hours; in the latter sense also called a working day".

¶ 37 The parties in this dispute made no argument or submission regarding the meaning or scope of the word "day" as it is used in Article VII of the Agreement. It is my conclusion that the whole case turns on the meaning of that word as used in Article VII of the Agreement within the confines of this article of the Collective Agreement, to have meaning and substance, I have concluded it means work day. In the Collective Agreement, unless varied by arrangements of the parties to that agreement, the work day is eight hours of work which are extended to eight and a half hours overall because of a lunch break of one half hour.

¶ 38 My further conclusion of what constitutes a work day is that it includes the period of scheduled rest hours prior to the beginning of the next scheduled shift which is the beginning of the next work day. In other words a work day is a period of eight hours of scheduled work followed by the number of rest hours between the end of the eight hour work period and the beginning of the next scheduled shift.

¶ 39 When a number of work days follow one another it produces what is commonly called a shift schedule.

¶ 40 In the Mill at Quesnel there were two shifts working and these schedules were:

1. Day shift: Monday to Friday, with hours of 7:00 am. to 3:30 p.m.
2. Afternoon Shift: Monday to Friday, with hours of 4:00 p.m. to 12:30 p.m.

¶ 41 An intrusion into the hours of rest produced by the above noted shift schedules by way of a return to work because of the necessity of work requirements must then be paid at the appropriate overtime rate or rates.

¶ 42 Allan Durand and Keith Thompson were working and had worked these regular schedules for some time. On April 11, 1997, Mr. Durand work his scheduled day shift which ended at 3:30 p.m.

¶ 43 His scheduled rest hours following Friday's shift continued until 7:00 am. Monday. Those rest hours were intact and he did return-to work on Monday April 14, 1997 at 7:00 a.m.

¶ 44 Keith Thompson worked his scheduled afternoon shift on April 11, 1997 which ended at 12:30 am. His scheduled rest hours ended at 4:00 p.m. on Monday, April 14, 1997.

¶ 45 However, on Monday morning April 14, 1997, Gary Norrish, who was scheduled to work the day shift, was unable to report for work because of illness. The Company properly observing the

seniority provision applicable to truck drivers called Balbir Bining and asked him to come to work to fill the void created by the illness of Gary Norrish. Both Mr. Bining and the Company viewed this call as being a case where overtime rates would be paid. The acceptance of overtime is optional at this mill and Balbir Bining declined the work. The Company then, following the seniority list, called Keith Thompson who accepted the work and worked the day shift on April 14, 1997. This had the effect of Allan Durand and Keith Thompson working in the required two truck driver's position.

¶ 46 Allan Durand is the senior truck driver.

¶ 47 By Keith Thompson working day shift on April 14, 1997 his scheduled rest hours between the completion of his work on his scheduled afternoon shift on Friday 11, 1997 and the beginning of his scheduled afternoon shift on Monday, April 14, 1997, were shortened by eight hours. In other words the hours worked by Keith Thompson on day shift Monday, April 14, 1997 were in excess of his eight regular hours worked by him on the afternoon shift of April 11, 1997. Because of this he should have been and was paid rate and one half for the first three hours worked on day shift April three hours worked on day shift April 14, 1997 and double straight time rate for the remaining hours of the eight hour shift. The required overtime payment to Keith Thompson for his work on day shift April 14, 1997 clearly illustrates the fact no overtime rates were payable for the April 14, 1997 afternoon shift. That shift was comprised of the eight hours of his April 14, 1997 work day and no hours excessive thereto were worked.

¶ 48 In as much as there was no overtime payable for the afternoon shift of April 14, 1997 the terms of the October 28, 1994, Letter of Understanding (Exhibit 3) have no objective value in this case. In answer to the issue noted in the Statement of Facts (Exhibit IA) I have decided, for the reasons set out above:

1. Allan Durand was not entitled to work the afternoon shift for which. Keith Thompson was scheduled on April 14, 1997 and therefore he is not entitled to overtime wages for those hours.
2. Keith Thompson was paid the correct overtime rates for the eight hours he worked on day shift April 14, 1997, albeit the Company's reasons for so doing vary from those I have enunciated in this decision.

¶ 49 The grievance fails.

QL Update: 981210

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