Text:

ARTICLE VIII - SENIORITY

Section 1:

a) Notwithstanding anything to the contrary contained in this Agreement, it shall be mutually agreed that all employees are hired on probation, the probationary period to continue until sixty (60) days have been worked, during which time they are to be considered temporary workers only, and during this same period no seniority rights shall be recognized.

b) It is agreed that probationary employees will have preference over Casual Employees for any work performed during the normal work week, subject to competency.

c) It is further agreed that in the application of b) above, probationary employees will be called in for work in accordance with their hiring date, unless such call-in is beyond the control of the employer, and is subject to the employee being competent to perform the work. This obligation does not apply where the employee cannot be readily contacted or where the employee has already worked one shift in the 24-hour period.

d) Upon completion of sixty (60) days worked, they shall be regarded as regular employees, and shall be entitled to seniority dating from the day on which they entered the Company's employ, provided however, that the probationary period of sixty (60) days worked shall only be cumulative within the six (6) calendar months following the date of entering employment.

Guidelines:

ARTICLE VIII: SENIORITY

Section 1, a):

The duration of the "probationary period" was lengthened in the 2018 to 2023 Collective Agreement from the former 30 working days to 60 working days. The commencement of benefit coverage entitlement for newly hired employees was agreed to be maintained as it was under the former 30 working day probationary period. This agreement has been incorporated under the Health and Welfare Article accordingly.

Time spent on casual work while in the category of casual employee does not count as days worked by a probationary employee. *(See Case Reference #1)*

This is an appropriate point to comment on the employer's latitude to discharge probationary employees. The general arbitral authority in the forest industry regarding the employment security of "probationary" employees is that they are more vulnerable than, and to be distinguished from, the status of regular (i.e.: seniority rated) employees. Probationary employees are not afforded the full protection provided by the just cause provision, as those who have completed a probationary period are. It cannot be expected that an employer be able to assess the full capabilities and potential of a newly hired employee from a brief interview, application form and reference checks. The employer must be entitled to an opportunity to view a new hire in the specific context of his own work environment. This is the logic for the probationary period.

However, employers are cautioned that they should ensure they clearly convey all objective performance standards and expectations to the probationary employee. It is also recommended that any concerns or performance deficiencies be explained during the probationary period. Finally, if an objective decision of unsuitability is made, it is advised to execute the discharge prior to the absolute last day of the probationary period. The employer should conduct the probationary assessment in an objective, non-arbitrary, non-discriminatory manner in order to be well positioned to address a prospective post-discharge grievance. A case from West Fraser Mills Ltd., Houston Forest Products Division, dated April 14, 2005 (*See Case Reference #2)* resulted in the arbitrator reinstating a probationary employee with an additional trial period because of the manner in which he was terminated. A case from West Fraser Mills Ltd., Fraser Lake Sawmill Division, dated May 20, 2015, resulted in the arbitrator dismissing a grievance where the union claimed that the decision to terminate a probationary period was arbitrary. The arbitrator ruled that the Employer acted reasonably and in good faith and made a fair and reasonable assessment of the grievor's suitability for employment consistent with the Employer's duty to ensure a safe workplace. (*See Case Reference #3)*

Section 1 b):
According to this paragraph, probationary employees have preference over casual employees for any work during the normal work week.

However, probationary employees do not necessarily have to be provided preference over casual employees for available casual work. Article VII, Section 12 (Casual Work), paragraph d) specifies regular laid off employees shall have preference over casuals. Probationary employees are, by definition, not "regular" employees until the completion of the probationary period.

Section 1 c):

This paragraph imposes an obligation on the employer similar to that required for regular employees; that scheduling of probationary employees is done in concert with their hire date, subject to considerations: competency, availability, and whether the individual already worked one shift in a 24-hour period.

Section 1 d):

It must be stressed that completion of the probationary period occurs at the completion of sixty (60) working days. These are working days of the individual probationary employee, as opposed to the mill's working days.

If an employee does not complete sixty (60) working days in six (6) calendar months following the commencement of employment, then he remains a probationary employee until such time that he does complete sixty (60) working days in six (6) consecutive calendar months. Then his seniority date will be deemed to go back to the first day worked in the six (6) qualifying months. The six (6) months is a floating period, and the resulting established seniority date might be a different date than the original date of hire.

Case References – Article VIII, Seniority, Section 1:

1. PLATEAU FOREST PRODUCTS LTD. AND IWA CANADA, LOCAL 1-424
   May 13, 1997 Arbitrator: Alex Brokenshire
   Click here to read this case reference

   CONCLUSION: The company terminated a probationary employee during his 30-day probationary period. The company had a well-established practice of terminating casual employees and rehiring as a full time production (probationary) employee. The union's position that time spent as a casual counted as part of the probationary period was not accepted.

2. HOUSTON FOREST PRODUCTS A DIVISION OF WEST FRASER MILLS LTD. AND THE UNITED STEELWORKERS, LOCAL 1-424.
   April 14, 2005 Arbitrator: Colin Taylor
   Click here to read this case reference

3. FRASER LAKE SAWMILLS A DIVISION OF WEST FRASER MILLS LTD. AND THE UNITED STEELWORKERS, LOCAL 1-424.
   May 20, 2015 Arbitrator: Colin Taylor
   Click here to read this case reference

Text:

ARTICLE VIII - SENIORITY

Section 2:

a) The Company recognizes the principle of seniority, competency considered.

b) The Company and the Union will meet to discuss a procedure for posting of vacancies of jobs above base rate.

c) Where the Company operates more than one plant, each such plant will be considered separately for seniority purposes; except where the Union and the Company agree upon some different arrangement.

Guidelines:

ARTICLE VIII: SENIORITY

Section 2, a):

This is a significant and fundamental statement with meaning that filters through the various specific sections in the Seniority Article. Seniority, usually articulated in terms of a date, or length of time, denotes an individual's status attained by length of continuous service with the Employer. This section, 2 a), provides for the recognition of seniority as the criteria on which certain decisions in the workplace are made, which are expressly provided for later in this Article; layoffs/recall, promotion.

This does not mean that seniority is to extend to and be the fulcrum on which all workplace directives and decisions must be based. For example, shift assignments in a particular job category (i.e. Trades) are not required to be made in alignment with seniority unless a firm has agreed to such a process specifically at the operational level. Another example would be the assignment or distribution of overtime work opportunities. Again, seniority does not extend to be applicable in this context unless specifically agreed to. Canadian Labour Arbitration reference manual Brown and Beatty comments on this matter as follows:

> "Similarly, if a collective agreement provides that an employer is required, either exclusively or in combination with other factors, to have regard to an employee's seniority for certain purposes but does not include in that list of purposes layoffs, demotions, transfers, **shift assignments,** or

recalls from strikes, seniority rights would have no application in those contexts."

(See Case Reference #1)

Equally important and in conjunction with recognition of seniority is the right of the Company to make work force decisions contingent on the required competence called for by a particular situation. To be competent means to have the requisite or adequate ability or qualities.

Decades of jurisprudence in the Forest Industry, commencing with the 1954 Strom Lumber Company arbitration, have established the application of seniority to be that of "threshold" or "sufficient ability". More specifically, reasonable ability to perform the required task(s) is the benchmark for assessing the ability and qualifications of a person. Competence in this context may also be defined as the ability of an employee to efficiently perform job requirements up to a reasonable standard of performance as established by management.

The Industry does not recognize relative competency; the notion that one employee is more competent than another and consequently is entitled to a particular job. If an employee meets the reasonable standard of performance, he is competent; if he does not, he is not competent.

With respect to trades positions and competency, it has been essentially determined that the Company reserves the right to establish that a trades certification is the determinant of competency in the application of seniority dynamics related to trades positions. *(See Case Reference #2)*

Section 2, b):

This sub-section outlines the obligation of the Company and the Union to meet to hold discussions in an effort to arrange for the specifics of a job posting process as the vehicle to realize the intent of sub-section a) in assignment to jobs. In discussions leading to such a procedure there is no obligation to include jobs at base rate. The resulting understandings with the union deriving from this section are vast and varied, although some common principles are evident. These

understandings are typically negotiated on a site-specific basis and are premised on unique operational requirements.

Section 2, c):
Supplement No. 2, Section 3 interprets this clause as below:

"This section means that the application of seniority as it is presently applied in the individual plant would remain in effect unless it is or has been changed by agreement between the Company and the Union.
The word 'plant' in this section means a sawmill, a planer mill, or a logging operation.

It is agreed that the foregoing understanding shall be of the same force and effect as if they had been written into the actual contract and this Section of Adjustment and Interpretation shall form Supplement No. 2 and be part of the Contract."

Case References – Article VIII, Seniority, Section 2 a:

1. FEDERATED COOPERATIVES LIMITED AND IWA LOCAL 1-417
   January 14, 1991 Arbitrator: Paul D.K. Fraser
   Click here to read this case reference

   CONCLUSION: In this case the employer instituted a rotational process for trades people (millwrights) requiring them to rotate through all shifts. The union took exception and alleged the Company was prohibited from doing so visa vie the Seniority Article, and the past practice and interaction history of the parties. The award was decided in favor of the Company concluding management had the right to make the change it did.

2. CANADIAN FOREST PRODUCTS LTD. – HOUSTON DIVISION AND USW LOCAL 1-2017
   November 23, 2020 Arbitrator: Jessica Gregory
   Click here to read this case reference

   CONCLUSION: In this case the employer had a long established ITA Certification of Qualification requirement for the application of the "seniority, competency considered" clause under Article VIII, Section 2, a) of the collective agreement with respect to trades positions. The employer used this competency requirement when reducing the number of carpenter positions in the operation from two to one. As a result of the reduction the grievor, who had worked as a highly qualified and experienced (albeit uncertified) carpenter and was more senior to the incumbent, was sent back to his former "production" position because he was not an ITA Certified Carpenter. The union took exception and challenged the employer' right to establish the certification qualification and argued that the grievor was a fully competent carpenter and the certification was not necessary. The Arbitrator disagreed and the award was decided in favor of the Company concluding that management had "acted within its legal rights when it established the certified carpenter qualification for its sole carpenter position at the Houston Division;" and "the grievor was not competent to fill the sole carpenter position at Canfor's Houston Division because he is not a certified carpenter."

Text:

ARTICLE VIII - SENIORITY

Section 3:

a) When making promotions, the Company agrees to give due consideration to length of service.

b) In the event of a reduction of forces the last person hired shall be the first released, subject to the provisions of Section 2 of this Article.

c) During a reduction of forces where an employee's seniority is such that he/she will not be able to keep his/her regular job he/she may elect whether or not to apply his/her seniority to obtain a lower paid job or a job paying the same rate of pay or a job paying a higher rate of pay or accept a lay-off until his/her regular job becomes available, provided however:

1. If during the lay-off period the employee wishes to return to work and so notifies the Company, he/she shall be called back to work as soon as his/her seniority entitles him/her to a job.

2. The application of this provision shall not result in an employee, in the exercise of his/her rights, bumping an employee with less seniority.

Guidelines:

ARTICLE VIII: SENIORITY

Section 3, a):

The context of this section, although not completely clear, is regarding the selection of individuals to non-bargaining unit, supervisory (management) roles. Both the IFLRA and FIR Collective Agreements have very similar language that spells out promotions to supervisory roles.

This sub-section provides that the Company will give due consideration to length of service in the selection and promotion of a bargaining unit employee to a supervisory role.

Section 3, b):

This section is significant and has far reaching implications for the practical application of the obligations under Article VIII, Section 2. Specifically, it outlines that in the administration of a layoff (reduction of forces); the Company will apply the principle of seniority, competency considered, to the layoff decisions. (See Subsection C for details).

The same principles and similar procedures must apply to the administration and scheduling of "spareboard" employees, or junior employees with an intermittent work schedule based on relief demands.

The question of training and seniority often arises around whether management has the right to train new employees out of line with seniority on a supernumerary basis. It is the view of CONIFER that calling low-seniority employees in to work for training purposes (on a supernumerary basis) is permissible. The practice should revert to calling in employees in line with seniority once employees are trained and competent for the jobs they will be assigned to.

Section 3, c):

Instrumental to the proper administration of this section is clear definition of the terms in the language. A reduction of forces is defined as a planned reduction of crew size, or required employment activity, due to curtailment of operations, or shifts, change in procedures, or methods, et cetera, initiated by management.

In the negotiation of the 2018 to 2023 Collective Agreement the Union raised a concern that an arbitration case (Kinzie), which provided a decision on a matter originating at the West Fraser, Chasm Division, would be utilized to fundamentally vary when/how CONIFER firms permitted "bumping" to occur. CONIFER provided an assurance in the form of a letter outlining that CONIFER member companies will not change their existing bumping practices during a reduction of forces and will not rely on the Kinzie decision to change the current practices or administration of Article VIII, Section 3 c).

In the settlement to realize the 1994-97 collective agreement CONIFER provided a commitment with respect to jurisprudence in the industry. The following content was contained in a letter dated October 8, 1994 from CONIFER to the Union as a facet of the negotiation settlement:

> "The Donald R. Munro, Q.C. arbitration decision, dated January 25, 1993, (Northwood Pulp and Timber Ltd., Houston Sawmill Division) will not be utilized by CONIFER member companies in the administration of Article VIII, Section 3 (b) and (c) of the Collective Agreement."

It should be noted that this commitment is pertinent to CONIFER member firms party to the settlement realized in October 1994.

In the event of a curtailment (reduction of forces), employers also need to be cognizant of their obligations under Section 54, "Adjustment Plan" of the Labour Relations Code of British Columbia. Sub-Section 1 of Part 54 states:

"If an employer introduces or intends to introduce a measure, policy or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,

a. the employer must give to the trade union that is party to the collective agreement at least 60 days' notice before the date on which the measure, policy, practice or change is to be effected, and
b. after notice has been given, the employer and the trade union must meet, in good faith, and endeavor to develop and adjustment plan, which may include provisions respecting any of the following:
    i. consideration of alternatives to the proposed measure, policy, practice or change including amendment of provisions in the collective agreement
    ii. human resource planning and employee counseling and retraining.
    iii. notice of termination;
    iv. severance pay;
    v. entitlement to pension and other benefits including early retirement benefits;
    vi. a bipartite process for overseeing the implementation of the adjustment plan

2018-2020 marked a period involving substantial litigation at the BC LRB regarding the meaning of and obligations under section 54. The focal case originated in the context of the plant closure of Tolko, Quest Wood Division. This is a complicated legal issue with complexity beyond the scope of this Manual. **Companies contemplating curtailment or closure are advised to seek legal advice regarding the implications of Section 54 of the Labour Relations Code of BC.**

Reduction in Work Not Classified as Layoff Triggering Seniority Rights

A November 19, 2007 Legal Opinion drafted for CONIFER by Gary Catherwood of Fasken Martineau, addresses the issue of member companies unilaterally reducing the work week for a **defined period of time for all employees** in the bargaining unit due to poor market conditions. An example of such a circumstance may be the need to reduce the work week from five workdays to four to deal with poor market conditions. **When all bargaining unit employees are participating in a reduced work week** this situation does not constitute a reduction of forces. Therefore, because this is not a reduction of forces, the application of Article VIII, Seniority, Section 3 (c) – Reduction of Forces is **not triggered** (contact CONIFER if you require a copy of this legal opinion). However, an exception to this principle is when contemplating a reduction in work hours for production employees where maintenance employee's hours are not reduced and production employees with trade qualifications **may be able to exercise their right to bump maintenance employees with less seniority than them, subject to competency.** A follow up legal opinion by Clayton Jones Fasken Martineau, dated November 27, 2007, explains this principle (contact CONIFER if you require a copy of this legal opinion).

Article VII, Hours of Work and Overtime, in the collective agreement does not provide for a guaranteed number of hours per week, nor does the collective agreement restrict management's right to reduce the work week hours.

The aforementioned legal opinions are based on a Supreme Court of Canada ruling which recognizes that there is a clear distinction between "layoffs and the

reduction of hours" and also stipulates that layoffs are not the employer's only options for dealing with production curtailments. More specifically, one such strategy may be to reduce the hours for **all employees** in the bargaining unit.
In order to prevent violating the seniority provisions in the collective agreement in these situations it is recommended that companies:

- **Do not refer to this as a layoff or reduction of forces when making decisions to reduce work hours**;
- **Limit the duration of the reduction in hours to a defined period of time rather than indefinitely;**
- **Uniformly reduce the hours of work of all employees in the bargaining unit;**
- **Avoid a significant reduction in the work hours of employees**

Regular job is defined as the employee's routine assignment, whether through a posting procedure (Article XIII, 2b)), or some other means, where there is a distinct element of permanence or steadiness. Many operations have unique, short-term, sporadic work demands where the assignment of employees to those tasks is not considered "regular" for the purposes of application of this section, and cessation of those assignments does not trigger "bumping" activity. Employees merely return to their previous "regular" assignment. These scenarios are established on a site-specific basis. Examples typically include snow removal, sporadic car loading, peripheral equipment operation, MSR grading, and similar short-term temporary demands.

When administering a reduction of forces (layoff), the last person hired shall be the first released (i.e.: by seniority), competency considered. There will be times when junior employees continue to work, while more senior employees are laid off, because of the assessment of required competency.

For example, during a production curtailment, a junior electrician may be scheduled to work on electrical jobs, when a senior equipment operator may be laid off. Another example may be a production employee with a required first aid ticket may be scheduled to work while an employee with more seniority is not. *(General Principle – See Case Reference #1)*

1. **BC TIMBER AND IWA, LOCAL 1-71**
   1983, Arbitrator Clive McKee, AR 1-84
   Click here to read this case reference

   CONCLUSION: In this case, the company closed operations and subsequently recalled employees for yard cleanup purposes. The grievor claimed he should have been recalled, as he was senior to one of the junior employees scheduled to work. The arbitrator upheld that the grievor was not competent to perform the function and therefore could not bump the junior operator.

The BC Timber case also clarified that a layoff is not a time for "testing" employees or giving them a chance to show what they can do in order that they may then exercise their seniority to bump other junior competent employees. **At a time of layoff, in order to bump a junior employee, individuals wishing to bump must be able to move into another job and immediately have hands on knowledge of the full requirements of the job.** The employer is not expected to accept a less than competent standard of performance from an employee bumping into a job, solely because he is more senior than the employee to be bumped. *(See Case Reference #2)*

2. **WIERE'S SAWMILL LTD. AND IWA LOCAL 1-424**
   May 24, 1985, Arbitrator Alex Brokenshire
   Click here to read this case reference

   CONCLUSION: In this case, the mill was down due to fire. Only "Watchmen" remained scheduled to work. An employee, senior to the scheduled watchman, grieved on the basis of the seniority language in this section. The arbitrator makes some helpful comments relative to proper administration of Article VIII, Section 2, and Section 3:

   > "It is generally accepted that an employee must be able to do the job without further training before he can exercise his seniority to bump into a job during a reduction of forces."

This case also discusses the meaning, application, and differences between "familiarization" and "training".

It is not uncommon in the industry in the administration of this section for employers to allow for a very brief period of "familiarization" or "re-familiarization" in the course of orchestrating bumping in a reduction of forces.

Familiarization does not mean altering the standards of competence normally applicable to a job. It does mean allowance of a brief period of time within which an employee adjusts to a new assignment obtained through bumping; and in short order demonstrates full required proficiency. Employers are not obligated to provide training in order to render an employee competent so that he/she can apply seniority to bump in a reduction of forces. Training is considered a period of tangible instruction, along with hands on development and learning, leading up to the level of required performance or competence on a particular job.

Administration of a reduction of forces and the resulting application of seniority (bumping) can be inherently chaotic. Employers are encouraged to apply sound objective judgement and consistent criteria in the determination of competence, keeping the aforementioned principles in mind.

A brief excerpt from a relevant arbitration case may prove effective to elaborate further on these principles. In MacMillan Bloedel Ltd. and IWA Local 1-357, the Arbitrator states:

> "…that an employee has the right to bump under the Collective Agreement, he has to have:
>
> (a) the necessary seniority – a question of fact and record not subject to any subjective decision-making. The employee is either the senior employee or he is not.

(b) the "competency" to perform the job into which he wishes to bump. To so perform, it is implied from study of the case law that he must have previously been assigned to, and worked in, the job described or its equivalent and can, therefore, immediately demonstrate "hands on" knowledge, ability, and experience in the job as a fully functional and productive employee.

As it is required that he must have immediate knowledge, experience and ability to perform a special job, no training is foreseen, required, or can be given. However, it is agreed that if, in the length of time an employee has been performing in other jobs, certain policies of operation or type of equipment have changed, a short period of familiarization – its length depending upon the circumstances of each case but in any event to be a length in which the company's production capability is not materially affected – is permitted.

In my view, there is no room for subjective reasoning or analysis of what is or may be in this type of situation. The employee demanding to exercise a right recognized in the Collective Agreement against another junior employee must be able at the precise time of the attempted bump to demonstrate:

(a) that he is more senior than the employee to be bumped; and

(b) that he has the "hands on" experience, knowledge of the specific job, and ability to step into that job and productively do the work needed without any training or interruption of workflow.

In fairness, a short period of familiarization is permitted but, as an example, an employee, once given a short period of time to familiarize himself with the controls of say a forklift in use by the company, must immediately drive it and demonstrate his "hands on "skill and ability to operate the forklift without limitation or delay as a part of the production mechanism of the company."

Section 3, c), (1):
An employee who elects layoff and subsequently wishes to return to work should be scheduled when a job is available (seniority, competency considered).

Section 3, c), (2):
There is no obligation on the employer to "shuffle" the schedule to slot someone in upon notification they wish to return from their initial elected layoff. Upon returning from layoff, initially elected when the regular job was not available, the employee can no longer "bump" a junior employee to resume working.

In any event, employees who have bumped or have elected layoff at the reduction of forces must return to their regular job when that regular job becomes available again.

The USW has made recent claims (summer 2020) that an employee is able to decline recall to their "regular job" if their recall is not of a sustained duration. Please contact the staff at CONIFER if you are faced with this scenario.

Text:

ARTICLE VIII - SENIORITY

Section 4:

a) It is agreed that when employees are to be re-hired after a layoff, it shall be done on the basis of the last person released shall be the first person re-employed, subject to provisions of Section 2 a). It is agreed that in cases of emergency the application of plant seniority may be postponed for such period as may be necessary, but not exceeding three (3) days. If the Company decides to exercise this provision, it shall notify the Committee or the Local Union immediately.

b) Where a reduction of forces is caused by emergency conditions, the application of seniority may be postponed for such period as may be necessary, but not exceeding five (5) working days. If the Company decides to exercise its rights under this provision it shall notify the Shop Committee as soon as possible.

Guidelines:

ARTICLE VIII: SENIORITY

Section 4, a):

The first sentence of this section again reinforces the applicability of seniority, competency considered, to the recall of employees from layoff. It is strongly advised that the employer develop a sound system in order to meet these obligations. Employers should keep a very clearly documented record of any attempts to contact employees for recall purposes, and diligence must be applied regarding recall efforts. Specifically, an attempted phone call to a senior employee that results in no answer, should be re-tried on a timely basis, especially when junior employees are subsequently working. Any policy matters regarding "on call" issues or times to anticipate contact should be clearly communicated to laid off employees. These principles also apply to the regular administration of "spareboard" employees, or those with an intermittent schedule based on relief needs.

Employers may postpone the strict application of seniority in this "recall" context for up to 3 days in the case of an emergency. An emergency is typically defined as something clearly beyond the control or foresight of the company. A routine mechanical breakdown is not necessarily an emergency. Notification of the plant

committee is very important and must be immediate, not in hindsight, or after the fact.

There are several arbitration cases where the company has been deemed out of compliance with the Collective Agreement by failing to immediately notify the union of its intent to postpone seniority due to an emergency, as clearly spelled out in this section. Also, the postponement of seniority is for up to three (3) days. All efforts to re-align activity with seniority should be made as soon as reasonably possible, as opposed to simply paying no attention for three (3) days.

Section 4, b):

Similarly to section a), the company may postpone the application of seniority for up to five (5) working days when a reduction of forces is necessitated by an emergency. Notification of the shop committee of the company's intent to exercise its right under this section must occur as soon as the decision to do so is made. Notification should not occur after the fact.

Also, not all breakdowns in the mill environment constitute an emergency. This section is not intended as an easy way out for avoiding seniority rights. Its intent is to permit the Employer to deal with an emergency with reasonable efficiency and without what would be a punitive application of seniority.

There is no completely clear definition of a breakdown that constitutes an emergency. It must be a sudden, unexpected event, of an extraordinary nature, with little, if any, prior occurrence. It must be somewhat beyond the control of the employer.

Case References – Article VIII, Seniority, Section 4:

1. CANADIAN FOREST PRODUCTS LTD., AND IWA LOCAL 1-424.
   Arbitrator R.B. Blasina, March 1996
   Click here to read this case reference

   CONCLUSION: This case serves as an effective illustration of the principles applicable in the suspension of seniority due to an emergency.

Text:

ARTICLE VIII - SENIORITY

Section 5:

a) When re-employing, in accordance with Section 4, after seasonal shut-down, all employees shall be notified by telegram or registered letter at least seven (7) days before re-starting of operation. The employees must reply by telegram or registered letter in the affirmative within ninety-six (96) hours of the telegram or registered letter being sent out by the Company, and appear for work not later than the above stated seven (7) day period.

b) Employees resident in the Province of Alberta or the Yukon Territories shall be entitled to one (1) additional day to report and employees resident in any other Canadian Province or the United States shall be entitled to two (2) additional days to report.

c) It shall be the employees responsibility to keep the Company informed of his/her address during the period of shut-down.

d) It is agreed that all employees shall, upon returning to employment, in accordance with this section, retain all seniority rights.

Guidelines:

ARTICLE VIII: SENIORITY

Section 5, a):

This section refers to the recall of seasonal employees, i.e.: logging; following seasonal shutdown, i.e.: breakup, and sets out a method for notifying employees of a return to work. The purpose is to give employers the flexibility to hire new people should contact not be made with a former employee. However, in some cases, there may be extenuating circumstances, i.e. employee hospitalized, and these must be taken into consideration.

Section 5, b):

This increases the seven-day period in sub-section a) to eight and nine days respectively.

Section 5, c):

Should the employee not keep the Company informed of his/her address the Company would not be responsible for failing to notify of a return to work and would be able to hire replacements.

Text:

ARTICLE VIII - SENIORITY

Section 6:

It is agreed that upon the request of the Union a list will be supplied by the Company setting out the name and the starting date with the Company of each regular employee; however, such request shall not be granted more than twice during each year of the term of the Agreement.

The Company will advise the Union once each month of changes to the said list.

Text:

ARTICLE VIII - SENIORITY

Section 7:
It is agreed that companies signatory to this agreement shall give preference in hiring, competency considered, on the following basis, in the following order:

1. Laid off employees of the Company who have previous Company seniority and are seeking employment as a result of operational closures or crew reductions in other divisions of the Company.
2. Previous employees of the company who have both previous seniority and an application on file.
3. Previous employees of the company who have previous company seniority and are seeking employment as a result of operational closures or crew reductions in other operations of the company.
4. Laid-off employees of other companies in the communities who are seeking employment as a result of operational closures or crew reduction in excess of ninety (90) days.
5. Laid-off USW members of Local 1-2017 who are seeking employment as a result of operational closures or crew reduction in excess of ninety (90) days.
6. The provisions of no. 3 and 4 above are limited to USW Certified companies in the Northern Interior Forest Products Industry.
7. Persons who qualify for preference, and wish to exercise their rights to preference, must make application within six months of the operational closure or the ninety-day lay-off period.

Applications will be kept on file as active for 60 days. After which time, the person seeking employment must renew applications, or no preference shall be considered.

Guidelines:

ARTICLE VIII: SENIORITY

Section 7:

Items 1) through 5) of this section list, in descending order of priority, classifications of employees that will be afforded preference in hiring, competency considered. This section was altered into its current form at 1994 negotiations, with a slight amendment in the 2013-18 Collective Agreement (inclusion of point 1).

It is important to clearly understand that this section spells out obligations to apply hiring preference, not an automatic hiring obligation. The content is not to be construed to be a guarantee of hire for someone who is classified into one of points 1) through 5). Individuals who have been discharged for cause or who have voluntarily terminated their employment do not qualify for preferential consideration. There is no obligation to hire a candidate with preferential status if that candidate is not acceptable to the company under normal hiring practices.
Item (6) limits the applicability of categories listed under point (4) and (5) to USW certified Forest Companies in the Northern Interior *(Although the contract language still makes reference to point 3 and 4: this needs to be corrected in 2023 collective agreement amendment).*
Item (7) establishes an onus on the individual who may qualify for preferential consideration, to apply within six (6) months of either the operational closure or ninety-day lay-off period.

Applications must be retained for 60 days. Employers are advised to develop an appropriate administrative system to categorize preferential candidates in order that they can be processed accordingly. Employers are also advised to carefully weigh each preferential hiring case on its own individual circumstances and determine whether there are reasonable grounds to not re-hire a candidate *(See Case Reference #1).*

The following letter by Harvey Arcand dated October 8, 1994 provides some clarification around the intent of the Preferential Hiring Language negotiated in 1994. Specifically, the letter negates the applicability of preferential hiring for employees who are discharged for cause, voluntarily terminate their employment and/or do not meet the company's normal hiring practices.

October 8, 1994

CONIFER
902 - 299 Victoria St.
Prince George, B.C.
V2L 5B8

Attention: Dave Gunderson
Director

Dear Sir,

Re: Preferential Hiring
Art. VIII, Section 7(1),(2),(3)&(4)

To clarify the application of the agreement reached in 1994 negotiations with regard to Preferential Hiring under Article VIII, Section 7, it is not our intent that this provision will apply to persons who have been discharged for cause or persons who have voluntarily terminated their employment and are considered "no rehires."

It is not our intent to have the terms of Article VIII, Section 7 cause any employer to be required to hire as employees persons who are not acceptable to them under normal hiring practices, nor is this section to be construed as a guarantee of hire.

Sincerely yours,

Harvey Arcand

Harvey Arcand
4th Vice President
IWA-Canada

Case References – Article VIII, Seniority, Section 7:

1. BABINE FOREST PRODUCTS LTD., AND IWA LOCAL 1-424.
   Arbitrator Sanderson April 25, 2003
   Click here to read this case reference

   CONCLUSION: The grievor worked as a summer student as a Spare Board Operator in 2000 but was not physically able to perform the work because of an existing medical condition, carpal tunnel syndrome. The employer designated the grievor as a no re-hire. The grievor alleged that he was not given preference in hiring when he applied as a summer student for the position of Spare Board Operator in 2002. The employer effectively made a medical judgment that it was not qualified to do when it decided that the grievor's physical condition was such that he could never work for the employer again. The decision-making process that brought about the rejection of the grievor's application was incomplete and flawed. An employer must have reasonable grounds not to re-hire an employee. Grievance upheld, in part.

Text:

ARTICLE VIII - SENIORITY

Section 8:

It is agreed between the Parties that seniority during lay-offs shall be retained on the following basis:

a) Employees with less than one (1) year's service will retain their seniority for a period of eight (8) months.
b) Effective July 1, 2003, employees with one (1) or more year's service shall retain their seniority for one (1) year, plus one (1) additional month for each year's service, up to an additional twelve (12) months for a maximum period of twenty-four (24) months.
c) A laid-off employee's seniority retention as provided for in a) and b) above will be re-instated in the event of re-employment before the expiry of seniority retention and on the completion of one day's work.

Guidelines:

ARTICLE VIII: SENIORITY

Section 8, a):
In the event of a lay-off, employees with less than one (1) year's service will retain seniority for eight (8) months. Therefore, employees with less than one (1) year of service who are not called back to work after eight (8) months of lay-off are terminated. It is advisable to notify employees in writing regarding the expiration of seniority retention and the coincidental termination of employment. Such an employee may qualify for hiring preference. *(See Article VIII, Section 7)*.

Section 8, b):
Employees with one (1) or more years of service are entitled to one (1) year's seniority retention, plus an additional one (1) month per each additional year of service, up to an additional 12 months. Therefore, the maximum seniority retention is 24 months.

The above was amended in the 2003 to 2009 Collective Agreement and is applicable to employees in a layoff situation who have one (1) or more years of service. These employees will continue to retain their seniority for one year plus one (1) additional month for each year of service, however this amendment increases the seniority retention provision to a maximum of 24 months during a layoff situation. This is an increase from the previous maximum seniority retention provision in the 2000 - 2003 collective agreement, which stated that eighteen (18) months was the maximum seniority retention obligation for employers.

Example 1:

Employee with 1 ½ years of service is laid off.

- seniority retention is for 12 months

Example 2:

Employee with 4 ½ years of service is laid off

- seniority retention is for 15 months

Section 8, c):

A laid off employee's seniority retention is reinstated and re-commences upon the completion of one day's work. The definition of one day's work is not necessarily the completion of the given scheduled shift. It is the period of time the employer re-calls the laid off employee to work on any given day. Employers are cautioned to apply sound judgement when considering recall of laid off employees who have not worked for a considerable duration. Doing so re-starts the corresponding seniority retention and also has Health/Welfare coverage implications. *(See Health/Welfare Section – Tab 17).*

Text:

ARTICLE VIII - SENIORITY

Section 9:
It is agreed that when the Company has transferred an employee to a supervisory or staff position, he/she will continue to accumulate seniority for a period of ninety (90) days. At any time during this ninety (90) day period, the individual shall have the right to return to the bargaining unit job, which he/she would have held if he/she had not left the bargaining unit. (In special cases this ninety (90) day period may be extended for up to a further ninety (90) days by mutual agreement between the Company and the Shop Committee.) At the expiration of the period mentioned above, his/her seniority will be frozen. Thus, if at a later date, he/she ceases to be a supervisor or staff worker and the Company desires to retain his/her services, it is hereby agreed that reinstatement can be made within the bargaining unit provided, however, that any employee so reinstated must return to the job held at the time of his/her promotion to the supervisory or staff position.

Guidelines:

ARTICLE VIII: SENIORITY

Section 9:
This section is fairly straight forward as written; however, an example may serve to further clarify:

Employee hired - January 1, 2000
Employee transferred to supervisory role – January 1, 2001
Seniority frozen after 90 days.
Employee returns to bargaining unit – after 180 days (June 2001)
Bargaining Unit seniority date adjusted – to April 1, 2000 (by number of days in excess of 90 out of bargaining unit)
Vacation entitlement still based on continuous length of service from January 1, 2000.

There is one interpretation case (*See Case Reference #1*) which has served to somewhat limit an employee's avenue to "return to the job held at the time of his/her promotion". The employee can return if the returning employee has more seniority than the individual assigned to the job, otherwise the returning employee must apply seniority in line with Article VIII, Section 3 c).

It should be noted that this section is often misconstrued and misapplied in practice. The language only becomes applicable when the company has actually **TRANSFERRED** an employee via formal reassignment to a staff or management position (i.e. non bargaining unit). The language spells out the seniority implications if the individual subsequently returns to the bargaining unit at some future point in time.

Many operations seem to think that this section means there is some sort of ninety day "ticking clock" count down with in which a bargaining unit employee is limited to provide relief for a staff supervisor in his or her absence. In the opinion of CONIFER staff, this is **NOT** the intent of this language. This section is not rendered applicable unless the employee is formerly transferred out of the bargaining unit. A chargehand, simply functioning as a chargehand within the bargaining unit without the direct presence of a staff supervisor, does **NOT** constitute a transfer out of the bargaining unit to a staff position.

Case References – Article VIII, Seniority, Section 9:

1. CASE REFERENCE #1: WEST FRASER TIMBER AND IWA LOCAL 1-424, 1-425. Interpreter: H. Allan Hope Q.C., May 22, 1984. AR 9-84
   Click here to read this case reference

   CONCLUSION: This case involved the return to the bargaining unit an individual who had previously been transferred out of the bargaining unit and had his seniority frozen accordingly. At issue was whether he could return to his previously held job, given the employee assigned there had more seniority. The Interpreter stated the following"

   "Turning to the precise issue of interpretation, it must be presumed that what the parties meant by "the job held at the time of promotion" was the job category previously occupied by the supervisor. The employer will have the right in every case to reinstate a supervisory employee to the job category held at the time of promotion and at the seniority held at that time, together with the 90-day extended seniority provided for in the agreement. Thereafter the

supervisor will be governed by the provisions of the agreement. If his bargaining unit seniority is such that he can claim a position in his previous job category, he will be entitled to claim it. If his seniority is not sufficient to claim a position in that category, he will be entitled to exercise his bumping rights under Article VIII (3) or to exercise any other rights available to him as a member of the bargaining unit."

Text:

ARTICLE VIII - SENIORITY

Section 10: Transfer Of Company Seniority:

i) Where Employees of a Company operation are offered, and accept a position in another division of that Company and successfully complete their probationary period, then their prior Company service date will be applied for annual vacation entitlement and vacation pay purposes.

ii) Employees will be entitled to a maximum of one floater per Employee per year in the event of transfer.

Guidelines:

ARTICLE VIII: SENIORITY

The intent of the Transfer of Company Seniority provision is strictly limited in that the sole purpose is to allow for transferring employees to retain their company seniority for the purposes of **maintaining annual vacation entitlement and vacation pay** at the new division's site based on total time employed with the employer. It should be clearly understood that this section is applicable only when an employee is moving to a different division of the same company.

Once employed with their new division, the employee's seniority rights start from the date that they are hired with the new division after successfully completing their probationary period. All rights and privileges that flow from seniority provisions with the receiving division will be granted from the start date with the new division after successful completion the probationary period and will not be based on the employees overall total company seniority prior to transferring to the new division.

However, it is important to note that the transferring employee's Health and Welfare benefits are portable and remain intact and no waiting period for said benefits is required.

Employees who exercise their right under the Transfer Of Company Seniority provision are still subject to a probationary period with the receiving company

division and are expected to meet or exceed acceptable performance criteria set by the employer. If the employee does not meet the acceptable performance criteria within the probationary period, their employment could be terminated.

Employees who transfer to another division within the same company shall only be entitled to one floater per contract year. Therefore, if the employee has utilized their floater in the contract year prior to transferring to the new division, they will not be entitled to another floater at the new division for the same contract year.