IN THE MATTER OF AN ARBITRATION
UNDER THE *LABOUR RELATIONS CODE*, RSBC 1996 c. 244

BETWEEN:

WEST FRASER MILLS LTD.
(CHASM SAWMILLS DIVISION)

(the "Employer")

AND:

UNITED STEELWORKERS, LOCAL 1-417

(the "Union")

(Re: Technological Change Grievance)

AWARD

Arbitration Board:	**Joan M. Gordon**
For the Employer:	Donald J. Jordan, Q.C.
For the Union:	Sandra L. Banister
Date and Place of Hearing:	October 19, 2010 Kamloops, British Columbia
Date of Award:	November 8, 2010

I. Introduction

These proceedings concern the Union's grievance that material changes in working methods or facilities constituting a technological change occurred in or about October 2009 at the Employer's sawmill in Chasm, B.C. The Union contends that the Employer failed to comply with the severance pay and rate adjustment requirements of Article XX, Sections 2 and 3, of the Southern Interior Master Agreement for 11 employees who were displaced as a result of the changes instituted at the mill. The Employer's position is that the changes at issue in this dispute do not constitute a technological change for the purposes of Article XX.

II. Agreed Statement of Facts

Counsel for the parties adduced the relevant background to this dispute by way of the following Agreed Statement of Facts. The term "CTL" refers to cut to length logs.

West Fraser Mills Ltd. (Chasm Sawmills) and United Steelworkers of America, Local 417 (Technological Change)

AGREED STATEMENT OF FACTS

1. The Employer operates Chasm Sawmill in Chasm, BC, and is a member of the Interior Forest Labour Relations Association.

2. The Union is the bargaining agent for the employees at Chasm Sawmill.

3. At all times, material to this grievance, the Employer and the Union were bound by the British Columbia Southern Interior Master Agreement 2003—2009: Tab 1. Article XX provides as follows:

ARTICLE XX — TECHNOLOGICAL CHANGE

Section 1: Advance Notification

The Company shall notify the Shop Committee and the Union not less than six (6) months in advance of intent to *institute material changes in working methods or facilities* which would involve the discharge or laying off of Employees

Section 2: Severance Pay

Employees discharged, laid off or displaced from their regular job because of mechanization, *technological change* or automation shall be entitled to severance pay of seven days pay (a day is defined as 8 hours straight time pay) for each year of service with

the Company. The amount calculated under such entitlement shall not exceed a maximum of thirty (30) weeks' pay, (maximum 210 days, with a day defined as 8 hours straight pay). This Section shall not apply to Employees covered by Section 3(b) below.

Employees entitled to severance pay under this section shall have the option to terminate their employment and accept severance pay either (a) at the time of layoff, or (b) at the point seniority retention expires.

Section 3: Rate Adjustment

(a) An Employee who is set back to a lower paid job because of mechanization, *technological change* or automation will receive the rate of his regular job at the time of the setback for a period of three (3) months and for a further period of three (3) months he will be paid an adjusted rate which will be midway between the rate of his regular job at the time of the setback and the rate of his new regular job. At the end of this six (6) month period the rate of his new regular job will apply. However, such employee will have the option of terminating his employment and accepting severance pay as outlined in Section 2 above, providing he exercises this option within the above referred to six (6) month period.

(b) Following an application of (a) above, where an Employee is set back to a lower paid job because of an application of Article X Seniority brought on by mechanization, *technological change* or automation will receive the rate of his regular job at the time of the setback for a period of three (3) months and for a further period of three (3) months he will be paid an adjusted rate which will be midway between the rate of his regular job at the time of the setback and the rate of his new regular job. At the end of this six (6) month period the rate of his new regular job will apply.

(emphasis added)

4. Prior to approximately May of 2008, Chasm received three types of logs from its logging contractors. They were: "long logs" delivered in 51 foot lengths on trailers built to haul long logs; "shorts" which described logs less than 51 feet delivered by a contractor utilizing long log hauling trailers. The "shorts" were usually packed in the middle of the long logs. Long logs and "shorts" were placed in the mill through the infeed deck and were cut to length by the cut-off saws. The mill also received cut-to-length ("CLT") logs from contractors using short log trailers. CLT logs were fed directly into the mill and there was no need for them to go through the cut-off saw. Historically, the majority of the logs at the mill had to be cut to length prior to being fed into the mill. The Company's Log Inventory Management System (LIMS), which is used to

calculate the pay for loggers and the provincial stumpage, shows the following percentages of loads which were delivered CTL.

2005	20.6% CTL
2006	24.6% CTL
2007	39.2% CTI.
2008	46.5% CTL (after October 2008, 100 Mile Sawmill went 100% CTL. Chasm processed all long logs which previously went to 100 Mile)
2009	50.9% CR (January - September)
2009	100% CTI. (October - December)

5. As of May 2008, the Company was cutting beetle killed pine. Contractors who were not contracted to provide CTL logs were advised they had to separate out their "shorts" and deliver them using short log trucks. This meant that the percentage of logs being delivered to the mill on short log trucks increased. By October of 2008, the Company had stopped putting long logs directly into the mill for a 5 week period because of the predominance of short logs being delivered. By October 2009, approximately 51% of the logs coming to the mill were CTL. All logs, be they long logs, "shorts" or CTL were limbed in the woods and cut to their optimum length for quality and recovery. Optimum length was determined depending upon the stand logs were harvested from.

6. Logs delivered to the mill by truck, including shorts and CTL were unloaded from the trucks by the stacker machine. The Butt'n Top machine was used to sort all the logs in the yard and occasionally unload trucks.

7. CTL logs were loaded directly into the mill by the 966 loader or the stacker. Long logs were moved by the 966 loader to the infeed decks of the cut off saws where they were cut to length. From the cut off saw, the logs were fed directly to the mill although, on occasion, some were returned to the yard for future use.

8. Prior to October 2009, the Employer decided to become solely a short log operation and thereafter all logs delivered to the mill were CTL. The Employer ceased to process long logs.

9. On October 5, 2009, Marty Gibbons, President of the Union, wrote Gary Hill, General Manager of Chasm Sawmills, advising that the Union had not yet received notification of Technological Change from West Fraser, as required by Article XX, and requesting information about the Employer's plans, in order to enable the Union to begin the grievance procedure if necessary.

10. On October 13, 2009, the Union received a letter from Mr. Hill, dated October 2, 2009 (Tab 3), which informed the Union that the Employer was eliminating the following positions "through the normal reduction of forces process":

    a. Log Yard Bander/Bucker/Clean-up (Group 9)

b. Forklift Operator/Kiln (Group 12)
c. Log Cut-Off Saw Operator 1, 2 & 3 (Group 14).

11. The changes described in paragraph 8 were implemented over several weeks in late October and early November 2009.

12. As a result of utilizing only CTL logs, logs are simply fed into the mill or stored in the yard for future use. Logs are no longer cut to length at the mill.

13. The Company acquired a Volvo loader in December 2009, a loader which is used only to unload short logs, from Northstar Lumber when it ceased whole log chipping in November 2009. The Volvo loader was not operational until February 2010. It has not been operational 100% of the time because of reliability issues. When operational, the Volvo is a far more efficient machine for unloading trucks than the stacker.. The stacker continues to be used today to unload CTL logs, in addition to the Volvo. After the move to utilization of only short logs in October 2009, the Butt'n Top was fitted with a new grapple which permits it to handle short logs more efficiently than previously. The Butt'n Top loader was always used to unload logging trucks, "shorts", long logs or CTL logs.

14. In addition, the curve gang operator has been affected by the changes. When the logs reach the curve gang, they can only be slightly over twenty feet in length. If the logs are longer than that, the curve gang operator uses a chain saw to trim the logs. Following the changes a great number of logs needed to be trimmed.

15. The changes noted in paragraph 8 resulted in the elimination of the jobs of eleven members of the Union, in the following positions:

a. John Spence (Cut-off Saw 1)
b. Ken Campbell (Cut-off Saw 1)
c. Greg McEwan (Cut-off Saw 1)
d. Lloyd Horieshka (Cut-off Saw 2)
e. Les Alexander (Cut-off Saw 2)
f. Dean McNabb (Cut-off Saw 2)
g. Brian Thomas (Cut-off Saw 3)
h. Mark Cerniuk (Cut-off Saw 3)
i. Marco Giusti (Cut-off Saw 3)
j. Harley Tiche (Bander)
k. Bill Spooner (Bander)

16. On October 26, 2009, Jordan Lawrence, of the Union, initiated the grievance procedure.

17. Mr. Lawrence and Mr. Hill agreed to proceed directly to step four.

18. By letter dated November 4, 2009, Mr. Gibbons wrote, advancing the grievance to Arbitration: Tab 4.

III. Argument

The Union maintains the differing language in Article XX, Sections 1, 2 and 3 has spawned two lines of cases. One line of cases, says the Union, requires proof of a technological change at the employer's operation due to the introduction of new equipment, technology, and so forth. See, for example, *Northstar Lumber, a Division of West Fraser Mills Ltd. -and- United Steelworkers of America, Local 1-424*, unreported, July 28, 2006 (Larson); and, *Western Quality Wood Products and United Brotherhood of Carpenters & Joiners of America, Local 1928*, [1999] B.C.C.A.A.A. No. 13 (Glass). Whereas a second line of cases, and those on which the Union relies here, stand for the proposition that proof of material changes in working methods or facilities as referred to in Article XX, Section 1 constitutes a type of technological change triggering the protections provided under Article XX, Sections 2 and 3. See *West Fraser Mills Ltd. (Fraser Sawmills Division) v. Industrial Wood and Allied Workers of Canada (Weber Grievance),* [1998] B.C.C.A.A.A. No. 503 (Blasina); *Cascadia Forest Products Ltd. -and- United Steelworkers of America, Local 1-2171*, unreported, October 24, 2005 (Love); and, *B.C. Timber Ltd. v. International Woodworkers of America, Local 1-71 (Severance Pay Grievance),* [1982] B.C.C.A.A.A. No. 557 (Bird).

The Union's position is that Article XX should be given a broad, liberal, purposive interpretation such that the types of employer conduct specified in Section 1 will trigger the consequential protections offered by Sections 2 and 3 without any linkage to technological change. The Union submits that the discontinuance of the cut-off saws and banding station, together with the dramatic increase in the supply of CTLs to the mill after October 2009, constitutes a material change in working methods or facilities attracting the relief under Article XX, Sections 2 and 3. See *Cascadia Forest Products Ltd.*

The Union maintains that where an employer's facility changes from a place where long, short and CTLs are processed into lumber, to a facility where only CTLs are processed into lumber, and where the series of acts required to produce lumber from CTLs is different from the previous series of acts required to process all three types of wood fibre into lumber, a change of working methods and facilities has occurred. Thus, says the Union, Arbitrator Bird's reasoning in *B.C. Timber Ltd.* should be applied to the facts of this case. There, Arbitrator Bird held that changes in the employer's methods of log delivery to the mill, plus

changes in the type of fibre supplied to the mill, plus the discontinuance of part of the operation amounted to a change in working methods and facilities constituting technological change.

The Union further contends that the award of Arbitrator Larson in *Northstar Lumber*, on which the Employer relies in these proceedings, is poorly reasoned, wrong, and should not be followed. From the Union's perspective, when all aspects of the changes in working methods and facilities at the Chasm mill are considered, it should be determined that material changes have occurred thereby entitling the 11 employees affected by those changes to qualify for the relief provided under Article XX, Sections 2 and 3.

The Employer submits that several overarching principles should be taken into account in analysing this particular dispute. First, Article XX, Section 1, should not be interpreted so broadly that it effectively performs the work of other collective agreement provisions.

Second, if Section 1 constitutes a stand alone right, then the only relief arising in this case is notice to the Union. In order to gain access to the relief under Sections 2 and 3, the Union must prove that the institution of material changes in working methods or facilities also constituted mechanization, technological change or automation.

Third, care must be taken when considering prior arbitral awards relying on the decision of the Labour Relations Board in *Eurocan Pulp and Paper Co. Ltd. -and- CPU, Locals 298 and 1127*, B.C.L.R.B. No. 62/82, because the definition of technological change in the *Labour Relations Code*, which was interpreted as mandating a liberal approach, has now been replaced by Section 54.

Fourth, it is well settled that existing arbitral jurisprudence creates a climate of expectations within which collective agreements must be interpreted and applied. Thus, the parties should be able to guide their conduct in a manner consistent with the existing arbitral jurisprudence such as that found in Arbitrator Larson's *Northstar Lumber* award. Additionally, while subsequent arbitrators may disagree with an award of a significant vintage such as *Northstar Lumber*, arbitrators should never overrule pre-existing awards.

Relying on the reasoning of Arbitrator Larson in *Northstar Lumber*, the Employer's position is that the discontinuance of an operation must result in material changes in

working methods or facilities that constitute a technological change in ordinary parlance. The Employer contends that the mere elimination of the cut-off saws, without any modification and/or use of that equipment in any different method, does not constitute any material change in working methods or facilities of the remaining operation at the mill. The Employer maintains that changes of this nature are not sufficient to establish a technological change. Here, says the Employer, following the discontinuation of the banding station and cut-off saws due to the non-receipt of long logs at the mill, all of the work performed and machinery used to process CTLs into lumber remained the same as before; and, the fact that the curve gang operator now trims more logs in the same way as before is insufficient to establish technological change.

In reply, the Union factually distinguishes several cases on which the Employer relies. The Union argues that the presumptive framework principle is inapplicable to the *Northstar Lumber* award, which was published in the middle of the parties' current collective agreement. The Union also emphasizes that many cases decided under Article XX have not required any linkage between Section 1 and "mechanization, technological change or automation" in Sections 2 and 3.

IV. Analysis

The arbitral jurisprudence relating to the interpretation and application of the language in Article XX, Sections 1, 2 and 3, and similarly worded collective agreement provisions, has been reviewed at length and repeatedly in many of the awards cited by the parties to this board. See, for example, the award of Arbitrator McConchie in *Canadian Forest Products Ltd. v. Pulp, Paper and Woodworkers of Canada, Local No. 25,* [2004] B.C.C.A.A.A. No. 191, 132 L.A.C. (4th) 300. I therefore decline to undertake another jurisprudential review in this award, focusing instead on the application of existing arbitral reasoning to the facts before me.

Having considered the facts of this dispute, and having thoroughly reviewed all of the awards cited by the parties, I find the facts in *Northstar Lumber* to be very similar to those in the case at hand, and I find Arbitrator Larson's reasoning therein to be compelling.

In *Northstar Lumber*, over time, the employer's lumber processing system changed from one where short logs and CLTs were processed, to a system where mainly long logs and some CTLs were processed. The employer installed a Merchandiser system at a new

sawmill to process long logs. Over the next eight years or so, the percentage of long log processing decreased significantly, and the employer eventually decided to limit its lumber production system to CTL processing. This decision resulted in the elimination of the Merchandiser system because, like the Chasm sawmill, CTLs were fed directly into the sawmill for processing. The discontinuance of the Merchandiser system where long logs had been processed meant that loader equipment no longer loaded long logs onto decks and no longer placed logs on the Merchandiser in-feed decks. An optimizer system in the Merchandiser was discontinued, as were the cut-off saws. Among other consequential changes, the sorting area and banding station were shut down. A new Volvo 330 loader was introduced into the changed operation. This machine as well as a 980 loader were used to unload the CTLs delivered to the site, and to take the CTLs and either place them into inventory or feed them into the sawmill directly. These and other changes reduced the bargaining unit by 19 employees.

In terms of the technological change provisions in the collective agreement, Arbitrator Larson adopts an approach which appears to fall mid-way on a spectrum ranging from a strict and narrow approach, to a liberal and broad approach. At page 7, Arbitrator Larson observes that, given the length of time the technological change provisions have remained essentially unchanged, they should be viewed as "modest in their scope and reach, perhaps reflecting the less complicated expectations of the previous era." Arbitrator Larson also observes that the obligation under Article XX, Section 1, has been interpreted in the context of the remaining provisions, "most notably Section 3 which provides for a rate adjustment of employees who are set back to a lower paid job *because of* mechanization, technological change or automation" (page 7; emphasis added).

Then, following a review of previous jurisprudence under technological change provisions, Arbitrator Larson rejects the test enunciated in *Bestwood Industries Ltd. (Lakewood Division) -and- International Woodworkers of America, Local 1-367,* unreported, April 16, 1982 (McKee), as too restrictive. Arbitrator Larson further concludes that the previous awards of Arbitrators Glass and Thompson in *Western Quality Wood Products* and *Re Federal Pioneer Ltd. and International Brotherhood of Electrical Workers, Local 258*, (1992), 32 L.A.C. (4^{th}) 284, respectively, do not stand for the proposition that the elimination of part of an operation could never constitute a technological change. Arbitrator Larson additionally notes that in several prior awards, the elimination of equipment or the shut down of part of an operation was found to have resulted in changes in working conditions constituting a technological change. He then concludes that the bright line in

such cases is drawn where the partial discontinuance or shut down of an operation results in material changes to the remaining parts of the operation:

> … Arbitrator Thompson found in the *Federal Pioneer* case … at p. 287, that "virtually every aspect of the production work that remained in the Richmond plant was technologically different from the previous operations." That must necessarily be the test. It is not resolved by a mere determination that an operation or part of an operation has been shut down. *One must go one step further and examine whether the balance of the operation that remains in production has been changed in some material particular, which is a question of fact to be determined in all the circumstances of the case*.
>
> (page 11; emphasis added)

Arbitrator Larson proceeds to review two cases wherein the discontinuation of part of an operation and changes to the remaining operation were found to constitute a technological change: *West Fraser Mills Ltd.*, and *B.C. Timber Plateau Mills Ltd and International Woodworkers of America, Local 1-424*, unreported, October 22, 1984 (Ready). In the former case, a finding of technological change was made where the employer removed machinery from its stud mill and replaced it with other machinery which altered the flow of lumber and changed that part of the operation to dimension mill. In the latter case, the employer shut down its hog-fueled wet cells, which fired the drying kilns, and replaced that part of the operation with natural gas. This change was found to be a change in work, method and material attracting the protection of the technological change provisions.

Thus, I find Arbitrator Larson's approach to the application of the technological change provisions reflects an intensely factual assessment of the circumstances of each case. Indeed, Arbitrator Larson notes that the facts in the case before Arbitrator Blasina in *West Fraser Mills Ltd.,* on which the Union relies here, supported a finding of technological change attracting the application of the collective agreement. Arbitrator Larson's concluding remarks clarify his focus on the factual circumstances of each case:

> The fact is that the entire [Merchandiser] system was shut down. … Nor is there any evidence that the shut down impacted the sawmill operations or the plywood plant in any material way. One may presume that both continued to operate in precisely the same way that they did prior to the shut down. Obviously, the Merchandiser system and the employees who worked in it have been directly impacted by the shut down, but the remaining sawmill and plywood operations have not been affected. On the authorities, a shut down of

> that nature must be seen to be controlled by other provisions of the collective agreement, if at all, but it is not a technological change. …
>
> (page 12)

In my view, Arbitrator McConchie's award in *Canadian Forest Products Ltd*. can also be viewed as another example of arbitral reasoning focusing on the factual matrix of each case rather than adopting strict principles which either foreclose or permit the application of the technological change provisions.

Applying this approach to the case at hand, I am persuaded that the facts relating to the changes at the Chasm mill in late 2009 do not support a finding of material changes in working methods or facilities constituting technological change.

In the fall of 2009, the Employer decided to stop processing long logs into lumber at the mill. The delivery of logs to the mill was restricted to CTLs, which had been loaded directly into the mill by loader or stacker for many years. The move to 100 percent CTLs resulted in the curve gang operator having to trim more logs than before, but nothing in the process by which the curve gang operator trimmed the logs changed: a chain saw was used throughout for this purpose.

The change to 100 percent delivery and processing of CTLs meant that the banding station, in-feed decks and cut-off saws were no longer required, and those parts of the operation were discontinued. Those parts of the operation were previously involved in processing long and short logs; they were not involved in processing CTLs. And importantly, in my view, the discontinuance of the banding station, in-feed decks and cut-off saws did not have the effect of materially altering the remaining part of the mill operation where the CTLs are processed into lumber. Those parts of the operation were simply shut down, leaving the remaining lumber producing part of the mill operating as it had before.

In terms of machinery, the Volvo loader, which was acquired in December 2009 and became occasionally operational in February 2010, is used for one of the same purposes as the stacker has historically been used -- i.e., to unload logs from trucks -- and when operational, the Volvo loader is simply more efficient than the stacker at performing that task. The stacker is still used for the same purpose as the Volvo. In my view, this cannot be found to be a material change in working methods or facilities constituting technological change for the purposes of Article XX.

With respect to the Butt'n Top, I find the addition of the grapple constitutes a minor, although not a material, modification to enhance the efficiency of the equipment. The Butt'n Top loader, which has always been used to unload CTLs from logging trucks, continued to be used for this purpose when the exclusive delivery of CTLs was instituted. This loader was fitted with a grapple in October 2009 to facilitate the handling of short logs. It is not entirely clear on the agreed facts whether the new grapple is used to handle CTLs, but assuming it is, the grapple does not appear to have altered the use of the Butt'n Top in any material way. That equipment continues to be used to unload CTLs from trucks and simply does so more efficiently than it did without the grapple. Again, I cannot find this to be a material change in working methods or facilities constituting technological change.

If, however, the introduction of the occasionally-used Volvo and/or the addition of the grapple on the Butt'n Top constitutes a material change in working methods or facilities, it cannot be found on the agreed facts of this case that these changes resulted in any employee being displaced or set back to a lower paid job. In terms of causation, the facts are that the 11 bargaining unit members whose jobs were eliminated due to the change to exclusively CTL delivery and lumber production were Cut-off Saw Operator and Bander Operators. See paragraph 15 of the Agreed Statement of Facts. The elimination of those positions was due to the discontinuance of the banding station, in-feed decks and cut-off saw, which I have found does not constitute technological change at the mill.

It is the case, as the Union notes, that *in West Fraser Timber Ltd.*, Arbitrator Blasina espoused a liberal, purposive approach under the contractual language in issue here. At the same time, I am satisfied the facts relating to the equipment replacements and other changes at the stud mill would have supported the same finding under Arbitrator Larson's approach in *Northstar Lumber*.

For the following reasons, I find the facts in *Cascadia Forest Products Ltd.* and *B.C. Timber Ltd.*, the two other cases the Union relies on, are distinguishable from the facts of the instant case. Again, it is the case, as the Union notes, that in *Cascadia Forest Products Ltd.*, Arbitrator Love took a broad approach to the interpretation of the technological change provisions in the collective agreement, finding that the changes addressed in Section 1 constitute a type of technological change. At the same time, the facts of that case establish that the work performed at, and the essential purpose of, the Port MacNeil Dryland Sort facility, which had been to sort, scale, buck, remanufacture and transfer logs, was materially changed. The work performed at, and the essential purpose of, that facility was changed to

become a facility where nothing more than log weighing and dumping into the water occurred. This was found to be a significant enough change in working methods and facilities to constitute technological change. In my view, no similar significant material facility change(s) occurred at the Chasm sawmill to warrant a similar finding.

Finally, in *B.C. Timber Ltd.*, the employer abandoned the formerly important working method of river drive log delivery via the Coast Sort for conversion into wood chips, and substituted a method whereby logs were converted into wood chips elsewhere and the wood chips where then transported to the pulp mills. No equivalent material change in working method occurred on the facts of the case before me. CTLs were delivered to the mill by logging truck and fed directly into the mill for production into lumber before the change and CTLs continued to be delivered to the mill by that same method and fed directly into the mill for processing, albeit in greater amounts than before the change. I also accept the Employer's submission that Arbitrator Bird's approach to the provisions of the collective agreement before him appears to have been influenced by the *Eurocan* decision and the definition of technological change in the *Labour Relations Code* at that time.

V. Decision

I conclude that the Union has not established any material changes in working methods or facilities constituting technological change under Article XX of the collective agreement. Accordingly, the grievance is dismissed.

It is so awarded.

DATED this 8th day of November, 2010 at Vancouver, British Columbia.

Joan M. Gordon
Arbitrator