IN THE MATTER OF AN ARBITRATION

BETWEEN:

NORTH CARIBOO FOREST LABOUR RELATIONS ASSOCIATION
(WEST FRASER TIMBER)
(hereinafter referred to as the "Employer")

AND:

INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 1-424 & 1-425
(hereinafter referred to as the "Union")

(SUPERVISORS' SENIORITY ARBITRATION)

Arbitrator:	H. Allan Hope, Q.C.
Counsel for the Employer:	Gary Catherwood, Esq.
Counsel for the Union	Friederike Lambeck, Esq.
Place of Hearing:	Williams Lake, B.C.
Date of Hearing:	January 17, 1984

A W A R D

I

This arbitration relates to a dispute with respect to the proper interpretation of a provision of the collective agreement dealing with the right of the employer to reinstate supervisory employees to positions within the bargaining unit.

The parties are the signatories to a master collective agreement which is one of three master agreements in force in the forest industry in British Columbia. The arbitration was conducted pursuant to a special interpretation provision of the master agreement. The parties agreed that I was properly constituted as an arbitrator under the provision and had jurisdiction to determine the dispute.

The dispute arose when Narender Bhati, a supervisor in West Fraser Timber, was returned to the bargaining unit on December 31, 1981 as a lumber grader in the planer mill after having been a supervisory employee outside of the bargaining unit for approximately two years. The reason for returning him to the bargaining unit was a reduction in the management forces brought about by an economic decline.

At the material time West Fraser Timber operated two shifts in the planer mill with two lumber graders on each shift. Coincidental with the return of Mr. Bhati to the bargaining unit, the most junior of the four lumber graders, Baljinder Gill, was placed on layoff and was forced to bump into a lower-rated position. Mr. Gill was senior to Mr. Bhati. He was hired on September 29, 1974. Mr. Bhati was hired on February 14, 1975, approximately five months later.

When Mr. Gill was displaced he was senior to the supervisor in both bargaining unit seniority and company seniority.

The disputed provision on which the employer relied is Art. VIII (9) of the master agreement. I will set out that provision later. The union did not challenge the right of the employer to reinstate a supervisor to the bargaining unit. It challenged the fact that an employee senior to the returning supervisor in both company seniority and bargaining unit seniority could be displaced in order to accommodate the return. The union position was that the supervisor, upon his return, was as much governed by the seniority and layoff provisions of the collective agreement as any other bargaining unit employee.

It was not clear on the facts exactly how the employer saw the reinstatement of a supervisor as working. That is, it was not clear if the employer saw itself as entitled to place Mr. Gill on layoff from his position in order to create a vacancy for the returning supervisor or whether it saw the return of the supervisor as creating an excess of employees in the lumber grader category which permitted the employer to put Mr. Gill on layoff status.

That aspect of the procedure for returning supervisors is not addressed expressly in the disputed provision. Aside from the provision, placing Mr. Gill on layoff in anticipation of the return of the supervisor or in response to his return would be a clear breach of the seniority and layoff provisions of the master agreement.

The disputed provision, Art. VIII (9), reads as follows:

Section 9:

> It is agreed that when an employee has been transferred by the Company 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 in the 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. (underlining added)

Art. VIII (9), as stated, does not contemplate in express terms how a supervisory employee is to be "reinstated" or what was meant by "the job held at the time of his promotion". The position of the employer was that Art. VIII (9) should receive a literal interpretation and that a returning supervisor was entitled to claim the job held at the time of promotion and was prohibited from exercising any other claim. The employer went so far as to say that if the job of the supervisor had ceased to exist, the supervisory employee would be without rights, regardless of his seniority.

The union position was that the disputed provision had to be read in the context of the collective agreement. In particular, the union said the provision should be applied consistent with the seniority and layoff provisions. Those provisions read in part as follows:

Section 3:

b) In the event of a reduction of the 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 accept a lay-off until his/her regular job becomes available, provided however ...

If the employer is to be seen as having placed Mr. Gill on layoff after the "reinstatement" of Mr. Bhati, that act would be a breach of Art. VIII (3) (b). If the layoff of Mr. Gill is to be seen as having occurred in order to make room for the "reinstatement" of Mr. Bhati, then it would be a breach of Art. VIII generally because no such right in the employer is contemplated in Art. VIII. That is, it is not contemplated in Art. VIII that employees will be placed on layoff to accommodate the return of supervisors. In point of fact, the layoff of an employee for such a purpose out of seniority ranking would be contrary to the scheme of seniority as an employee benefit. If that right is to be found, it must be found in the disputed provision.

II

The union position was that the parties never intended in Art. VIII (9) to vest in supervisory employees access to seniority rights greater than those they would have enjoyed if they had remained in the bargaining unit or superior to those enjoyed by members of the bargaining unit itself. In particular, the union submitted that there was no

intention in the parties to give to supervisors the right to oust employees with greater bargaining unit seniority or company seniority than the supervisor.

The employer, as stated, took the position that the language of the provision was clear and unambiguous and that the disputed language should be applied literally on the basis of the ordinary meaning of the words used, even if it meant that some supervisory employees were denied all seniority rights because the job they occupied at the time of their promotion had ceased to exist. (The risk that the particular job would be gone is high in an industry ravaged by declining markets, sharply reduced production, consolidation of production facilities and technological changes.)

Provisions dealing with seniority rights of supervisory employees have been interpreted in a number of decisions. The purpose of such provisions was discussed in one of the leading decisions, ICN Strong Cobb Arner Ltd. (1973) 5 L.A.C. (2d) 105 (Weiler). Prof. Weiler described the purpose on p. 108 as follows:

> The purpose of this kind of clause is to give protection to the long service employee in lay-offs or promotions, notwithstanding his absence from the bargaining unit (an absence which experience has shown may be only temporary or intermittent). Nor is this a totally open-ended protection, extending to every non-unit employee. Read in conjunction with s. 2, this benefit is restricted to those employees who were hired into the plant unit, placed on the seniority list, and who are allowed to continue to accumulate seniority even though they were promoted or transferred out of the unit. A fair argument could be made that this is a natural implication of the basic principle of seniority itself.

The interpretation urged by the employer does not achieve that contemplated purpose. It makes the rights of supervisory employees extremely narrow and subject to loss by factors totally unrelated to the seniority and qualifications of the supervisor. Art. VIII (9) speaks of seniority. It speaks of seniority retention and a right to continue accumulating seniority. It is implicit that the parties intended to have seniority figure in the right of an employer to be reinstated to the bargaining unit. But, on the interpretation of the employer, the seniority of a supervisor would play no part in determining his right to return to the bargaining unit, his initial position in the seniority hierarchy or his rights upon return vis a vis other members of the bargaining unit.

The rights of a supervisor would be contingent solely on the basis of whether his job continued to exist in identifiable form after his promotion and prior to his return. If his job could be identified, then the supervisor would have a right to reinstatement regardless of his seniority or the seniority of the employee he was seeking to displace. It is not a seniority concept on the employer's interpretation. It is retention of a right to claim a particular job and seniority is irrelevant. Certainly, to paraphrase the ICN Case, the interpretation of the employer does not fall within "a natural implication of the basic principle of seniority itself". It is, in fact, the antithesis of that basic principle with senior members of the bargaining unit made subject to layoff despite their seniority and qualifications.

III

In support of its interpretation the employer

called extrinsic evidence of the manner in which the disputed provision came into existence and the manner in which it had been applied following its introduction. In particular, the employer called evidence from Jacob Holst who began his career in the forest industry in 1936 as a member of the union.

Mr. Holst served in a number of executive capacities in the union, including a period as president of Local 1-424, the local having jurisdiction over the northern interior master agreement then in existence. He was an officer of District Council #1 of the I.W.A., the predecessor to the existing Western Canadian Regional Council #1, which has jurisdiction over the various local unions which represent employees in the forest industry in British Columbia. In 1965 he commenced a 17-year career with management as vice-president of industrial relations for Canadian Forest Products.

His evidence was that the disputed provison came from a provision negotiated into the coast master agreement in 1957. That provision, being Art. XIV (10), read as follows:

> In any case where an Employee has been transferred by the Company to a supervisory position and at a later date ceases to be a supervisory worker and the Company desires to retain his services, it is hereby agreed that re-instatement can be made within the bargaining unit commensurate with competency and seniority.

A dispute arose as to the proper interpretation of the provision and the dispute was submitted to the Hon. G.M. Sloan, then designated as the interpreter of the coast agreement. In a decision published on December 30, 1957 Mr. Sloan dealt with the issues of interpretation. I will return

to that decision later in this award. The union was dissatisfied with the interpretation and raised the issue during its next set of negotiations. Mr. Sloan participated in those negotiations in the role of mediator. The negotiations led to an agreement which was reduced to memorandum form on August 14, 1958. The memorandum recorded the following agreement:

> That Article XIV, Sec. 10 be amended to provide that supervisory workers reinstated in the bargaining unit must return to the job held at the time of their promotion to a supervisory position.

That aspect of the memorandum of agreement invoked considerable controversy. In response to that controversy Joe Morris, the president of District Council #1, wrote to Mr. Sloan on August 28, 1958 inviting his interpretation as to what the parties intended to encompass in the memorandum. In particular, Mr. Morris noted that the parties had some disagreement as to whether seniority would continue to accumulate after a promotion or whether it would be "frozen". The memorandum did not address that specific issue.

Mr. Sloan responded in a letter dated August 30, 1958, which was addressed to John Billings, a representative of the employer. The parties agreed that the letter would form part of the apparatus of interpretation of the collective agreement. The operative part of the letter reads as follows:

> ... my note on my original memorandum indicates that seniority to be frozen when going back to original job whether by demotion or reduction in forces.

The provision which was included in the 1958 coast

master agreement did not incorporate the concept that seniority would be "frozen" upon promotion but Mr. Holst agreed that the parties accepted that interpretation in the application of the clause. That provision, in its final form, read as follows:

> In any case where an Employee has been transferred by the Company to a supervisory position and at a later date ceases to be a supervisory worker and the Company desires to retain his services, it is hereby agreed that reinstatement can be made within the bargaining unit provided however that supervisory workers reinstated in the bargaining unit must return to the job held at the time of their promotion to a supervisory position.

Mr. Holst said that the 1958 northern interior master agreement contained a similar provision but that the northern interior version provided expressly that seniority would remain "frozen" upon promotion. He said the 90-day continuation of seniority concept was never introduced in the coast master agreement. The concept was first introduced in the northern interior by way of a letter of understanding with a member employer and was later incorporated in the master agreement. The precise date of introduction was not given.

Mr. Holst said the vast majority of supervisors who were reinstated were returned within 90 days of their promotion until the economic crisis resulted in supervisors being returned after protracted absences. He could recall only one occasion where the returning supervisor displaced an employee with greater seniority. That was under the coast master agreement. A grievance which was filed was dropped. That was the only significant evidence led of past practice.

The requirements before evidence of past practice can be helpful in the resolution of disputed interpretations were discussed extensively and summarized in Great Atlantic and Pacific Tea Co. and American Bakery Workers, (1962), G2-1 C.C.H. (ARB) 1856:

> Furthermore, it should be recognized that merely because a certain action or conduct occurred once or even several times, such behaviour does not constitute a past practice with the firming influence the term conveys. To fall into the category of a past practice, behaviour or conduct must have the following characteristics: It must have been consistently followed; it must have been repeated over a substantial period of time; it must represent mutually acceptable action - mutual acceptance not in the sense of a negotiated understanding but as indicated by no protest of either party who were nevertheless knowledgeable about the action, behaviour or practice ... The presence of those characteristics is total and not selective.

An implication can arise that grievances settled or abandoned can bind the parties to a particular interpretation but there were no sufficient facts adduced to support such a finding in this dispute. The nature of the grievance and the terms of its settlement were not adduced. The evidence consisted solely of the recollection of Mr. Holst that such an event occurred. Mr. Holst did not offer his understanding that a clear practice had been established. In my view the only extrinsic evidence led which can be of any assistance is the evidence of bargaining history.

Initially the union called no evidence. In rebuttal it called evidence from Harvey Arcand, president of Local 1-425, the local of the union having jurisdiction with respect to the northern interior master agreement. Mr. Arcand said that issues involving collective agreement inter-

pretation required the consideration and approval of the directors of the board of Regional Council #1 and that the issue giving rise to this dispute had been discussed at that level. The board members did not agree with the interpretation placed on Art. VIII (9) by the industry, he said, but that there was no one on the board who had been involved in the negotiations giving rise to the disputed language or who had any insight into the dynamics giving rise to it.

The union called Mr. Arcand for the purpose of meeting any adverse inference which might have been drawn by reason of the failure of the union to call evidence relating to the bargaining history of the provision. The union said there was simply no evidence of bargaining history available, other than Mr. Holst. To quote Mr. Arcand "there was no one other than Jake (Mr. Holst) from the I.W.A. who had participated in negotiations".

In cross-examination Mr. Holst agreed that the parties did not give consideration to the issue which gave rise to this dispute. He said that neither party anticipated the implications of supervisors returning to bargaining units in response to an economic downturn, (although that matter was considered, at least hypothetically, according to Mr. Sloan's letter of August 30, 1958.) It was in that vein that Mr. Holst agreed that the parties did not direct their minds to the issue which gave rise to this dispute, that is, they gave no consideration to an application which would result in giving employment preference to a supervisor who was junior in bargaining unit seniority, or even company seniority, to the employee who had been or was to be displaced to make room for him.

As stated, Mr. Sloan had been called upon to interpret the 1957 provision and he concluded that it did not have the effect of "freezing" seniority. The result for the currency of that agreement was that supervisory employees continued to accumulate seniority after leaving the unit which they could invoke in order to claim a job in the bargaining unit. Coincidental with the dissatisfaction of the union with that practice, however, another practice developed which the union found equally objectionable. That practice arose with respect to supervisors who were returned to the unit and who used their continuing seniority and the experience they had gained as supervisors to claim jobs other than jobs they had worked in prior to their promotion. In short, returning supervisors were claiming the jobs of employees whom they had supervised on the basis of qualifications, or "competency" obtained in the course of that supervision.

It was for that reason that the union proposed in the 1958 agreement that a returning supervisor be restricted to "the job held at the time of ... promotion". The intent of the union was to restrict supervisors from obtaining benefits contrary to the accepted principles of seniority. Those supervisors who claimed more desirable positions through the device of leaving and returning to the bargaining unit were seen as using the mobility of their brief promotion to bump into a position they would not be able to claim in the ordinary course of events. On the evidence, creating a right in a supervisor to force a more senior employee from his position was the furthest thing from the mind of either party when the disputed language was negotiated.

IV

The employer submitted that the fact that parties

to a collective agreement do not turn their minds expressly to every potential application of particular language does not justify a conclusion that the language should be assigned a meaning different from the ordinary meaning of the language used. The employer emphasized that the words used should be assigned their ordinary meaning.

To that extent, the employer sought to rely on the rather more narrow principles of interpretation which govern disputes under the common law. In British Columbia a different approach is taken to the question of interpretation, by reason of the Labour Code. The Labour Relations Board considered the implications of the Code with respect to the task of interpretation imposed on arbitrators in its decision in University of British Columbia and Canadian Union of Public Employees, Local 116, (1977) 1 Can. L.R.B.R. 13. The board made the following comments on p. 18:

> The parties do not draft their formal contract as a purely literary exercise. They use this instrument to express the real-life bargain arrived at in their negotiations. When a dispute arises later on, an arbitrator will reach the true substantive merits of the parties' positions under their agreement only if his interpretation is in accord with their expectations when they reached that agreement.

In that decision the board was critical of the very approach urged by the employer in this dispute. That is, it was critical of assigning words their literal and ordinary meaning impervious to their industrial relations context or the apparent expectations of the parties. On p. 16 the board said:

> Secondly, it is important in industrial relations that the arbitrator decipher the actual intent of the parties lurking behind the language which they

> used and not rely on the assumption that the parties intended the "natural" or "plain" meaning of their language considered from an external point of view. An employer and a trade union don't simply negotiate about an isolated transaction and then go their separate ways. They have to live together for a long time and resolve a great many problems which will arise over the course of their relationship.

In this dispute the real difficulty is to assign a meaning to the disputed provision with respect to an application the parties never considered at the time of negotiation. The Labour Relations Board has given direction to arbitrators as to the approach they should take in those circumstances. In Andres Wines (B.C.) Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 300, [1978] 1 Can. L.R.B.R. 251. The board said as follows on p. 253:

> As a practical matter, it is impossible for the parties to a collective agreement to anticipate, to canvass, and then to reach agreement about every contingency which might arise during its term. The fact of life stems from the very nature of a collective agreement.
>
> . . . . . .
>
> When they take [such an] issue to arbitration, their arbitrator does not have the luxury of deciding not to decide. He must make up his mind about the implications of their general contract language for this peripheral problem. In the absence of any clear indication of the mutual intent of the parties - gathered from either their language or their behaviour - the arbitrator must, in effect, reconstruct some kind of hypothetical intent.

The principle addressed in the Andres Wines Case was further elaborated on in a later decision of the board in British Columbia Forest Products Ltd. (Caycuse Logging) and International Woodworkers of America, Local 1-80, May 16,

1980, unreported. On p. 4 of that decision the board said as follows:

> In such a case, the Board has indicated that the arbitrator should not throw up his hands in despair, but should draw a reasonable inference of the presumed intent of the parties, had they addressed their mind to this one particular case.

I cannot find any indication in the extrinsic evidence that either party sought to achieve the result now urged by the employer or that they would have pursued that result if they had turned their minds to that specific application. The bargaining goal of the union, as described by Mr. Holst, was to redress perceived abuses with respect to the return of supervisory employees to the bargaining unit. One clear objective of the union in negotiations, and the goal which is material to this dispute, was to achieve a resriction on supervisors taking jobs they had not previously occupied on the basis of qualificaitons obtained as supervisors.

Seniority rights and access to a bargaining unit are matters which must be negotiated. Where access is left unrestricted, it is coincidental with employment and it is open to an employer to employ anyone in any capacity it chooses, provided that the decision is not otherwise contrary to the collective agreement. See: Federal Wire & Cable Co. Ltd. (1960), 3 Steelworkers Arbitration Cases 276, as cited in Windsor Machine Co. Ltd. and United Steelworkers, Local 7816 (1982) 3 L.A.C. (3d) 331 (Munroe). Two of the observations cited from that decision appear in the Windsor Machine Case on p. 334 as follows:

> I take as my starting point that seniority under a collective agreement has its meaning and application only under the terms and in the context of the agreement. Seniority, in other words, is a collective bargaining concept.
> . . . . . .
> When new employees become members of the unit, or other employees are brought into the unit they take their place and rank according to the prescriptions of the agreement governing job vacancies, or job entitlement in general, and service standing proceeds in the same footing. They become employees in the bargaining unit only on and by the terms of the collective agreement ...

Prior to the introduction of the first provision in 1957 there was no restriction on the return of supervisors to the bargaining unit. It was the union which sought to impose restrictions. The first provision was deemed inadequate by the union and further restrictions were pursued, including the restriction on supervisors using experience gained as supervisors to return to the bargaining unit and claim jobs they had not performed in the bargaining unit. The employer was prepared in bargaining to make concessions with respect to its previously unfettered right to return supervisors to the bargaining unit. Nothing in the pattern of bargaining suggested that the interpretation now urged by the employer reflects the collective bargaining goals or expectations it had at the time.

The pattern of concessions made by the employer bespeak an intention to retain for supervisors a continuing right to exercise their seniority in a return to the bargaining unit, not to acquire the narrow and restricted right which was urged in this dispute. I must presume from the evidence of Mr. Holst that the goal of the employer was to acknowledge the seniority of members of the bargaining unit but to retain a right to return supervisors to the bargaining

unit with their bargaining unit seniority frozen after 90 days, but intact. Its particular concern was to ensure that bargaining unit employees would continue to accept promotions. To that end it was deemed necessary that bargaining unit employees have the security of being able to return to the bargaining unit with seniority intact if the supervisory venture failed. The thrust of the 90-day period during which seniority was to continue to accumulate and the restriction to the particular job was to provide a hiatus during which an employee promoted to a supervisory position would maintain a sort of status quo which would protect both he and the remaining members of the bargaining unit if he elected to return within the 90 days.

The 90-day provision was not introduced into the coast master agreement and returning supervisors were limited to the seniority they had accumulated in the bargaining unit. But the principle was the same insofar as the presumed intent of the parties is concerned. In neither case was there anything to support a mutual intent to bestow on returning supervisors a right to oust employees senior to them in bargaining unit or company seniority.

V

I now turn to the disputed interpretations. In support of its interpretation the employer relied on three aspects of extrinsic evidence. The first was the evidence of Mr. Holst as to the bargaining history of the provision. The second was its application in practice. The third was the present wording of the disputed provision in the coast master agreement.

I have commented on the evidence of practice, which I found to be of no assistance. I have commented extensively on the evidence of bargaining history and I will return to that aspect of the issue shortly. I pause now to set out the current language of the disputed provision in the coast master agreement. That provision reads as follows:

> In any case where an employee has been transferred by the Company to a supervisory position and at a later date ceases to be a supervisory worker, and the Company desires to retain his services, it is hereby agreed that reinstatement can be made within the bargaining unit in line with his bargaining unit seniority. The following options shall prevail:
>
> (a) If the Supervisor has the bargaining unit seniority, he shall revert back to his previously held job, or,
>
> (b) If the Supervisor does not have the bargaining unit seniority as outlined in (a) above, he may apply his seniority to a job commensurate with his bargaining unit seniority, competency considered, or,
>
> (c) If the Supervisor does not have the bargaining unit seniority to obtain a job, he shall be laid off and subject to all the provisions of the Coast Master Agreement.

The point made by the employer on those two remaining aspects of the extrinsic evidence was the same. The employer said that the interpretation urged by the union in this dispute would give to the provision the same meaning it had in the 1957 coast master agreement and as later amended to its current form.

The employer said that the parties cannot be taken to have intended to the meaning now assigned by the union or

they would have used language to reflect that intention which approximated the language in the coast master agreement.

It was in that context that the employer led the evidence of the bargaining history of the provision in the northern interior master agreement. The employer said that while the provision evolved from the provision in the coast master agreement, the language did not continue to imitate that provision. It would be wrong, said the employer, to treat the provisions as if they had a common meaning. I agree in substance with the submission of the employer. The three master agreements are different agreements and nothing suggested a mutual intention in the parties to achieve a uniformity of interpretation of the respective agreements. I agree also that language differences must be weighed.

But the union did not assert an interpretation based on the interpretation of the coast master agreement. The union position was that the disputed language did not entitle the employer to reinstate an employee into a position in the bargaining unit which would result in the displacement of an employee senior to the supervisor in bargaining unit or company seniority. The union position was that the disputed provision had to be interpreted according to the principles applicable to the interpretation of collective agreements.

In that vein the union said that the provision should be interpreted so as to give effect to the seniority and layoff provisions and consistent with the principles of seniority implicit in the master agreement. Those principles were seen by the union to be in accord with the general principles of seniority which prevail in our industrial relations system.

It was in that context that the union said that the term, "job held at the time of ... promotion" must be assigned a liberal meaning aimed at securing the apparent goal of the parties, a goal the union saw as balancing the rights as between bargaining unit employees and supervisory employees.

That view of the purpose of clauses which have reference to the retention of seniority by employees promoted out of the bargaining unit is consistent with the view taken in the various authorities. See: ICN Case, Windsor Machine Case and Tonka Corporation Canada Ltd. and International Molders & Allied Workers' Union (1977) 15 L.A.C. (2d) 165 (Weatherill).

The employer urged that the decision of Mr. Sloan made with respect to the proper interpretation of the disputed language in the 1957 provision would assist in resolving this dispute. But the interpretation of Mr. Sloan dealt primarily with the question of whether the seniority of supervisors should be frozen as of the date of promotion. Mr. Sloan held that it would require a specific provision to freeze seniority, an interpretation which he saw as being in accord with the relevant authorities. In particular, he cited the decision in United Electrical, Radio and Machine Workers, Local 512 & Square D Co. Ltd. (1957) 7 L.A.C. 261 (Taylor).

That decision was to the same effect as the later decisions, that is, that seniority for a bargaining unit employee continues to run after promotion out of the bargaining unit unless the language of the collective agreement restricts the meaning of seniority to service in the bargaining unit. The decision of Mr. Sloan does not assist in the resolution of this dispute. That decision led to changes in the language of the provision which were not considered by

Mr. Sloan. In particular, he did not consider then or later the interpretation problem raised in this dispute. As stated, the interpretation urged by the employer is not endorsed in the arbitral authorities. The interpretation creates a circumstance in which the principles of seniority are flouted, not imposed. In my view the union is correct that the disputed provision must be interpreted consistent with the seniority and layoff provisions of the collective agreement.

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 Art. VIII (3) or to exercise any other rights available to him as a member of the bargaining unit.

Applying the proper interpretation to the particular facts before me, it was open to West Fraser Timber to reinstate the supervisor, Mr. Bhati, to the position of lumber grader in the planer mill. Thereafter, when West Fraser wanted to reduce the number of lumber graders in the planer mill, it was obligated to do so in compliance with Art. VIII (3) (b) and (3) (c). In that application Mr. Bhati, as the

application Mr. Bhati, as the lumber grader with the least bargaining unit seniority, would have been given the option under Art. VIII (3) (c) to seek another position as a means of avoiding layoff, or to accept layoff subject to his right of recall.

If, by way of hypothesis, Mr. Bhati had been senior to one or more of the four lumber graders in terms of bargaining unit seniority, the junior lumber grader, following the reinstatement of Mr. Bhati to the unit, would be placed on layoff from the position and, thereafter, the seniority and layoff provisions would govern.

The facts are not sufficiently broad for me to consider what the circumstance would be if the previous job category of a supervisor had ceased to exist, but the union conceded in argument that such a supervisor, on a reasonable interpretation of the provision, would have a continuing claim based on his seniority. Certainly the authorities would favour a decision which gave meaningful recognition to the seniority of the supervisor.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of May, A.D., 1984.

H. ALLAN HOPE, Q.C. Arbitrator