

IN THE MATTER OF AN ARBITRATION

BETWEEN:

WEIR'S SAWMILL LTD.

(The Company)

AND:

INTERNATIONAL WOODWORKERS OF AMERICA Local 1-424  
(The Union)

CONCERNING THE GRIEVANCE OF

BOOTA JOHAL

Arbitrator  
For the Company  
For the Union  
Date of Hearing  
Date of Award

Alex Brokenshire  
Norman K. Trerise  
F. Andrew Schroeder  
April 23, 1985  
May 24, 1985

This Arbitration was held in Quesnel, British Columbia, on April 23, 1985. It was agreed that the Board was properly constituted and had jurisdiction to hear and rule on the matter in dispute.

The question before the Arbitrator is:

**"Did the Company violate the agreement between North Cariboo Forest Labour Relations Association and International Woodworkers of America, AFL, CIO, CLC - Local 1-424 - July 1, 1983 - June 30, 1986 when, following a reduction of forces, it did not allow Boota Johal to 'bump' into a watchman's position?"**

BACKGROUND

The Company operated a Sawmilling complex in Quesnel, B.C. This was made up of a Sawmill, a Planer and the necessary supporting services.

On November 2, 1984 the Sawmill section was consumed by fire. This caused Sawmill employees to be laid off on that date. The exception to this was the retention at work of the two regular watchmen. These were **G. MacCauley**, Seniority February 2, 1979 and **K. Bryce**, Seniority September 23, 1982. The continuation of this service was required by the Planer Mill which continued to run using the existing planer stock inventory. The planing function including the operation of the Dry Kilns continued until Christmas time, 1984.

As well as this, watchmen were needed to provide security to the entire Mill site whereon machinery was stored.

On December 13, 1984, the Grievor, **Boota Johal**, initiated a grievance claiming violation of the Collective Agreement by the Company. This was based on the fact that the Company had not allowed him to bump into a watchman's job. **Mr. Johal's** seniority date is February 12, 1980. This places him higher on the seniority list than regular watchman **K. Bryce**. This grievance is now before this Board.

A preliminary objection was raised by Company Counsel. He contended that the Grievance had not been processed within the time limits set out in the Collective Agreement and therefore a decision by the Board should find that the right to grieve had been nullified. He cited Article XIII - Grievance Procedure, Section 1, Page 32, which reads:

**"Step 1 - The individual employee involved with or without the Job Steward shall first take up the matter with the Foreman directly in charge of the work within fourteen (14) days from the occurrence of the event or events giving rise to the grievance or from the time when the employee has knowledge or may be reasonably presumed to have knowledge of such event or events."**

He contended that the fire which caused the lay off occurred on November 2, 1984 and the grievance had not been raised until December 13, 1984. This is a period of six weeks and far exceeds the fourteen (14) day limit.

Council for the Union contended that unusual circumstances were involved in this case and he therefore asked the arbitrator to relieve this breach of time limits using the terms of the Labour Code of British Columbia, Section 98(e).

The parties agreed that the case should be heard before the Board made a decision on the preliminary objection.

### UNION EVIDENCE

The Union called three witnesses. The first was **Diane Rintoul** who first was hired on a temporary basis on the long weekend of November 11, 1976. She was shown the fire stations, the kilns and advised who to phone if anything seemed out of line. The person phoned would then come to the Mill and take the necessary action. The first weekend was quiet and she did not have to call anyone. She continued to be called in on a relief basis for weekends and then for vacation relief until 1982. During that time, she learned the full scope of the job which included checking for fire with emphasis on areas of the Mill where welding was done; checking the kilns; starting and stopping these when required; and knowledge of reading of recording meter charts .

During the learning period, which was a progressive process where experience was gained, she would phone the regular kiln operator, **Mr. David Myers**, who would come to the Mill and set things right. She had to phone **Mr. Myers** on a number of occasions during her learning period.

In addition to these duties, she also watched for incidents of theft and worked at clean up when time allowed. During her time as a watchman, she had found a number of fires. Some were controlled by using a fire hose, but it also had been at times necessary to call the town fire department. They usually respond quite quickly.

**Mr. Boota Johal** told the Board that he had been employed by the Company in several operational jobs since 1980 and at the time of the November 2, 1984 fire, he was a cut-off saw operator. He had been the Union Plant Committee Chairman for about two years.

On November 2, the employees had not been told of any plans or circumstances for future employment and it was not until early in 1985 that the Company had announced that the Sawmill would be rebuilt.

On November 19, 1984, the Company sent a registered letter to **Mr. Johal**, Chairman of the Plant Committee in which he was advised that it was the Company's intent to institute material changes in working methods of facilities which will involve the laying off of employees per Article XXIII, Section 1 - Technological Change - of the Collective Agreement.

On the same date a letter was sent by the Company to employees who were laid off because of the fire. This advised them of their benefits coverage and also that the Company was assessing the damage caused by the fire and that future plans would be announced in the near future.

This witness stated that at the time of the fire, he thought the watchmen were laid off and it wasn't until early December, when he saw **Ken Bryce's** truck at the Mill and then phoned **Mr. Bryce** and asked what job he was doing, that he realized that there was this activity at the Mill. He then spoke with **Mr. Harry Hodson**, a company supervisor, telling him of his intention to exercise his seniority rights to bump into a watchman's job. **Mr. Hodson** told him he would not get the job, so the next day, on December 13, he filed a grievance. This was discussed with **Mr. Hodson** and Mill Manager **Don Wade** who told him he was not competent to do the job. He then phoned **Mr. Shiv Garcha**, the Union Business Agent and advised him of the situation. He answered a call from **Mr. Hodson** on December 21, 1984 and went to the Mill at about 2:30 p.m. Again **Mr. Hodson** and **Mr. Wade** told him he was not competent to do the job and asked him to sign a paper to that effect. This he refused to do. The Company then told him he would not be shown the job, only the watchman's punch clock and he better know how to load it. He tried to load the clock and also went and looked for the fire stations; he found three in about fifteen minutes. He knew that he should watch for fire, vandalism and also that he would be required to do clean-up. When questioned by Company Counsel, he said that he was familiar with the terms of the Collective Agreement that states an employee can bump a more junior employee, if competent to do so, at the time of a lay off. He also was aware of the time restrictions contained in the negotiated grievance procedure.

When questioned further, he told the Board that he had not done the job at any time, did not know the duties in regard to the kilns, and did not have the ability to

read and interpret the recording "kiln charts" as he had never been shown how to do so. He did not know how to operate the clock, the sprinkler system, the dry valve, and was unsure as to what was required regarding air pressure to the fire system. He did not know how many dry valve systems were extant, the number and location of fire extinguishers and was in the same situation regarding fire hydrants and fire hoses. However, he felt that he could do the job if shown the several component parts.

He told of leaving the Mill at about 3:00 p.m. and then returning and meeting **Mr. Hodson** who asked him if he had returned to do the job, to which he replied that he had come back to be shown the job requirements and then he would be able to tell management if he was or was not competent to do it. **Mr. Hodson** replied that he was supposed to be competent before he could get the job. The punch clock was on a table, **Mr. Hodson** said, "There's the clock and there's the papers ... show me you can make a station check." The Grievor had difficulty and **Mr. Hodson** told him again that he would not get the watchman's job.

**Shiv Garcha** was called by Union Counsel to clarify why the Grievor had returned to the Mill in the afternoon of December 21, 1984. He gave the following information.

Early in December, the Grievor had told him that a watchman with less seniority than he possessed was working in the Mill. He had spoken with the Company, telling them he wished to bump into the job. This had been refused. **Mr. Garcha** advised **Mr. Johal** to file a grievance. There was some fuss at the second step of the grievance procedure, so on or about December 14, **Mr. Garcha** wrote a letter requesting a third step meeting. **Mr. Dave Gunderson** of the North Cariboo Forest Labour Relations Association had approached **Frank Everett** of the I.W.A. to arrange a meeting regarding cooperation between the parties in the extraordinary matters that had been caused by the Mill being burned. A meeting took place in Prince George shortly before December 21. Among other things, **Mr. Johal's** case was discussed. **Mr. Garcha** had to leave the meeting before it was completed. However, he was later advised by **Mr. Everett** that the Company would call **Mr. Johal** to the Mill and if he could do the job he would get it.

On December 21, **Mr. Johal** phoned **Mr. Garcha** and told him of the 2:30 meeting. **Mr. Garcha** told him that the Company would show him the job. This was in keeping with **Mr. Everett's** information and is the reason the Grievor returned to the Mill later in the afternoon of December 21.

**Mr. Garcha's** testimony was given as an additional witness following the Company's presentation.

Following **Mr. Garcha's** testimony, Counsel for the Company called **Mr. Robin Rogers**, a staff member of the North Cariboo Forest Labour Relations Association who had been present along with **Mr. Gunderson** at the Prince George meeting. He believed that meeting was held on December 21. He testified that the **Johal** grievance was discussed with management retaining the position that the grievance was out of time and in any event **Mr. Johal** did not possess competency to do the job and that the Company was not obliged to train him.

During a caucus, the Company was called by phone. They were anxious to put the matter to bed and relayed that thought. They did not agree to a trial as being the measure of competency. After the caucus, the matter was discussed with **Mr. Everett** and the possibility of a trial for the Grievor was not definitely ruled out. **Mr. Rogers** testified that it was likely that **Mr. Everett** would understand that a trial run would be given.

#### COMPANY EVIDENCE

**Gordon MacCauley**, who has been a watchman for the Company for about six years, was called. Prior to coming to the Mill, he had worked for many years as a diesel engineer, a diesel electric engineer and a millwright. When first hired as a watchman, he was given training with a regular watchman for two shifts and then came in on his own time for four more shifts with a watchman. At that time he considered that he knew enough to see when something was wrong. He could not do many of the things required of the job, but he would know enough to phone **Mr. Myers** who would come in and take over the repair or adjustment responsibility. He gave detailed evidence regarding clean-up, clock patrols, checking fire line pressures for adequate air pressure, attendance to the sprinkler system re bleeding

air to prevent freezing, checking for hot bearings on conveyors to prevent fire and also the checking of the air compressors. Constant attention had to be given to areas where welding had been done and where there was a possibility of sparks flying from the sawdust burner.

The kilns require special attention. If the burner gets stuck, the dryer gets too hot which in turn can cause fire or activate the sprinkler system. This can cause water damage to product. It takes a few months to know how to really do the job and be able to make the necessary checks and adjustments. The job content has changed by being more complex than it was a year and a half ago. The sprinkler system has been added and also some areas are computerized. This latter is helpful but doesn't always work properly. A manual override is then imposed. Some instruction and training is required to understand the workings of the computer. This witness spent quite a bit of time during a three week period with the man who was installing the computer and thereby gained the required knowledge.

There has been a considerable amount of theft from the Mill. The security aspects of the job are important. **Mr. MacCauley** said the other watchman, **Mr. Ken Bryce**, had been employed as a casual employee on weekends for some time before becoming a watchman. He had worked around the kilns and other parts of the fire and security systems. He had gained a substantial amount of knowledge pertinent to the watchman's job before he became a regular incumbent.

**David Myers** had been employed by the Company as Kiln operator and Fork Lift operator for about twelve years. During that time, he had trained **Mr. MacCauley** and **Mr. Bryce** in all aspects of kiln controls. He had been trained on the computer by the installer for about two weeks. If the watchmen are not capable of diagnosing problems and resetting kiln controls, it makes it necessary for them to call **Mr. Myers** who will then attend the Mill and do what has to be done. If the watchman is inexperienced, this may be as often as two or three times a shift. For this **Mr. Myers** is paid three hours at overtime rates for each visit to the Mill. He cited a number of incidents where inexperience or inability had caused sizable losses. It takes two to three months for watchmen to become capable of meeting emergencies.

**Donald Wade**, the Mill Manager, related that the fire on November 2nd started about 10:00 a.m. All employees of the Planer Mill, with the exception of the watchmen, were sent home before noon. An advertisement was put in the local paper saying no work until further notice. On November 19, all employees were sent a letter to the same effect. On December 13 the Grievor had come to the Mill and advised the Company that he intended to exercise his seniority to bump into a watchman's job. He was told that by not making this known at the time of lay off, he had accepted the lay off and therefore had no rights at this time and in any event he was not competent to do the job. A grievance was filed and **Mr. Johal** continued to contact the Company demanding the job. On December 21, he was called to the Mill, again told he was out of time on his grievance and again told he was not competent. Later **Harry Hodson** told **Mr. Wade** that the Grievor had returned to the Mill and asked to be shown the job. He was given the clock which he took but returned shortly thereafter with the recording chart in upside down and the centre holding nut not in place.

**Mr. Wade** repeated some of the operational complexities of the kilns.

Mill superintendent, **Harry Hodson**, corroborated evidence previously given and added his account of the contact with the Grievor at about 3:30 p.m., December 21.

**Mr. Hodson** met him in the Mill yard by the bins. **Mr. Johal** said "I'm here to work." **Mr. Hodson** said he was not going to give training to which **Mr. Johal** replied that would not be necessary as he was already qualified. At this point **Mr. Hodson** gave him the clock and asked him to show that he could do that facet of the job.

This produced the results previously reported. When questioned, **Mr. Hodson** said that if **Mr. Johal** had shown competency to do the clock rounds, he probably would then have been asked to fire up the kiln.

However, after a total ignorance of the clock was demonstrated, no further checking was needed to ascertain that **Mr. Johal** was not competent to do the job.



### UNION ARGUMENT

Union Counsel argued that the Collective Agreement was quite clear in regards to bumping rights at a time of crew reduction. Article VIII, Section 3(c) when read in conjunction with Section 2 of the same article says that a senior employee who possesses the required competency can bump a junior employee. Sometimes a period of familiarization is required. The watchman's job is not complex, a large percentage of it is a matter of Mill clean-up. The Grievor had done that type of work. The Company has provided other employees with training periods of as little as two hours and in another case two days. **Mr. Johal** knows the Mill, it is not a large mill. If he had been given a familiarization period, he then could have continued to learn other aspects of the job while working as others had done. The Company called **Mr. Johal** to the Mill on December 21. It seems that the purpose of this was to provide an improper trial.

Company Council has made a preliminary objection to the hearing of the case by claiming the time limits as prescribed in the Collective Agreement have not been met. It is true that a grievance was not processed until December 13, about six weeks after the date of the Mill fire. However, the Grievor says he was not aware that a junior employee was working as a watchman until early in December. This is quite reasonable when it is recognized that the Mill had burned. This is not an ordinary situation. It was something that happened very suddenly and created a number of uncommon issues regarding technological change even if the Mill was rebuilt.

Management requested that the Union give it some breathing room regarding matters of seniority because of the unusual circumstances. No lay off lists of laid off employees were provided by the Company to the Union. Taking all these things into consideration, it is proper that the Arbitrator exercise his authority as set out in the Labour Code of British Columbia, Section 98(c) and waive the grievance procedure time limits.

### COMPANY ARGUMENT

Company Council contended that **Mr. Johal's** grievance was beyond the time limits set out in the Collective Agreement. The fourteen (14) days in which a grievance

must be raised was exceeded and therefore the right to grieve is nullified. **Mr. Trerise** further argued that **Mr. Johal** had not signified his desire to bump into the watchman's job in conformity with the terms of Article VIII, Section 3(c) and subsections 1 & 2 of Section 3.

These read as follows:

Section 3(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:

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.

These contractual provisions are qualified by the wording of Section 3(b) and Section 2(a) of Article VIII. They read:

Section 3(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.

Section 2(a):

The Company recognizes the principle of seniority, competency considered.

Company counsel argued that these contractual terms illustrate that **Mr. Johal**, by virtue of not electing to exert his seniority at the time of lay-off now has only one alternative. That is to signify his desire to return to work within the terms of Article VIII, Section 3, Subsection 1 & 2.

Addressing the question of **Mr. Johal's** competency to do a watchman's job, Counsel referred to evidence already recorded in this report to show that the Grievor did not possess the competency to do the job without being given training. It was not

suggested that **Mr. Johal** was untrainable but the Company has no obligation to place a person in a job which he is not capable of doing in its entirety. If employees who are not fully capable are on the watchman's job, call-ins of fully capable people are required. This is a costly item for the Company.

The job of watchman in this mill has some complexities that are linked closely to the production function. The proper attendance to kiln requirements is paramount. Damage to property and loss of product can occur if the watchman does not carry out the full requirements of the job.

#### CONSIDERATION OF EVIDENCE & ARGUMENT

Two issues have been raised. The first being the length of time that passed between the time of the fire on November 2, 1984 and the filing of **Mr. Johal's** grievance on December 13, 1984. There is no disagreement between the parties that this period of time exceeds the fourteen (14) day period of time as set out in Step 1 of the Grievance Procedure contained within the Collective Agreement.

Counsel for the Company argues that because of this fact, the Board should find that **Mr. Johal's** right to grieve has been abandoned.

Union Counsel contends that the grievance is not out of time. **Mr. Johal** did not know that a junior person was working as a watchman until early in December. He followed up on an observance of a familiar truck at the Mill and found **Mr. Bryce** employed as a watchman. At that time, he signified to the Company his desire to exercise his seniority rights and when this was denied, he processed a grievance well within the prescribed fourteen (14) day period of time.

Counsel argues that in any event the Arbitrator is given the authority to extend time limits contained in collective agreements by the wording of Section 98(e) of the British Columbia Labour Code.

This section reads as follows:

Authority of Arbitration

Section 98:

For the purposes set out in Section 92, an arbitration board has the authority necessary to provide a final and conclusive settlement of a dispute arising under a collective agreement, and without limiting the generality of the foregoing, has authority to

- (e) relieve, on just and reasonable terms, against breaches of time limits or other procedural requirements set out in the collective agreement.

Section 98 refers to "the purposes set out in Section 92. Section 92 in part reads:

Interpretation

Section 92:

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

**The first determination I must make is whether or not the grievance is "out of time". Mr. Johal states that he did not know that watchmen were working. In a community the size of Quesnel and where the Mill site is within the community, it is somewhat difficult to understand how this could be so, particularly when Mr. Johal held the position of Union Plant Committee Chairman. However, there were certain uncommon circumstances in this case. The lay-off was occasioned by a dramatic incident. The sawmill was destroyed by fire. It was unknown for some time as to whether or not the Mill would be rebuilt. The Company and the Union Local were discussing matters pertaining to problems related to the fire and possible reconstruction. The Company had not sent the Union revised employee seniority lists or lists showing the names of those employees still at work. All of this and more could have created sufficient turmoil to the point that Mr. Johal did not pursue employment matters with much diligence.**

After listening to the evidence, I am of the opinion that the real substance of the matter in dispute is **Mr. Johal's** desire to exercise his seniority to obtain employment by bumping a more junior employee.

**Therefore, I relieve against time limits set out in the Collective Agreement. This is done through authority granted by Section 98(e) of the Labour Code of British Columbia.**

**The second issue now is before me. Did the Company violate the Collective Agreement by not allowing the Grievor to bump into the watchman's job?**

The correct application of Article VIII Seniority is of paramount importance. It is from this that employees are provided with the protection of their employment at all times and this becomes vital during periods of crew reductions. In the case before this board, the issue is one of employment for **Mr. Johal** during the time that the Mill is being rebuilt.

The issue is not new or uncommon but it is one that must be determined on the facts of each individual case. However, numerous arbitration cases have been heard and very useful principles have developed from the findings of these hearings.

One finding that expresses the principle of seniority, competency considered is one by **Arbitrator Carrothers** in International Woodworkers of America, Local 1-424, unreported, June 25, 1954. He said:

**"In respect of any given function in the Company's Mill, whether skilled or unskilled, there is only one standard of competency; either the employee performs a normal or average day's work, in terms of quality or quantity or both, or he does not: he is either competent or incompetent. Human conduct does not readily fall into categories, but if an employee is to be classified as incompetent, the difference between his performance and the standard by which he is being gauged, the standard of the productivity of the average man performing a normal day's work at a given function, must be measurable and substantial. The fact that the employee's performance compares unfavourably with the performance of another employee performing the same function may be evidence that the first employee falls substantially below the standard, but the fact that an employee is 'less competent' is not conclusive evidence that he is 'incompetent'.**

Likewise, the fact that an employee has been employed over a substantial period of time may be evidence that he is a competent employee, but duration of employment is not conclusive evidence that he is competent, for an incompetent employee may be retained because of a shortage of competent men, a competent employee may become incompetent, and a man may be competent at one function but incompetent at another."

This opinion is repeated by many other arbitrators through the years. 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.

The Union did not disagree with this concept while presenting **Mr. Johal's** case. The position was taken that with a period of familiarization he would be able to do the basic functions of the job and he could then continue to learn the occasional requirements as he worked. It was argued that the amount of familiarization needed would not fall into the category of training.

Company witnesses referred to the necessity of training new people for the job. New equipment and controls have been added during the last year and a half. The sprinkler system was installed in recent years and there is now a computer on kiln controls. **Mr. Myers** and **Mr. MacCauley** told of the time needed for them to become conversant with this machine. These two men also spoke of the training necessary to properly take care of kiln heat and humidity, the dry valve systems, the compressors and the sprinkler system.

When asked, **Mr. Johal** was unable to say where and how many fire extinguishers, hydrants and fire hoses were in the Mill. He did not show any knowledge of fire fighting and told the hearing his only experience was on a forest fire. He admitted that he didn't know how to load and use the punch clock, the kiln controls were unknown to him, he was not able to check and adjust any of the equipment with the possible exception of air pressure. He had overall knowledge of the Mill but the only portion of the watchman's job that he had done was Mill clean-up.

It is the Company's position that to do the watchman's job in an acceptable manner and for him to produce a normal or average days work, in terms of quality or quantity or both, the Grievor would have to receive training. The Company

considers that it is not required under the terms of the Collective Agreement to provide such training.

The positions of the concerned parties are now defined. The Union contends that **Mr. Johal** did not require training, only familiarization. The Company maintained that training was necessary before the Grievor could do the job.

**The question then is when does familiarization cease and become training in the practical sense?**

In MacMillan Bloedel Limited (New Westminster Division) and International Woodworkers of America, Local 1-357, 1983 B.C.D.L.A. (McKee), it is stated:

**"In assessment of this case, I am faced with the understanding the parties have of the words "orientation, familiarization, and training. The oxford Dictionary shows:**

**Orientation: to adjust, correct or bring into defined relationship to known fact or principle; to put oneself in the right position or relationship; to ascertain one's "bearings"; to find out where one is.**

**Familiarize: to make familiar or well known; to put a person on a footing of intimacy; to make (a person or oneself) well-acquainted or to feel at ease or at home with something.**

**Training: discipline and instruction directed to education; systematic instruction and exercise in some area, profession or occupation with a view to proficiency in it."**

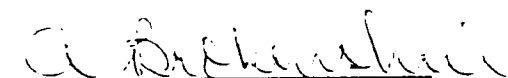
**Arbitrator Carrothers** sets out a test by stating in his finding that there is only one standard of competency; either the employee performs a normal or average day's work, in terms of quality or quantity or both, or he does not.

It is my opinion, based on evidence given by witnesses, particularly **Mr. MacCauley** and **Mr. Myers**, that to allow **Mr. Johal** to meet that test, he would have to be provided with something more than familiarization. He would have to receive training.

I find that **Mr. Johal**, at the time of his application to bump into a watchman's position, was not competent to meet job requirements without training. Therefore the Company did not violate the terms of Article VIII of the Collective Agreement.

**The grievance fails.**

Signed this 24th day of May, 1985.

A handwritten signature in cursive script, appearing to read "A. Brokenshire", written over a horizontal line.

ALEX BROKENSHERE