IN THE MATTER OF AN INTERPRETATION

BETWEEN:

INTERIOR FOREST LABOUR RELATIONS ASSOCIATION

(THE "IFLRA")

AND:

IWA-CANADA, LOCALS 1-405, 1-417 and 1-423

(THE "UNION")

COLLECTIVE AGREEMENT INTERPRETATION

(FIRST AID ATTENDANTS)

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| Interpreter: | Mr. Justice Ian T. Donald |
| Counsel for the Union: | Miriam Gropper, Q.C. |
| Counsel for the Interior Forest Labour Relations Association: | Thomas A. Roper, Q.C.<br>Julia D. Platz |

The parties have referred a difference to me over the interpretation of the British Columbia Southern Interior Master Agreement 1997-2000 as it relates to first aid attendants.

The primary issue is whether, under the Agreement, the employers may assign Level 1 first aid attendants to groups of employees smaller than five persons, or whether they must assign attendants of Level 2 or 3 to all groups regardless of size. If Level 1 attendants can be used, then the secondary issue arises whether such attendants are entitled to a 10¢ premium.

My conclusion on the main issue is that the Agreement does not govern the assignment of first aid attendants. The subject clause in the Agreement, Article V, s. 1(a)-(c), deals only with the pay for whatever assignment is made, not with required qualification levels. Of course, the employers are required to comply with Workers' Compensation Board Regulations on the subject which are quite detailed and specific.

On the secondary issue, my interpretation is that Level 1 attendants are not entitled to the 10¢ premium.

The subject clause reads as follows:

**ARTICLE V- WAGES**

Section 1: Rates

a) The Parties hereby agree that effective the 1st day of July, 1997 the wages of all hourly rated Employees will be increased by one percent (1%) per hour. The Parties further agree that effective the 1st day of July, 1998 the wages of all hourly rated employees will be increased by a further two percent (2%) per hour. The Parties further agree that effective the 1st day of July, 1999, the wages of all hourly rated employees will be further increased by a further two percent (2%) per hour.

b) The basic rate for common labour shall be:
July 1, 1997 - $19.85½/hr.
July 1, 1998 - 20.25/hr.
July 1, 1999 - 20.65½/hr.

c) Designated First Aid Attendants shall receive:
Level 2 - Fifty cents per hour (50¢/hr.)
Level 3 - Eighty-five cents (85¢/hr.)
plus their occupational rate of pay

These premiums will be paid upon Designated Duty First Aid Attendants attaining certificates as required by the Workers' Compensation Board.

"ALL OTHER EMPLOYEES HOLDING VALID FIRST AID CERTIFICATES SHALL RECEIVE 10¢ PER HOUR PLUS THEIR OCCUPATIONAL RATE OF PAY"

The Union, which initiated the interpretation, frames the two questions in this way:

The questions for determination before the Interpreter are:

(i) can an employee holding a Level 1 First Aid Certificate be designated a First Aid Attendant;

(ii) are <u>all</u> employees, holding a valid First Aid Certificate, including a Level 1 Certificate, entitled to the premium rate of 10¢ per hour.

The IFLRA prefers to express them in this way:

A. Can the employer designate an employee who has a Level 1 First Aid certificate as a First Aid Attendant? Does the Interpreter have jurisdiction to decide this issue?

B. Is a Company required, under Article V, section 1(c), to pay employees who hold a Level 1 first aid certificate 10 cents per hour in addition to their occupational rate of pay?

The reference to jurisdiction in the IFLRA's version is based on the argument that if the agreement has no assignment clause I have no authority to add one. This is an incontrovertible proposition and I need say no more about it.

The interpretative difference arose from the Union's discovery that Galloway Lumber used a Level 1 first aid attendant for a small crew. I was given no more details of the problem than that. After a grievance was filed, it became apparent that the practice of assigning Level 1 attendants to

small groups was widespread among member employers and the parties realized that they had a major disagreement on their hands.

A brief description of the three levels may be helpful. These levels are designations made by the Occupational Health and Safety Regulations of the Workers' Compensation Board, and they indicate specific levels of first aid training. Level 1 signifies a somewhat rudimentary certification achieved after eight hours of training, usually in a single day. The Regulations require a worker with at least Level 1 certification to cover a crew of 2-5 workers in the hazard classification for the manufacturing and woodland operations in this industry. The Level 1 classification is not mentioned anywhere in the Agreement.

Levels 2 and 3 require much more rigorous training and testing. Candidates must pass oral and written examinations before obtaining certification. Level 2 involves 36 hours of instruction over a week with many additional hours of study. The successful candidate must obtain at least 70% on three examinations. Level 3 has 70 hours of instruction with the same number of examinations and passing grade. Candidates must achieve certification in ascending order.

It will be seen that Levels 2 and 3 First Aid Attendants can provide much more protection for their fellow workers and it is for this reason that the union presses the case for assignment of the more highly qualified attendants in all instances.

The IFLRA called witnesses representing member companies who explained that their practice is to assign Level 1 attendants for forest crews of less than five and for watchmen and small maintenance crews in the manufacturing plants. They discussed the difficulty in getting higher level attendants, explaining that most employees find the training too arduous to undertake and as a result the companies would not be able to find the personnel to satisfy the union's demand. They also estimated that the cost of staffing many small crews of 2 or 3 loggers or foresters with Level 2 or 3 attendants would be significant.

The Union's first argument is that on its face the clause restricts assignment to Levels 2 and 3. However, the language does not support that argument. The clause merely spells out the pay for the assignment. It does not say anything about how the assignment is to be made. A restriction on the power

of management to control assignments cannot, in my view, be implied by the listing of Levels 2 and 3 in Article 5(1)(c) after the words "designated first aid attendants shall receive …", said by the Union to exclude the power to designate Level 1 attendants in any circumstances. The more plausible interpretation of the language is that the extra pay is only for Levels 2 and 3.

The Union advanced a second argument based on negotiation history as an extrinsic aid in reaching an interpretation in its favour. It comes down to this. Revision of the W.C.B. Regulations in 1995 changed the terminology relating to certification of first aid attendants from AA-C to the current designation of Levels 1-3. Since the Master Agreement language tended to track the Regulations, the Union was concerned that the change might lead to a downgrading of first aid coverage in the industry. In the 1996 negotiations it sought assurances, first in the coast master agreement bargaining session and later in the Southern Interior negotiations, that no such downgrading would occur. The Employers gave those assurances in both sets of negotiations. For the IFLRA, Mr. Vern Carter, chief spokesman, testified that he told the Union representatives that the quality of coverage would not be diluted because of the change in the

regulations. He assured them that the companies would use Level 3 Attendants except for the occasional instance, for example when a mill is situated in close proximity to a hospital, where a Level 2 Attendant would be assigned. He said he was speaking in the context of manufacturing plants during production shifts and not woodland operations where Level 1 or its previous equivalent was routinely assigned; but he conceded that he did not articulate this qualification at the bargaining table.

Mr. Dave Tones, the Union's chief spokesman at those negotiations, took Mr. Carter's remarks as a general assurance, not qualified in any way, that member companies would use only Level 3 attendants with the odd exception for Level 2. On the strength of that, he said the Union dropped a bargaining proposal which read:

> First Aid Coverage
>
> We demand Level 3 First Aid Attendants as a minimum level in all forest industry operations.

On the evidence, I find that the parties did not address their minds to Level 1. The Union's leadership was not aware of the practice of deploying Level 1 attendants to cover small

employee groups and therefore did not bring it up. The IFLRA assumed the Union's objective in proposal 7, quoted above, was to ensure that the conversion from letter to number designations in the W.C.B. Regulations would not result in any lower coverage, namely from Level 3 to 2. Had the IFLRA realized that the Union desired the elimination of Level 1 coverage, which was not the Union's conscious objective as I have said, it would have asserted that such a change was impractical and too costly even if enough higher qualified attendants could be found.

In the end, I conclude that the parties did not reach an understanding regarding the assignment of Level 1 Attendants and consequently the negotiation history does not assist me in construing the agreement.

Having found that the language of the subject clause does not deal with assignments, I must answer the first question in the negative.

Turning to the premium payment issue, the relevant part of the clause is in the concluding words of Article V, s.1(c):

"ALL OTHER EMPLOYEES HOLDING VALID FIRST AID CERTIFICATES SHALL RECEIVE 10¢ PER HOUR PLUS THEIR OCCUPATIONAL RATE OF PAY"

As will have been noticed, Level 1 does not appear in the clause and the question is whether the phrase "All other employees" refers only to those employees holding Levels 2 or 3 certificates for whom rates are expressed, or includes all employees holding certificates for either Level 1, 2 or 3. Thus an ambiguity arises for which extrinsic evidence should be considered. The IFLRA sought to rely on a consistent past practice that Level 1 attendants have never been paid a premium when they are assigned to provide coverage. I place no reliance on that as I am not satisfied on the evidence that the Union leadership can be fixed with the knowledge of the use of Level 1 coverage as earlier described. There is no record that a dispute arose prior to the matter at Galloway Lumber which lead to this proceeding.

One of the difficulties facing the Union is that the 10¢ premium is paid to certified employees for all hours worked, not just when they are providing first aid coverage. This alternative claim arose upon the discovery that Level 1 employees were providing coverage in some instances. The Union was fully aware that the member companies encouraged all employees to obtain Level 1 certificates and paid their costs

associated with getting them. But the Union was also aware that the employees were not getting an additional 10¢ on their wages for doing so. My point is that a premium paid regardless of assignment is now being claimed in circumstances related to assignment, although I appreciate that the union's position is that since Level 1's are being used they should get the premium for all hours worked

While knowledge of the practice of assigning Level 1 certificate holders for first aid coverage may not be attributed to the Union, there is no doubt that the Union knew that the employers were not paying a general premium to such employees. In that respect the extrinsic evidence is against the Union's claim.

Moreover, in the 1996 negotiations the Union advanced a specific proposal regarding the pay for first aid attendants. It read:

> 39. First Aid Premiums
>
> We demand that the appropriate section be amended to provide that as First Aid Ticket Holders renew their tickets under the new classification system, their premium rate shall be paid as follows:
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> | Level 3 | 10% of base rate |
> | Level 2(T) | 7% of base rate |

| | |
|---|---|
| Level 2 | 6% of base rate |
| Level 1(T) | 4% of base rate |
| Level 1 | 3% of base rate |

This proposal was not accepted and consequently the agreement was renewed without incorporating any reference to Level 1.

For these reasons, I conclude that the answer to the second question must be in the negative.

Donald J.A.

Vancouver, British Columbia

June 8, 1999