

IN THE MATTER OF An Arbitration Between
Northwood Inc. (the Employer), and
Canadian, Energy & Paperworkers Union, Local 603 (the Union)

British Columbia Collective Agreement Arbitration
Award no. A-265/98

Heard: (Prince George, B.C.) August 25, 1998.
Award: September 8, 1998.

(Walter Schmaus Grievance)

Arbitrator: K. Albertini

Counsel: Norm Treerise, for the Employer.
John Hodgson, for the Union.

AWARD

This case concerns an interpretation grievance filed by Walter Schmaus. The Union, on behalf of Schmaus, alleges that the Employer violated the terms of the Collective Agreement when it hired a Mr. Hollis in 1995 and assigned him work in the stores department. Hollis was not a member of the bargaining unit.

The parties agree that the Board is properly constituted and has the necessary jurisdiction to decide all of the issues in dispute.

The Employer operates a pulp mill near Prince George, B.C. The stores department is responsible for the ordering, storing and issuing of all tools and supplies required in the operation of the mill. The vast majority of the items found in the stores department are items regularly used or possibly needed by the different departments. More than consumable goods are on hand, spare pumps and other large critical components of the mill are also kept in stores.

According to Don Crocker, Stores Manager until his retirement in 1996, until the last few years each general stock item was recorded on a two part cardex system. When a stores person removed an item, he noted whether the remaining had reached the re-order limit shown on the card. If it had, one half of the card was taken to him or his assistant, both of whom are salaried and not part of the bargaining unit. Enquiries would be made by Crocker or his assistant of the department for which the item was stored to see if the current level of inventory was sufficient or, if more had to be ordered at all. There is no dispute that almost all of the work related to general stock items was and is performed by members of the bargaining unit.

In addition to the standing inventory of general supplies, there is another category of items referred to as special orders. It is work on special orders by Hollis for a two to four month period in 1995 that gave rise to this grievance.

Special order appears to be the description of any item, not part of the general inventory, they are ordered and retained by the stores department at the request of another department head. The item may have been needed for a specific project or is simply a specialty part. Special orders are ordered, received and distributed by the stores department. When more than one of an item was ordered and not all used, the remaining are stored by the stores department but not listed in the general inventory cardex or, more recently, the computer system. They often remain on a shelf for a very long time.

It is Crocker's evidence that since at least 1975 he and/or his assistant would try to keep up on the status of special orders being held in stores by reviewing the number of items being held, contacting the supervisor who had initially ordered the items and asking whether the remaining items were still required. If a special order item is shown to be needed on a regular or urgent basis that item may be added to the general inventory list. If the item was no longer required, Crocker or his assistant would negotiate with the vendor to see if it could be returned for cash or credit. If a return was not possible they would initiate contact with other mills to see if the item could be sold. If not, a decision would be made whether to consider it scrap for disposable purposes. On one occasion, the pulp bureau distributed lists of overstocked items between mills to assist in the reduction of unneeded inventory. There is no dispute that department supervisors also often appear at the stores department reviewing their own special order inventory.

The number of special orders is not insignificant. There are hundreds that, because of a possible need or simply lack of attention, remain in storage for years. For example, there are more than 30 pages of special orders that were purchased and last checked in 1994, still in stock.

In the summer of 1994 Shane Bilodeau was hired into the stores department to assist in reducing the special order inventory. His role was to assemble the special order items in one location, as they were stored in a number of different buildings, and send a copy of the original purchase order to the supervisor who initiated the order. The supervisor was asked his future needs of that or those items. Bilodeau had no contact with vendors or other mills. Nor did he have the authority to declare it as scrap. During his period of employment, Bilodeau was a member of the bargaining unit.

In the summer of 1995 Hollis was hired to further reduce the special order inventory. Hollis was hired as a salaried employee and was not a member of the bargaining unit. His duties differed from those performed by Bilodeau in 1994. According to the evidence, he performed little if any physical work. Hollis was given a group of purchase orders that had been processed during a specific period of time years earlier. He had the items on those purchase orders assembled in one area, checked with the ordering supervisor to see if the remaining items were needed, initiated calls and negotiated with vendors and called other mills to see if they would purchase the excess. In other words, he performed the same duties as Crocker and his assistant. It was the assignment of that work to Hollis, as a salaried employee, that gave rise to the grievance.

The Union relies upon Article IV Section 1 of the Collective Agreement and Article II Section (a) of the Statements of Policy. Those provisions read as follows:

Section 1: Co-operation

The Company will cooperate with the Union in obtaining and retaining as members the employees as defined in this Agreement, and to this end will present to new employees and to all supervisors and foremen the policy herein expressed.

Article II - Definitions

(a) Definition of "Supervision". (Memorandum of Agreement dated January 30, 1958)

Employees and employers recognize that supervisors are excluded from the provisions of the B.C. Standard Labour Agreement and accordingly it is improper for supervisors normally to do the kind of work which is done by those defined as employees in the Agreement.

It is also recognized that for the practical and efficient operation of the mills there are occasions when a supervisor must help. Such occasions must be temporary in nature and must not result in the displacement or exclusion of employees under the Agreement.

I accept the analysis and conclusions reached by arbitrator Joe Weiler in *Canadian Forest Products Limited, Howe Sound Pulp Division and Canadian Paperworkers' Union, Local 1119* (January 5, 1979) unreported, as to the proper application of the Statements and Policy: "they are to serve as a supplemental guide to be used as a tool in the interpretation of contract rather than to be considered to be a term of the Collective Agreement per se". The Employer does not dispute that it has an obligation under the Collective Agreement to maintain the integrity of the bargaining unit. The existence of the recognition clause, classifications, wages and the interpretations contained in Subsection (a) of the Statements of Policy support the Union's position that the Employer is not free to assign work normally performed by bargaining unit employees to salaried employees as it chooses.

An obstacle for the Union in this case is the past practice shown by the evidence. I am only dealing with work done by Hollis during that short period in 1995 when he was hired specifically to assist in the reduction of special order inventory. This decision should be read in the narrow scope intended. There has been no such hiring since and it appears none is contemplated.

I find that the grievance cannot succeed. The evidence adduced at the hearing by both parties was sparse but, I am bound by that evidence. There is no dispute that Crocker and his two previous assistants, all of whom were salaried individuals, regularly performed stores work identical to that done by Hollis, without objection from the Union. Also, when Bilodeau was hired in 1994, while the intent of his work was the same as that undertaken by Hollis, the specifics of his duties differ in that he was assigned work that was normally performed by bargaining unit employees. Hollis, on the other hand, was assigned duties identical to that performed by Crocker and his assistants with little if any physical work involved. If I were to find that the Employer was in violation of the Collective Agreement in the work it assigned to Hollis, keeping in mind this was a temporary assignment for a special order project, it could by extension imply a limitation on the Stores Manager and his assistant that has never existed. The past practice of the parties, in my view, has established a fine line between the work normally performed by storemen and salaried employees on special project inventory. The Employer will have to exercise caution in its work assignments in that area to ensure it does not infringe on the work normally performed by bargaining unit employees.

For the above reasons the grievance is dismissed.