

**IN THE MATTER OF An Arbitration Between
Northwood Inc. (Pulp Mill Division) (the Employer), and
Communications, Energy and Paperworkers Union, Local 603**

Award no. A-370/98

British Columbia Collective Agreement Arbitration

Heard: (Prince George, B.C.) November 5, 1998.

Award: November 23, 1998.

(Accidental Death Insurance: Donald Taylor)

Arbitrator: D.R. Munroe, Q.C.

Counsel: Norman K. Trerise, for the Employer.
John Rogers, for the Union.

AWARD

I

I was constituted by the parties as an arbitration board under their collective agreement with jurisdiction to hear and decide a grievance filed by the union on March 8, 1993. The grievance alleges a breach by the employer of Article XIX and Exhibit "C" of the 1992-94 collective agreement.

Article XIX states (in Section 1) that, "There shall be a Welfare Plan pursuant to the terms and conditions of Exhibit `C' which is attached hereto and forms part of this Agreement". Article XIX also requires (in Section 2) the establishment of a Joint Welfare Board (a requirement which is repeated verbatim at Section 4 of Exhibit "C"):

A Joint Welfare Board shall be established comprised of three (3) members appointed by the National Union and three (3) members appointed by the Pulp and Paper Industrial Relations Bureau.

The function of the Board will be to review the operations of the Plan. It will formulate and review uniform statistical reports to be supplied by the Company for the purpose of ensuring compliance with Exhibit "C". The Company agrees to furnish the Board such statistical reports as the Board may require.

Reference is made in the above-quoted language to the "National Union" and to the "Pulp and Paper Industrial Relations Bureau". That is because the 1992-94 collective agreement was one of a long line of collective agreements which had been negotiated and settled in multi-party collective bargaining: between the National Union (on behalf of its various locals) and the PPIRB (on behalf of its member companies).

Exhibit "C" says in its opening paragraph that it "...sets forth the respective coverages, benefits, rights and

obligations of the Company and its employees under the Welfare Plan established pursuant to Article XIX of this Agreement".

Section 1 of Exhibit "C" is headed "Compliance". It reads as follows:

- (a) Each Company signatory to the B.C. Standard Labour Agreement will comply with the terms and conditions set forth in this Exhibit "C" and provide the coverages required therein.
- (b) The coverages shall be subject to the limitation in the contracts of the selected carrier or carriers.

Section 2 of Exhibit "C" is headed "Coverages and Benefits". In its several sub-sections, it speaks of Group Term Life Insurance, Accidental Death or Dismemberment Insurance, Non-Occupational Accident and Sickness Insurance, Medical-Surgical Coverage, Dental Care Plan, Long Term Disability Plan and Out-of-Province Travel Plan. For present purposes, I need only reproduce sub-sections (a) and (b) dealing with Group Term Life Insurance and Accidental Death or Dismemberment Insurance:

(a) Group Term Life Insurance

The Welfare Plan will include Group Term Life Insurance in accordance with the following Table of Hourly Job Rate Brackets and corresponding coverages. Benefits will be payable as a result of death from any cause on a twenty-four (24) hour coverage basis.

(b) Accidental Death or Dismemberment Insurance

In addition to the above Group Term Life Insurance coverage the Welfare Plan will include Accidental Death Insurance as outlined in the Table on a twenty-four (24) hour coverage basis.

Dismemberment and paralysis insurance benefits of the Welfare Plan will be in accordance with the schedules offered by the particular carrier involved, such coverage to be on a twenty-four (24) hour basis.

of those sub-sections refers to a Table. Looking at the Table, one finds that at the material time, the "Group Term Life" was \$60,000 and that "AD&D" likewise was \$60,000.

Also pertinent are Sections 9, 10 and 12 of Exhibit "C" which deal respectively with "Changes in Premiums and Employee Contribution", "Distribution of Surplus" and "Disputes":

9. Changes in Premiums and Employee Contribution

It is understood that any change in respect of either the premium rate charged by the carrier or the basis of the employer-employee sharing thereof may only be made effective as of July 1 in any year.

10. Distribution of Surplus

It is understood that surplus accumulations, if any, will be used only for the purpose of reducing premium costs.

Surplus accumulations must be disposed of within reasonable time limits. Questions in this respect will be referred to the Joint Welfare Board for decisions.

11. Disputes

No dispute arising out of the operation, administration or interpretation of any coverage contract between the Company and the carrier shall be subject to the Adjustment of Complaints procedure of the B.C. Standard Labour Agreement. Any such dispute shall

be adjudicated under the terms of such coverage contract.

Those last three provisions of Exhibit "C" are pertinent because, like Section 1(b) of Exhibit "C", they clearly demonstrate a common understanding that the employer's obligation under the collective agreement to establish a Welfare Plan pursuant to the terms and conditions of Exhibit "C" can and likely would be satisfied by entering into contracts of insurance with insurance carriers. See also the word "Insurance", as part of the phrases "Group Term Life Insurance" and "Accidental Death Insurance" in Exhibit "C", Sections 2(a) and (b), reproduced above.

II

The facts giving rise to the present dispute can now be recounted. Until his death on July 5, 1992, Donald Taylor was an employee in the bargaining unit. He was also a private pilot. His death was due to the crash of his Cessna 182 airplane. Mr. Taylor was the pilot of the airplane at the time of the crash.

In due course, Mr. Taylor's widow was paid the \$60,000 associated with the Group Term Life Insurance. It will be noted that under Exhibit "C", Section 2(a), the Group Term Life Insurance is required to be "...payable as a result of death from any cause on a twenty-four (24) hour coverage basis".

Because Mr. Taylor's death was accidental, his widow also applied to the insurance carrier (at the time, Sun Life) for the \$60,000 Accidental Death Insurance. However, the application was denied by the carrier because the insurance contract describing the Accidental Death coverage contained an exclusion which said, in effect, that payment would not be made for deaths resulting from aircraft mishaps where the person whose life was insured was flying the aircraft. This is commonly known in the insurance industry as an aviation-related exclusion.

III

The union does not dispute that under the terms of the insurance contract, the accidental death benefit of \$60,000 was not payable; that is to say, that the circumstances of Mr. Taylor's death were within the aviation-related exclusion. However, as the union argued the case, that is neither here nor there. The insurance policy, says the union, was a private contractual arrangement between the employer and the insurance carrier. There is some evidence to suggest that both the National Union (since 1987) and Local 603 (since January, 1992) had been in possession of the Accidental Death or Dismemberment Insurance Contract (including the "exclusion"), but so also is there evidence of some initial confusion by local management about whether the \$60,000 accidental death benefit was or was not payable to Mr. Taylor's widow. And to repeat: the union says that in the final analysis, none of that is truly relevant. What is relevant, says the union, is that the employer contracted with the union to provide "Accident Death Insurance as outlined in the Table [\$60,000] on a twenty-four (24) hour coverage basis"; and that the employer failed to do so in full measure. In the submission of the union, the consequence of the employer's failure in that regard is that the employer effectively became a self-insurer of the benefit denied by the carrier based on the aviation-related exclusion.

The employer does not agree. Included in the employer's evidence was a report by J. Gordon Argue, an expert on employee benefit plans. Mr. Argue's report addresses the following question: "What is the

general industry prevalence of aviation-related schedules and conditions which serve to restrict benefits otherwise payable in twenty-four (24) hour AD&D contracts?" Mr. Argue's report includes the following:

In our experience, all AD&D insurers routinely include some form of aviation-related restriction to protect the financial integrity of their plans in relation to these higher risk activities. Certain insurers will also seek to limit their risk in other higher risk areas as well, however, an aviation-related exclusion or restriction is universal in virtually all AD&D contracts.

In the light of that evidence, and having regard to the material parts of the collective agreement, the employer points to the arbitral consensus to the general effect that where the parties have apparently agreed that health and welfare benefits will be provided through an insurance plan, and no plan is specified, it will be presumed that a plan containing standard provisions was intended: cf., *Green Valley Fertilizer Ltd.* (1991) 22 L.A.C. (4th) 417 (Hope) at page 426. The employer points as well to Exhibit "C", Section 1(b) which clearly states that the "coverages" of the Welfare Plan "...shall be subject to the limitations in the contracts of the selected carrier or carriers". No doubt, that provision cannot be allowed to negate a coverage or benefit plainly stipulated elsewhere in the Welfare Plan. But at the least, says the employer, it calls everyone's attention to the fact that the "coverages" are found in insurance policies, and that the policies contain "limitations". In short, it reinforces the notion that the Welfare Plan is actually an insurance plan; and that the employer can satisfy its obligations in respect of the Welfare Plan by entering into insurance contracts with one or more carriers containing provisions which are standard in the industry for each of the particular "coverages".

The union accepts that an insured health and welfare plan is likely to contain standard provisions which are unobjectionable. But not all standard provisions are per se unobjectionable as a matter of the enforcement of the collective agreement. The arbitral authorities are legion that standard provisions in insurance policies are only enforceable by the employer against the union to the extent they do not conflict with the collective agreement. Another way of saying the same thing is that the insurance contract must be compatible with the collective agreement i.e., in the sense of not diminishing the terms of the collective agreement. If the insurance contract is not compatible with the collective agreement, then the employer may become a self-insurer to the extent of the incompatibility. See *MacMillan Bloedel (Powell River)*, June 13, 1997 (Germaine); see also *Green Valley Fertilizer Ltd.*, cited above, at page 428. In the submission of the union, Exhibit "C", Section 1(b) cannot properly be construed as detracting from that principle.

IV

The union's expression of principle is correct. But in this instance, it is also question-begging. This is not one of those cases where the coverage or benefit required by the collective agreement is itself undisputed, leaving only the issue of whether a provision of the insurance contract somehow derogates from the collective agreement. Rather, this is a case requiring an adjudication at the threshold, so to speak, of this question: "What is the coverage required by Exhibit `C', section 2(b) of the collective agreement?"

Central to the union's argument is the proposition that 24-hour "Accidental Death Insurance", as the quoted words appear in Exhibit "C", Section 2(b), means "accidental death insurance which provides coverage for accidental death from any cause".

That certainly is one possible meaning. However, an interpretive judgment to that effect would require an important underlying conclusion. In short, one would have to conclude that when the parties used the bare words "Accidental Death Insurance" in their Welfare Plan, which clearly was understood to be an insured plan, they intended to impose an obligation on the employer to arrange and pay for accidental death coverage which was superior to the norm (by being free of the standard aviation-related exclusion); and that in default of doing so the employer would become (to the extent of the default) a self-insurer.

Examining the collective agreement as a whole, I think that is an unlikely expression of mutual intent. The more likely expression of mutual intent is that the parties bargained for accidental death coverage which must meet but need not exceed the prevailing standard for such coverage.

V

On the evidence before me, the "Accidental Death Insurance" in force on the date of Mr. Taylor's death measured up to the prevailing standard in terms of coverage. It follows that the union and its members were not denied the accidental death coverage for which they bargained, as described in bare terms in the collective agreement. In the result, the grievance is denied.