IN THE MATTER OF the Labour Relations Code Part 8 SBC 1992 C.82
AND IN THE MATTER OF An Arbitration Between

Northwood Pulp and Timber Limited (the "Employer"), and

Communication, Energy and Paperworkers Union of Canada Local 603 (the "Union")

Award no. A-28/94

British Columbia Collective Agreement Arbitration

Heard: (Prince George, B.C.) December 8 & 9, 1993.
Award: January 25, 1994.

(Trade Lines)

Arbitrator: D.L. Larson

Counsel: Norman K. Trerise, for the Employer.
Gregory Mullaly, for the Union.

AWARD

The dispute in this case involves allegations by the Union that a reassignment of work by the Company requires mechanics to cross clear-cut trades lines. The changes were presented to the Union on October 29, 1993 as being designed to reduce maintenance costs thereby making the Company more competitive and also to reduce the level of frustration that supervisors were experiencing with the current work practices. The intended changes were set out in a memorandum of the same date which is summarized as follows:

1. Millwrights will be required to do lubrication on shift including lubrication required on equipment rebuilds;

2. Millwrights will totally remove and install mechanical components such as pump elements, agitators, pressure screens, etc. including the disconnection and/or connection of their own water, air or oil piping;

3. All trades persons will do heating work; and

4. The forklift transportation of equipment and parts will be done by Stores employees or the yard crew.

Only the first three changes were disputed. The Union conceded that the operation of a forklift does not constitute a trade such that a reassignment of that work could not then involve crossing trade lines. In addition, it did not dispute that Millwrights may properly be required to remove and install mechanical components since that is the essential nature of their work but it takes the position that it is not part of their normal trades work to disconnect and/or connect their own water, air or oil piping. Finally, it does not claim that trades persons should not be required to do heating but only that they should not use oxy-acetylene gas.

The basis for the claim by the Union originates in the first Bull Session Agreement that was negotiated between the parties shortly after the start up of the mill in 1966. That agreement is considered to be an ancillary part of the B.C. Standard Labour Agreement but essentially deals with issues that are of a local

nature. Section 3 of that agreement provides as follows:

> **"Cross Trading**
>
> The Company stated that under normal circumstances it is not management's intention to require Mechanics to cross clear-cut Trade Lines but will expect reasonable cooperation in special instances and in emergencies."

David Reid, who immediately before his retirement was the Senior Industrial Relations Advisor at the Pulp Bureau, testified that he had worked for the Company as its Industrial Relations Supervisor when the mill first started up. He said that the mill was under construction when he arrived on January 4, 1966 and that his first task had been to hire the various crews required to operate it. The actual start up occurred sometime in June later that same year.

He said that he had to be rather aggressive in his tactics because the labour market was tight at that time, particularly for experienced tradesmen. The Weyerhaeuser pulp mill in Kamloops opened about that same time. He said that he toured the province blatantly advertising in the local area, wherever he went -- to the great irritation of the other employers. Ultimately, he said that he was able to hire a full maintenance crew. Some were hired from other pulp mills in the province; some were hired from eastern Canada; and many came from other industries. A substantial number came from the construction industry including some who had been involved in building the mill.

The evidence was that the Bull Session Agreement was signed on May 24, 1966. Because that was at the time of start up, the Company argued that, given the diversity of backgrounds from which the trades had been drawn, there could not have been any clear cut trade lines in the mill at that time and that it must be taken to refer to trade lines in the industry. The Union took the position that since the Bull Session Agreement is essentially a local agreement it must be taken to refer to trade lines in the mill as they developed from time to time. It introduced considerable evidence about the efforts of the parties to work out the various trades jurisdictions in the few years following the signing of the Bull Session Agreement, about which more will be said later in this award.

While that issue is of fundamental importance as to whether Millwrights can be required to do the disputed tasks, I do not intend to belabour it because I consider the argument of the Company to be sound. Obviously the Bull Session Agreement meant something to the parties when it was negotiated but it could not have meant trade lines in the mill since there were no established trade practices that could be considered to be at all unique to the mill at that time. Certainly the parties intended to restrict the entitlement of the Company to make work assignments, in some manner, across trade lines because that is clear from the express words of the agreement. But those lines could not have been intended to be drawn by reference to practices in the mill because it had not even started production when the Bull Session Agreement was negotiated. It must mean trade lines in the industry.

Presumably the reason why the Union saw it in its best interests to assert the local mill practices as comprising the trade lines, apart from the influence that it has had over the years in developing them, is that a local practice would always be vulnerable to change if it were demonstrated to be at variance with the industry.

In *Crestbrook Forest Industries Ltd. and Pulp, Paper and Woodworkers of Canada, Local 15 (Tradelines Grievance)* January 10, 1988 (MacIntyre) the parties had made that issue a matter of express agreement. Under their Bull Session Agreement the company agreed " .... as a general principle, to recognize trade

lines established in the Pulp & Paper Industry of British Columbia" and at p. 24 the board dealt with that standard as follows:

> "There are frequent references in this industry -- especially by employers -- to the "core function" concept. Under this theory, each trade has certain functions which are recognized as unique to it; then it has others on the "fringe" which it can perform without being found to invade the core of another trade -- as seen from the employer's perspective. The union theory tends to focus on particular tools, which is a jurisdiction easier to supervise but dangerous if those tools are changed or disappear. In the present case, we are accepting, in the main, the employer's argument that it was bound to the generally accepted practice among all B.C. Pulp mills. Those practices which show a substantial variance would not qualify as a general practice."

Although that was not a matter that was expressly addressed in this Bull Session Agreement, I can see no basis for concluding that it was intended to be limited to trades practices in the mill. Accordingly, the test must turn on the accepted practice in the industry in assigning particular tasks to the various recognized trades.

Also of importance is the manner in which the test must be applied, which was equally dealt with by the board in the *Crestbrook* case, at pp. 24-25:

> "It is the opinion of the chairman, not necessarily shared by all members of the board, that the search for generally accepted practices should be based on a finding of a reasonable preponderance in the mills of a recognized practice. It is not necessary to find unanimity to find an "established" practice; but neither is it found merely because some mills have the practice. If something is "being done" in say, two thirds of the mills, then it probably represents a general practice. Conversely, if it is not done in two-thirds of the mills, it is probably not a general practice. There is no magic in two-thirds, but it will do for the sake of example."

On a related point, Mr. Trerise argued that in order for a trade line to be clear cut it would have to be shown to have existed at the time of the Bull Session Agreement. He said that the Union position that the language means practices that develop from time to time could not have been intended because that would bind the Company to an ongoing series of practices.

The problem with that argument is that if the language contemplates that the trades will change and evolve, as I think it does, then it could not have the effect of binding the parties to a static practice. That was also an issue that was dealt with in the *Crestbrook* case. At p. 23 the board said:

> "Upon all the evidence .... we conclude that the employer bound itself in 1969 to the generally accepted tradelines in British Columbia union pulpmills, whatever they were in 1969 and whatever they might later become."

Mr. Trerise also argued that trade lines could not refer to "practices" because if that had been intended there would have been no need to talk about "clear cut" trade lines. He asserted that if that had been intended the parties would have chosen language that the trade practices in existence at the time could not be changed.

The answer to that is that the language chosen by the parties can usually be improved. One would like to think that any defective language actually used in a collective agreement would not have been used had a particular interpretive problem been contemplated at the time the language was chosen. But interpretive problems do arise and the fact that other language might have been chosen does not inevitably lead one to a singular conclusion. In every such case, what an arbitration board must do is interpret the language that was chosen by the parties in light of the circumstances at the time.

In this case I do not agree that the words "clear cut" would not have meaning if "trades lines" is taken to mean practices. Those words quantify the degree to which the practices must be established. What they mean is that the Union can only claim jurisdiction over a practice in the industry that is substantial. The arbitration board in the *Crestbrook* case postulated that a practice would be considered to be established, or to use the words of this Bull Session Agreement, it would be a "clear cut trade line" if a practice is reasonably preponderant in the industry. As we have seen, the chairperson even went so far as to postulate that a practice in two-thirds of the mills would certainly meet that test although he conceded that there is no "magic" in that number.

Indeed, I think that it would be a mistake to attempt to set a test that merely quantifies the proportion of mills that have a particular practice because it might ignore such things as the amount of time that the practice has been in existence in each mill, the extent of the practice in particular mills and the essential nature of the practice.

If a practice is substantially established in the industry, the Union is entitled to claim jurisdiction over it as a trade line and to confine any future assignments of that work to the particular trade which is the subject of the practice. The Company is prohibited from making work assignments across clear cut trade lines, which means that it cannot assign any work that has come to be recognized as a trade practice to any class of employee outside of that trade.

On the other hand, it should be obvious that a practice may change in the industry. The obligation undertaken by the parties in the Bull Session Agreement is to follow the trade practices that are established in the industry from time to time. Since it keys on the industry, it does not operate to freeze practices in the mill or otherwise impose an absolutely static work environment. A trade practice may develop, recede or even disappear. If a question arises at any particular time about the appropriateness of a work assignment, one must determine what is the practice in the industry at that time. If the practice has changed then the assignment must be made consistent with the changed practice.

I do not have any difficulty accepting the argument of Mr. Mullaly that a trade line relates to a job function rather than a skill set. Millwrights may have the ability to do oxy-acetylene welding but they may generally not be required to do it throughout the industry, in which case it would not be a trade practice. Or Instrument Mechanics and Electricians may lubricate the equipment that they work on but that does not mean that trade lines do not exist between them. Trade lines are job function boundaries not skill set boundaries.

A trade line may exist, in some circumstances, where two trades do the same work but for a different purpose. In effect, that was the basis of the decision in *Finlay Forest Products Ltd. and Canadian Paperworkers Union, Local 402 (Tradeline Policy Arbitration)* November 2, 1983 (MacIntyre) where the arbitration board held that a Millwright was entitled to remove a metal enclosure in order to access the pulp baler even though the installation of duct work or sheet metal to protect machinery or to handle air would ordinarily be the work of the Pipefitters.

Considerable evidence was introduced by the Union on the mechanisms in place in the mill used to resolve trade line disputes. Those ranged from strictly internal union processes involving discussions between shop stewards and the "Unity Committee" to a bi-lateral process involving the Standing Committee as part of the grievance procedure. Doug Quaife, who is employed by the Company as a millwright but is also the Union's chief shop steward, testified that the Company has never refused to accept the determination of the Unity Committee although he admitted that there have been instances

when it did not agree that a particular trades line dispute could be referred to it. In those instances, the only recourse available has been the Standing Committee and, if the matter is not resolved at that level it must referred to arbitration.

Mr. Quaife also testified about several previous attempts by the Company to introduce changes to several work practices, including some that are the subject of dispute in this case. Without exception those were all withdrawn although I do not see that fact as having any probative value in determining the issue here. Nor are any of the previous grievance settlements helpful because while some of them relate to the changes that the Company now wishes to make there was no evidence that they were intended to bind the parties to a particular interpretation of the Bull Session Agreement. Some of those related to the nature of the undertaking to cooperate "in special instances and in emergencies" but that is not an issue for me to decide here. More will be said about those grievances later in this award.

With reference to the specific changes proposed by the Company, Mr. Quaife said that Millwrights in the mill had never been required to do lubrication or to disconnect and/or connect their own water, air or oil piping. He said that the former was done by Lubrication Mechanics and the latter by Pipefitters. As for heating, he said that the Millwrights have used hot air ovens, hot oil baths and the growler to enlarge or shrink bearings, sleeves, etc. but that they do not use oxy-acetylene gas. That is done by the welders although he did say that they use tiger torches or propane for the same purpose on occasion. Tony Baratta, a retired Pipefitter, gave similar evidence. He said that Pipefitters do not use oxy-acetylene torches in their work although they do use bernomatic torches to do things like put a facing on a flange or to melt lead to seal cast iron pipe. He felt that it would be unsafe if the Company were to require the trades to do all kinds of heating work.

Having reviewed that evidence it is now appropriate to turn to the specific changes proposed by the Company in the memorandum of October 29, 1993. In this award, I will deal with each proposed change separately.

1. Lubrication by Millwrights

Mr. Mullaly conceded that if the class of Lubrication Mechanic under the collective agreement is not considered to fall within the category of "Mechanics" within the meaning of the Bull Session Agreement then the work done by them would not comprise a trade line and would not be protected. Of course, he argued that the class was intended to be a trade. He pointed out that the Lubrication Mechanic class evolved out of the Oiler class (which continues in existence) when the Company assigned a number of higher level duties to it. He felt that it was significant that while a Lubrication Mechanic is differentiated from a Journeyman Mechanic under the wage Schedule, it is valued equivalent to a 4th year apprentice and that both are called "Mechanics".

John Scott, the Mechanical Department Superintendent, confirmed that when the mill started, only the Oiler class existed. It was valued at a much lower rate than a Journeyman Mechanic. He said that, at some point it was decided to require the Oilers to perform the following additional duties: (a) take the covers off bearings to inspect and lubricate; (b) break the couplings between a motor and any attached equipment to fill with grease; and (c) run small lubrication lines.

Having established the Lubrication Mechanic class, what the Company did was to make progression from

Oiler to Lubrication Mechanic automatic. After a person works three years as an Oiler he is automatically entitled to be reclassified to a Lubrication Mechanic. There is now a fairly comprehensive job description for the latter class dated October 31, 1975. Generally, it states that an incumbent is responsible for lubricating "all mill equipment on a routine and scheduled basis" except (a) mobile equipment, (b) electrical motors with greased bearings, and (c) closed refrigeration units. It has never been evaluated under the terms of the Job Evaluation Plan.

Doug Quaife acknowledged that when the Lubrication Mechanic class was introduced it resulted in a dispute where the Union claimed that some of the work belonged to the Millwrights and some to the Pipefitters. But he said that everyone learned to live with it. He admitted that many of the trades do lubrication. Electricians lubricate electric motors; Instrument Mechanics lubricate control valves; Heavy Duty Mechanics do a lot of lubrication including adding oil and anti-freeze to their equipment; and production workers top up fillers.

A number of grievances have been filed over the years in an effort to work out trades jurisdictions. But none of them were ever progressed by the Union to arbitration.

Those included a claim by Albert Barton, a Lubrication Mechanic, that a Millwright had improperly packed a coupling on an evening shift on May 4, 1970. The Company took the position at that time that each tradesman must perform necessary lubrication when reassembling equipment and that the Lubrication Mechanics are not responsible for all lubrication in the mill. That grievance was not progressed by the Union to arbitration. Two other similar grievances were initiated by Lee Conklin on May 6, 1970 and by J. Tremblay the next day with the same result. It should be noted, however, that Mr. Quaife explained that the reason those grievances were not prosecuted was that Oilers did not work shifts at that time but now they do and are always available to do lubrication.

Mr. Scott testified that Millwrights are the only trade in the mill who currently do not lubricate the equipment that they work on. He said that the Instrument Mechanics, the Pipefitters, the Garage Mechanics, the Refrigeration Mechanics and all the operators do lubrication.

David Reid testified that he conducted an industry survey one year ago, just prior to his retirement, which he updated by phone immediately prior to these hearings. He said that three mills require their Millwrights to do all the lubrication on shift; seven only require them to top up lubrication devices; in four mills they only do it in an emergency; and in another four or so mills they do not perform any lubrication functions. As for lubricating equipment rebuilds he said that there was no industry survey but he called seven mills and, of those, four require their Millwrights to lubricate the equipment they work on and three do not.

Although it is interesting to observe what is happening in the industry, I have concluded that it is not an issue to be determined by reference to practice. The question that must be decided in the first instance is whether Lubrication Mechanics are governed by the Bull Session Agreement and that can only be determined by reference to the provisions of the B.C. Standard Labour Agreement. Only if it is determined that they are covered does the industry practice become relevant.

The first thing to observe is that Exhibit "I" of the Job Evaluation Plan expressly defines "Mechanic" in a manner that does not include Lubrication Mechanics. Mr. Mullaly argued that that cannot be taken to be conclusive because it was only meant to apply for purposes of job evaluation. He pointed out, correctly, that the whole purpose of the provision was to preclude application of the plan to the Mechanical trades

and that, in practice, the Lubrication Mechanic class has never been evaluated. In further support, he pointed out that the wage Schedule calls them "Mechanics".

In fact, the Wage Schedule does not categorize the Lubrication Mechanics in the same manner as journeymen mechanics. They are all allocated to the Maintenance Department but a journeyman tradesman is the only class designated under the heading "Mechanics". There is then a heading of "Apprentices" which equally does not include Lubrication Mechanics. Then there is a designation, "Lubrication" and under that is the word "Mechanic". If one then goes to the Job Evaluation Plan a Lubrication Mechanic is not defined as a Mechanic. At the very least, what that means is that the Lubrication Mechanic class is subject to job evaluation -- even though it has never been evaluated.

But I think it means more than that. Exhibit "I" lists all of the trades that are used in the mill. The evidence does not disclose that there are classes that are considered by the Union to be trades outside of the Exhibit "I" list other than the Lubrication Mechanic. More importantly, there are no unique functions performed by that class at a high level of skill. There is no requirement that a person undertake a period of apprenticeship training to become a Lubrication Mechanic and there is an automatic progression from the Oiler class to the Lubrication Mechanic class after three years. Finally, the Lubrication Mechanic class did not exist at the time that the Bull Session Agreement was negotiated. Only the Oiler class existed and it was clearly not considered by the parties to be a trade.

Even if one were to conclude that the Lubrication Mechanic is a "Mechanic" within the meaning of the Bull Session Agreement, I am not persuaded that it is a trade or that the work that they do comprises a trade line. I do not consider that the words "mechanic" and "trade" in the agreement are necessarily interchangeable. A Lubrication Mechanic may be a mechanic for purposes of the Bull Session Agreement but the work that they do is not a trade.

One could argue that trade lines are internal and that once a trade practice is established within a particular trade no new duties may be assigned to that trade even if those duties do not encroach upon the jurisdiction of another trade. However, the Union would appear, in this case, to have conceded that the Bull Session Agreement operates only to preclude encroachments upon the practices of another trade and that it does not to otherwise confine one trade to its present practices. That is why it did not dispute that any mechanic may be required to operate a forklift truck. Similarly, if Millwrights are required to lubricate the equipment that they work on, that is not prohibited by the Bull Session Agreement because, while it may not be work that is part of their current work practices, it does not have the effect of putting them within the jurisdiction of some other trade. In those circumstances there can be no breach of the Bull Session Agreement to require them to do either general lubrication on shift or lubrication on equipment rebuilds.

2. Disconnection and/or Connection of Water, Air or Oil Piping

The reason why the Union says that this work cannot be assigned to the Millwrights is that it has traditionally been done by the Pipefitters. The Company argues that it is a proper assignment because it has never been exclusive to the Pipefitters and that although the Millwrights have not traditionally done it, many other trades disconnect and connect pipes of all kind to permit them to work on the equipment to which it is attached. It contended that in order for a clear cut trade line to exist the practice must be unique to a particular trade.

Mr. Scott testified that there are essentially four types of connectors used in the mill: "swivel", "quick disconnect", "union" and "hammer lock". He said that they are all easy to use and that most of the other trades use them. By contrast Mr. Quaife said that, as a millwright, he does not have the skill to disconnect and connect pipe although on further questioning it is clear that his answer was based not on his mechanical ability but safety. He said that he might not know what is in the pipe.

The problem with that approach is that while the arbitral jurisprudence has long recognized the right of an employee to refuse to do unsafe work, it is not a factor in the definition of the kind of trades work that is entitled to protection under the Bull Session Agreement. As we have seen, that depends on whether the work has been substantially confined to one particular trade in the industry.

The only evidence is that respect was given by David Reid but his survey was clearly deficient in that he only called seven out of nineteen mills in the province. Of those he said millwrights in five mills connect and disconnect piping but in two they do not.

Obviously I could dispose of the issue based on which party carries the onus of proof but, in my view, that would not be appropriate since, until this award, the parties were not in agreement on the test to be applied in the definition of trade lines under the Bull Session Agreement - and - the matter is capable of resolution by reference to objective evidence.

Under the circumstances I think that the only appropriate thing to do is to refer the matter back to the parties so that a proper survey may be conducted of the whole industry. Once that is done the parties ought to be able to reach an agreement on whether Millwrights can be required to connect and disconnect piping based upon the principles outlined in this award. I reserve jurisdiction to decide that issue in the event that an agreement cannot be reached.

3. Heating

Here the survey done by Mr. Reid was reasonably comprehensive. It shows that in fifteen mills, Millwrights are required to use oxy-acetylene gas for heating and bending. In ten of those mills the practice is unrestricted. In five there are restrictions such as it can only be done in the shop or only in the shop with other trades.

It is noteworthy that the practice in the industry, in this respect, has changed somewhat. Mr. Reid gave evidence in the *Crestbrook* case in 1987 when he said that in eleven mills the Millwrights were not using heat to remove or install couplings or were doing it with propane only; four mills said, yes and two more qualified their "yes" with dates of "since 1985 or '86". On that evidence the arbitration board concluded that the preponderant practice demonstrated that a trade line existed limiting gas welding torches to Welders.

One of the four mills that required Millwrights to use oxy-acetylene gas was probably Finlay Forest Industries Ltd. because the evidence before Arbitrator Chertkow in an arbitration in 1982 was that the trade line policy of the Company was to require them to use "oxy-acetylene torches (or other) to heat components for installation or removal on shafts". The policy also required that they "do destructive cutting of components from shafts in the shop".

In 1987 there were a total of 20 mills so that the effect of that evidence was that the Millwrights in more than half of the mills did not use gas to do oxy-acetylene welding. Only four mills made unrestricted use of it and the balance used it on a restricted basis. Now ten mills are unrestricted and five use it on a restricted basis, which leaves only four mills that presumably do not require their Millwrights to heat with oxy-acetylene gas.

The only conclusion that I am prepared to come to on that evidence is that at least with respect to the unrestricted use of oxy-acetylene gas to do heating there is not yet a "reasonable preponderance", to use to test enunciated in the *Crestbrook* case, or a substantial practice in the industry that would permit the Company to assign that work to the Millwrights. That is a bare majority although, if an additional one or two mills in the industry adopt such a practice that will, without a doubt, be sufficient to meet the test. But at present I am satisfied that a clear cut trade line exists that continues to confine the unrestricted use of oxy-acetylene gas to do heating to the Welders. On the other hand, the combination of unrestricted and restricted use in the industry must be regarded as substantial so as to permit the Company to make assignments to Millwrights on a restricted basis such as, in the shop or under the direction of a Welder elsewhere in the mill.