

ARBITRATION AWARD

BETWEEN:

COMMUNICATIONS, ENERGY AND PAPERWORKERS
UNION OF CANADA, LOCAL 60N
(hereinafter called the "Union")

AND:

ABITIBI CONSOLIDATED INC.,
(Newfoundland Woodlands)
(hereinafter called the "Employer" or the "Company")

GRIEVANCE:

Re: Camps

COUNSEL:

For the Union

Raymond F. Larkin, Q.C.

For the Employer

Harold M. Smith, Q.C.

ARBITRATION BOARD: James C. Oakley, Chairperson
Robert B. Andrews, Q.C.
Ray Cluney

The arbitration hearing was held at Grand Falls/Windsor on November 14 and 15, 2006. The parties agreed as follows:

1. The Arbitration Board was acceptable.
2. There were no preliminary objections going to jurisdiction to hear the grievance.
3. The grievance procedure was properly followed or any requirements waived.
4. The Board would remain seized of the matter for 60 days following publication of the Award in the event there was a question of interpretation or compensation arising from the Award.
5. Any applicable time limit to file the Award was waived.
6. Witnesses were permitted to remain throughout the hearing.

The following exhibits were entered at the hearing:

- Consent 1 - Collective Agreement between Abitibi Consolidated, Newfoundland Woodlands and Communications, Energy and Paperworkers Union of Canada (“CEP”), Local 60N, dated January 1, 2004 to December 31, 2008
- Consent 2 - Grievance Form - Grievance No. 01-AC-2006, dated January 13, 2006
- Consent 3 - Employer’s reply to grievance
- RS - 1 Letter dated September 17, 2004 from Kevin G. Dawe, Director of Industrial Relations, Newfoundland Woodlands to Ron Smith, CEP, Local 60N
- RS - 2 Grievance form - Grievance No. 09-AC-2003, Local 60N, dated September 9, 2003 and attached response of the Company
- RS - 3 Letter dated June 3, 2004 from William P. Furey, Manager, Newfoundland Woodlands to Rick Fudge, President, CEP, Local 60N
- RS - 4 Map of proposed Pine Martin Critical Habitat - Island of Newfoundland
- RS - 5 Photographs (No. 1 to No. 10) of Portage Lake Camp
- RS - 6 Grievance Form - Grievance No. 01-AC-99, CEP, Local 60N, dated October 1, 1999

- RS - 7 CEP, Local 60N - Union's 2nd submission on contract language, June 7, 2004
- RS - 8 List of Local issues
- RS - 9 Map of Newfoundland showing camps and cutting areas
- RF - 1 CEP, Local 60N - Union's 7th submission on contract language, July 14, 2004
- RF - 2 CEP, Local 60N - Union's 6th submission on contract language, July 13, 2004
- RF - 3 CEP, Local 60N - Union's 4th submission on contract language, June 18, 2004
- BE - 1 Map of Districts 10, 11, 12 and 13 showing location of camps and cutting operations
- BE - 2 List of employees for period beginning September 19, 2005 showing residence, whether stayed at Red Ochre Inn, and whether paid walking and riding time, or paid room and board
- BE - 3 Five year operating plan, 2003 to 2007 - Abitibi Consolidated, Forest Management Districts 10, 11 and 12
- BE - 4 Collective Agreement between Abitibi Price and Communications, Energy and Paperworkers Union of Canada, Local 60N dated January 1, 1996 to December 31, 1998

Nature of the Grievance

The Union grieves that the Company violated the Collective Agreement by failing to provide board and lodging in a camp for employees living outside a commuting area, from August to December, 2005. The Employer closed the Portage Lake Camp and provided accommodation for employees at the Red Ochre Inn in Buchans. The Union seeks an order that the employees be accommodated in a camp and that the Employer comply with the Collective Agreement. The Employer denies any violation of the Collective Agreement.

Collective Agreement

The relevant Articles of the Collective Agreement are as follows:

Article III - Recognition and Jurisdiction

...

3.01 (a) The Employer recognizes the Union as the sole collective bargaining agency for all the employees of Abitibi-Consolidated Inc., Woodlands Division, including all employees on the seniority list(s) of Abitibi-Consolidated Inc., in woods operations on the Grand Falls timber limits save and except Woodlands Manager, Assistant Woodlands Manager, Superintendents, Assistant Superintendents, General Foremen, Foremen, Assistant Foremen, Scalers, Assistant Scalers, Technical, Clerical and Office Staff, Guards, Gatekeepers, Non-Working Contractors, Non-Working Sub-Contractors, persons employed in Silviculture operations, persons employed in supervisory, advisory and confidential capacities.

...

3.03 Except as stipulated in Article 3.02(b), anyone performing work, except for the purpose of instruction and/or in case of emergency, as listed in the Job Classifications set out in the Wage Schedules attached to and forming part of this Agreement, shall be considered employees of the Employer within the terms of this Agreement.

...

Article X - Working and Living Conditions

10.01 The Employer agrees to abide by the terms and conditions of the *Logging Camps Act 1960*, the amendments thereto and the regulations thereunder. The Union agrees that the workmen covered by this Agreement will cooperate with the Employer in maintaining the general rules of cleanliness and order in the living quarters, mess halls and surroundings of camps and places of work.

10.02 Subject to this Agreement, it is clearly understood and agreed that it is the sole right of the Employer to administer Newfoundland Woodlands operations, direct Employees in such a way as to ensure maximum efficiency, change its methods or system of operation and distribute work. The Union shall be advised of any significant change in operations at least thirty (30) days in advance of the introduction of such change.

...

10.16 The Employer agrees that there shall be no shacking or batching on the Newfoundland Woodlands operations except by mutual agreement between the Company and the Union and under conditions mutually agreed to before

any shacking or batching commences. The Company agrees to maintain camps to accommodate people who live outside of commuting areas. This does not interfere with the Company's right to conduct commuter operations at certain times of the year while camps are shut down.

10.17 It is agreed that the Employer will maintain good conditions in respect to cleanliness, sanitation and health, and it is the duty of the employees to cooperate in this regard. Employees' living and service quarters will be washed and disinfected at least once each week and the Employer will continue to provide improved camp facilities.

10.18 (a) The Company recognizes the need for shift workers to rest comfortably during the off shift. The Company agrees to work towards providing single rooms for shift workers living in camps.

This process will start in 1999 and will be completed as space becomes available.

(b) Inside toilet facilities, washroom facilities, and drying rooms shall be accessible without travelling outdoors.

(c) Employees on other than regular day shift shall have separate sleeping quarters to enable them to obtain proper rest.

(d) Cookhouse and Bunkhouse staff shall have separate sleeping quarters, separated from the kitchen and dining room facilities to the extent that these operations will not unduly heat or disturb their sleeping quarters.

10.19 (a) Camps shall be constructed so as to accommodate all employees with not more than two (2) per room. The rooms shall measure approximately 8' X 10'. All beds and mattresses shall be of good quality and maintained in a serviceable condition at all times. The Employer shall continue to provide spring-filled mattresses and bedding consisting of pillows, pillowcases, sheets and blankets. Pillowcases and bed sheets will be changed once a week. Clean blankets shall be supplied upon hiring or transfer from another worksite and shall be changed as required. Such items of bedding must not be removed from the Employer's premises except by those employees who must do so in the course of their duties.

(b) In future, new camps shall be constructed so as to accommodate all employees with not more than one (1) per room. All beds and mattresses shall be of good quality and maintained in a serviceable

condition at all times. The Employer shall continue to provide spring-filled mattresses and bedding consisting of pillows, pillowcases, sheets and blankets. Pillowcases and bed sheets will be changed once a week. Clean blankets shall be supplied upon hiring or transfer from another worksite and shall be changed as required. Such items of bedding must not be removed from the Employer's premises except by those employees who must do so in the course of their duties.

...

10.22 All camps shall have separate drying rooms, adequate to the extent that it will not be necessary for employees to have wearing apparel and/or footwear drying in their sleeping quarters. It is agreed that drying rooms must be large enough to accommodate all employees, each of whom shall have, for his use only, a hanger-type device to facilitate the drying of wearing apparel.

10.23 All camps shall have a recreation room for the use of employees. Such rooms shall be large enough and equipped to accommodate at least half the employees in a comfortable manner.

...

10.26 (a) Food shall be handled in a sanitary manner at all times. Food served to employees in the camps shall at all times be of high quality and of reasonable variety and sufficient quantity.

(b) Fruit juices shall be supplied for breakfast.

(c) Fresh apples and fresh oranges shall be made available in Cookhouse five (5) days a week. Two additional items of fruit shall be made available two (2) days per week.

(d) There will be two (2) varieties of fresh meat for all take-out lunches. Suitable material will be supplied for wrapping of lunches.

(e) The Employer shall maintain at all camps non-carbonated fruit-flavoured cold drink dispensers. The Employer shall maintain steam tables in all camps and where new camps are constructed, such camps shall be equipped with additional electrical appliances to meet the needs of the cookery.

(f) An exhaust fan will be installed in Bunkhouse washrooms and in the Cookhouse.

(g) Food coolers will be provided in all Cookhouses.

(h) The Employer will supply fresh milk in all camps.

(i) Kitchens will be equipped with an industrial size dishwasher.

...

10.28 Effective upon date of ratification, Room and Board will be provided by the Company at a set rate of \$14.50 per day. Effective January 1, 2006, the set rate will increase to \$15.00 per day.

Board & Lodging - Weekend

Board and lodging in camps will be available to those who desire it on a seven (7) day week basis and cookery staff shall not be sent home for weekends, thus depriving them of wages due them.

...

Article XII Seniority

12.01 (a) There shall be two types of seniority

- 1. General Seniority
- 2. Classification Seniority

For the purpose of hiring and lay-off, employees in the Driver Classifications listed in Schedule "A", holding a Class 01 license and holding seniority in the classifications of Tractor Trailer, Knuckleboom, B-Train, Single and Tandem Axel will have such seniority combined into one classification of Truck Driver - Trailer.

...

12.08 Upon commencement of normal operations from June 1 to March 31, recall of employees will be in accordance with the seniority provisions of the Collective Agreement. When special projects, such as cutting of rights-of-way, road construction, bridge maintenance, etc., occur prior to or after normal operations, the work involved will be carried out firstly by commuters within the defined commuting areas rather than on a seniority basis.

...

Article XVI - Commuting

16.01 A commuter, for the purpose of this Agreement, is an employee not obtaining board and lodging in a camp or attached to a camp operation.

16.02 Each community from which employees commute will have an agreed central place or places as a Marshalling Point for the purpose of commuting, except as mutually agreed between the Company and the Union.

- 16.03 The Employer will provide free and acceptable transportation for commuters from the Marshalling point to the disembarkation point in the work area. When transportation is by road, factory-built buses or automobiles will be used.
- 16.04 Employees shall not be allowed to commute to an operation in their own vehicles except by arrangement between the Company and the Union. In such a case, employees who use their own vehicles will be paid the established corporate rate per kilometre or a rate as agreed to between the Company and the Union.
- 16.05 If it becomes necessary to hire a man who is not a bonafide resident of a community from which free transportation is provided, board and lodging will be provided in that community by the Employer at the agreed camp rate.
- 16.06 Where camps are operating and board and lodging is available, employees who use their own transportation will not receive a commuting allowance.

Article XVII - Walking and Riding Time

- 17.01 Walking and riding time will be established on the following basis:
- a) For the purpose of this Article, it is agreed that an employee walks at the rate of three (3) miles per hour.
 - b) Time allowance for riding time from the designated starting point to the disembarkation point will be established between the parties. Where a commuter bus makes frequent stops to allow employees to disembark, the time lost shall not enter into the calculation for walking and riding time.
 - c) When travelling time to the place of work is composed of walking and riding time, it shall be combined.
 - d) Walking and riding time from a camp shall be reckoned from the dining room door to the employee's place of work.
 - e) Walking and riding time for commuters shall be reckoned from the Marshalling Point to the employee's place of work.
- 17.02 Employees will be paid for walking and/or riding time to and from work over

one-half (½) hour each way on the basis of a flat rate of \$11.07 per hour. The flat rate will be adjusted by the amount of the General Wage increase for the life of the Agreement.

17.03 Walking and/or riding time shall not exceed one and one-half (1 ½) hours each way.

...

Local Issues - Loggers

1. Construction of a new, portable camp - resolved as per Company's letter of June 3, 2004.

The above item 1 under the heading "Local Issues - Loggers" refers to a letter dated June 3, 2004. The letter states as follows:

June 3, 2004

Mr. Rick Fudge, President
CEP Local 60N

Dear Mr. Fudge:

While the Company recognizes the importance and the associated efficiencies involved in relocating the Portage Camp, the new location of the camp cannot be determined at this time. Ongoing discussions with Government on the critical habitat of an endangered species, the Newfoundland Pine Marten, must be concluded and agreed to in order to decide where harvesting can take place in District 12. This is a very serious issue for the Company as it places approximately 35% of the District 12 allowable cut in question and current approvals are only issued one (1) year in advance, which prevents long-term planning.

If these issues are resolved in a favourable manner, the Company will relocate the Portage Camp to a location closer to the agreed harvest areas. Parts of the present camp that are suitable and can be moved economically will be relocated. Any sections which are unserviceable will be replaced with structures that are of a less permanent nature and more conducive to relocating in future.

The Company commits to moving this camp within twelve (12) months of the satisfactory resolution of the Pine Marten issue in District 12.

In an effort to expedite the resolution of the Pine Marten issue, the Company would recommend and support the appointment of a member of Local 60N to become a full member of the Pine Marten Recovery Team. The purpose of this appointee would

be to represent the social impacts of having these areas withdrawn from the harvest land base. We would also arrange a meeting between the Union Executive and the Minister of Environment and Conversation so that Government could be made further aware of the social impacts of declaring the affected areas closed to harvesting.

Yours truly,

William P. Furey
Woodlands Manager
Newfoundland Woodlands

Evidence

The witnesses called by the Union were Ron Smith, National Representative, Communications, Energy and Paperworkers Union, and Rick Fudge, President, CEP, Local 60N. The witness called by the Employer was William Evans, General Logging Superintendent, Newfoundland Woodlands Division.

The Company's Newfoundland Woodlands Division conducts wood harvesting operations within company timber limits in Districts 10, 11, 12 and 13. These areas are located mostly to the south and west of the paper mill at Grand Falls. The Company hires woods contractors to provide the equipment and conduct the wood harvesting operations. The woods contractors employ members of CEP, Local 60N, the bargaining agent for employees in the woods operations on the Grand Falls timber limits. The bargaining unit is defined in Article 3.01 (a) of the Collective Agreement. In September, 2005 there were five woods contractors. Four contractors harvested wood for delivery to the Grand Falls mill and one contractor, Woodrow Fudge, harvested wood for delivery to the Stephenville mill. Wood was harvested for the Stephenville mill in Districts 12 and 13, the areas of the timber limits closer to the Stephenville mill and further from the Grand Falls mill. Wood for the Stephenville mill was trucked in a westerly direction along gravel Company roads and along the paved Burgeo highway to the Trans Canada Highway and then to Stephenville.

In July, 2005, the Company announced the closure of the Stephenville paper mill. In September, 2005 the Stephenville mill stopped receiving wood fibre from the Company's Woodlands Division. Prior to September 19, 2005, the employees working in the Woodrow Fudge harvesting operation were accommodated at the Portage Lake camp, one of the two camps operated by the Company at

that time. The other camp was the Black Duck camp located in District 11. The total number of camps has declined over the years. Ron Smith testified that in 1988 there were five or six camps.

William Evans testified that at one time most employees were accommodated in camps and there were few commuters. Camps were relocated as necessary to be close to the harvesting operations. Mr. Evans testified that with the increased amount of mechanized harvesting operations, there are fewer employees engaged in harvesting and there is a need to move the place of harvesting more frequently. There is still a need for some wood harvesting to be done manually using chainsaws. In 2005, there were about 120 bargaining unit employees engaged in mechanized harvesting operations and about 20 bargaining unit employees in manual harvesting operations, according to Mr. Evans. Ron Smith testified that camps may be dismantled and moved to be closer to the harvesting operation. Article 17.03 states that walking and/or riding time shall not exceed 1½ hours each way. Walking and/or riding time from a camp is the distance from the dining room to the workplace. Mr. Smith testified that the structures used at the Portage Lake camp had been moved to that location from another location so that the camp would be closer to the harvesting operation.

Photographs of the Portage Lake camp were entered as exhibits. There was testimony about the camp facilities. Ron Smith testified that the camp buildings are constructed from trailers. The buildings could be dismantled and moved as required. At the Portage Lake camp there were five trailers with accommodation for about 50 employees. The cookhouse/dining hall was located in a separate building from the accommodation buildings. The camp had a recreation room. The conditions in camps are regulated in Article 10 of the Collective Agreement which is headed "Working and Living Conditions". There is also regulation of camps by legislation in the *Logging Camps Act*, Statutes of Newfoundland, 1960. Mr. Smith testified that accommodation in camps is a benefit to employees and maintaining camps is an obligation of the Company. He said the fact that there is a cost to move a camp does not relieve the Company of its obligations under the Collective Agreement.

Rick Fudge, President of CEP, Local 60N, testified that he has worked in camps for about 20 years, mostly in the position of cook and also, more recently, in the position of truck driver. He testified that a camp has advantages over accommodation of employees in motels or boarding houses. Camps are required to have certain types of food available, such as fresh fruit, and are required to have certain facilities, such as a drying room for wet clothes and a recreation room. The camps provide employment for cooks and bunkhouse staff. Mr. Fudge said there are fewer complaints about food in camps compared to other types of accommodation. The camps do not have the noise problems that may be caused by other guests in motels.

William Evans testified that there is currently more extensive regulation of camp construction than in the past, meaning that it has become more expensive and difficult to relocate a camp. Current regulation requires that design of water and sewer systems be prepared by an independent consulting engineer. There are currently detailed requirements for fire and emergency systems.

Mr. Evans testified that on July 26, 2005, the Woodlands Division received notice that the Stephenville mill would be closed. Prior to August 8, 2005, the Woodrow Fudge operation was harvesting wood at the Jacks Pond cut, on the south side of Red Indian Lake. From Jacks Pond, the wood could be supplied to the Stephenville mill, but it was not practical to supply the Grand Falls mill from that location. After the announced closure of the Stephenville mill, the Woodlands Division decided to move the Woodrow Fudge harvesting operation to the Mt. Brook cut, on the north side of Red Indian Lake, from where it was more practical to supply the Grand Falls mill. From August 8 to September 19, 2005, the employees continued to be accommodated at the Portage Lake camp and were transported from the camp by road to the Mt. Brook cut. During that period, some employees were transported to the Skidder Brook cut to do road construction. On September 19, 2005, the employees were moved from the Portage Lake camp to accommodations at the Red Ochre Inn in Buchans. The employees were transported each day by road from Buchans to the harvesting operations at the Skidder Brook cut. The distance from Buchans to the Skidder Brook branch was 11 kilometers. The distance from the Portage Lake camp to the Skidder Brook branch was 73 kilometers. Mr. Evans testified that the cook and bunkhouse staff remained at the Portage Lake camp for about four weeks after September 19, 2005 to provide security until the camp was dismantled. Part of the camp was demolished and some of the trailers were moved by loading them onto flatbed trailers and transporting them to Millertown for storage. With respect to the cooks, Mr. Evans stated that one cook was transferred on September 19, 2005 to the Black Duck camp. Another cook was transferred to the Black Duck camp after the Portage Lake camp was dismantled. Mr. Evans did not believe that any of the cooks or other employees suffered any loss of income. There had been a garage used by the mechanics at the Portage Lake camp. When the Portage Lake camp closed, the Company garage facility in Grand Falls was made available for the Woodrow Fudge operation. One of the mechanics, Bruce Hoffe, a resident of Badger, was assigned to work at the garage in Grand Falls. Bruce Hoffe commuted from Badger to the garage in Grand Falls in his own vehicle and was paid mileage.

When employees commute to a woods harvesting location, the Employer provides transportation from a marshalling point in a community to the workplace. Ron Smith testified that a marshalling point is not necessarily located in every community where employees have a place of residence.

According to a list entered as an exhibit, 15 of the 24 employees working with the Woodrow Fudge operation were accommodated at the Red Ochre Inn. One employee, Peter Hoffe, a resident of Buchans, continued to reside at his own house. Bruce Hoffe, the mechanic, resided at his house in Badger and commuted to his workplace at the garage in Grand Falls. The remaining employees were offered accommodation at the Red Ochre Inn in Buchans, but declined. Three of those employees resided at Millertown. The travel time from Millertown to the work site at Skidder Brook was slightly more than 1 ½ hours. Some employees resided at Badger or Grand Falls/Windsor, which was also more than 1 ½ hours travel time from the work site. Mr. Evans said he did not hear about any complaints regarding food or living conditions at the Red Ochre Inn.

Ron Smith testified that the Union was concerned about the Company using motels and boarding houses which were less desirable for employees than camps. By accommodating employees at the Red Ochre Inn, there was a loss of work for the cook and bunkhouse staff. There were complaints about the food. Mr. Smith testified that one of the benefits to employees of being accommodated in a camp was that the camp could be located close to the work site. Employees preferred to spend the least amount of time possible travelling to the work site. Employees residing in Stephenville now had to travel farther to Buchans than they had to travel to the Portage Lake camp. Mr. Smith did not believe that Buchans was a marshalling point for the Woodrow Fudge operation. He stated that in circumstances where almost all the employees lived more than 1 ½ hours drive from the work site, the Employer was required to accommodate the employees in a camp.

Rick Fudge testified that he was informed by employees in the Fall of 2005 that the Portage Lake camp was being demolished and employees accommodated in Buchans. He testified that one employee complained about the food at the Red Ochre Inn. The grievance covered the period starting when employees from the Woodrow Fudge harvesting operation were first accommodated at the Red Ochre Inn, and ending when the operation was shut down for the season on December 15, 2005. Mr. Fudge testified that after the Portage Lake camp closed, one cook was relocated to the Black Duck camp but demoted to cookee. Mr. Fudge said that Alvin Mercer, another cook, remained at the Portage Lake camp to assist the carpenters during the demolition. When the demolition was completed, Mr. Mercer moved to the Black Duck camp and his pay was reduced. Mr. Fudge testified that some employees travelled from their homes to the Skidder Brook work site and did not stay at the Red Ochre Inn.

Mr. Fudge testified that it was not a commuter operation when more than 90% of the employees lived outside the commuting area, which he considered to be an area located within 1 ½ hours from the work site.

Ron Smith has been the chief negotiator of the Collective Agreement on behalf of Local 60N from 1988 to the present, with the exception of one round of bargaining in the 1990's. He was also off work during part of the most recent negotiations in 2004. Mr. Smith testified that the reference in Article 10.16 to “no shacking or batching” meant that the Company could not erect a rough facility to accommodate the employees (“shacking”) or have the employees cook for themselves (“batching”). Mr. Smith testified that the commuting area did not exceed 1 ½ hours from the workplace to the marshalling point. If the distance was more than 1 ½ hours from the marshalling point to the workplace, then it was not a commuter operation. A commuter operation occurred where enough employees resided within 1 ½ hours of the place of work. There could be a camp operation and a commuter operation at the same time. There could also be a camp operation even though some employees decided to travel home from the work site. Commuters living within the defined commuting area were called to work first for special projects, pursuant to Article 12.08. The seniority provisions of the Collective Agreement applied to hiring for normal operations from June 1 to the following March 31. Seniority applied on a bargaining unit wide basis regardless of place of residence.

The Union’s position was that the Company was required to maintain at least two camps. The Union filed a grievance in 2001 when the Company accommodated employees at a motel in Badger. The grievance was settled by the Company agreeing to operate at least two camps in any year that the Badger facility was being utilized. The Union withdrew the grievance and the Employer provided the following letter to the Union:

September 17, 2001

Mr. R. Smith
CEP, Local 60N

Dear Ron:

Re: Settlement of Grievance #01 AC 99
Use of Facility in Badger for Housing Employees

As per our discussions, the following is offered in settlement of the above grievance.

In acknowledgement for the withdrawal of this grievance by the union, the company will agree to the following:

In any year that the Badger facility is being utilized to house company employees, not less than two company-owned camps will also be in operation, at a minimum, during the period when manual operations are ongoing.

During the period when the company camps are operating, the cookhouses will be staffed in accordance with the Collective Agreement. It is further understood that the cookery staff will work in their specific classifications for the duration of the applicable Employment Commitment as outlined in the Collective Agreement.

Yours truly,

Kevin G. Dawe
Director of Industrial Relations
Nfld. Woodlands

Ron Smith testified that he assumed the arrangement agreed in 2001 for the Badger facility would apply to other facilities, including the Red Ochre Inn in Buchans.

Woods harvesting operations are regulated for protection of the environment, including protection of wildlife. The protection of the Newfoundland Pine Marten is a significant issue in Districts 12 and 13. The Pine Marten has been declared an endangered species pursuant to the *Endangered Species Act*, SNL, 2001 c. E-10.1. The Newfoundland Government's Wildlife Division has proposed critical habitat areas for the Pine Marten. There have been public consultation sessions on the proposed areas. Ron Smith testified that the Union made a presentation at the consultation session. He did not know when the issue would be resolved. Rick Fudge testified that the Pine Marten issue may

not be resolved for some time. Mr. Smith testified that the Union acknowledged that the resolution of the Pine Marten critical habitat issue affected the areas where harvesting operations could take place and also affected the location where the Company could build a camp.

William Evans testified that the Company prepares a five year operating plan. The current plan is for the years 2003 to 2007. The Company was put on notice in July, 2002 that there were areas of proposed critical habitat for the Pine Marten, and wood harvesting areas could not be determined for more than one year at a time. Mr. Evans testified that, as of the date of the hearing, discussions were continuing with respect to resolution of the Pine Marten critical habitat area. Every year the cutting operations were getting further away from the Portage Lake camp. Woods harvesting in the area of Jacks Pond, south of Red Indian Lake, was placed on hold. Mr. Evans said the cut at Mt. Brook was commenced with the intent that the wood harvested in that area would be sent to the Stephenville mill. The Mt. Brook cut was about 1 ½ hours drive from the Portage Lake camp. The Company was paying a significant amount of walking and riding time. The Mt. Brook cut was about 35 kilometres from Buchans.

The Union filed a grievance dated September 9, 2003 (09-AC-2003) which grieved that employees were being housed at the Red Ochre Inn in Buchans. The settlement requested was that employees be placed in existing camps or a new camp be constructed. Ron Smith testified that during collective bargaining in 2004, the Union asked for construction of new camps so that travel time from the camp to the place of work would not exceed 1 ½ hours. The issue was resolved in bargaining, as noted under “local issues” by the Employer providing the letter to the Union dated June 3, 2004. The letter referred to the fact that the location of a new camp could not be determined at that time and that there were ongoing discussions with Government regarding the critical habitat of the Pine Marten.

Rick Fudge testified that the 2003 grievance concerning employees accommodated in Buchans was discussed in negotiations. He said that acceptance of the letter dated June 3, 2004 did not mean that the Union accepted closure of the Portage Lake camp.

William Evans testified that the closure of the Stephenville mill was not contemplated at the time of the 2004 negotiations and the issuance of the June 3, 2004 letter. The Stephenville mill was supplied by wood cut by employees accommodated at the Portage Lake camp. Mr. Evans acknowledged that the Union had not agreed that the Portage Lake camp could be closed while the Company was waiting for the Pine Marten critical habitat issue to be resolved.

Evidence was presented concerning prior collective agreement language and bargaining history In the 1996 to 1998 collective agreement, Article 10.16 read as follows:

10:16 The Employer agrees that there shall be no shacking or batching on their Fibre Resources operations except by mutual agreement between the parties and under conditions mutually agreed to before any shacking or batching commences.

Article 10.16 was amended to be the same as the current Collective Agreement commencing with the 1998 collective agreement. Negotiations for the current Collective Agreement occurred in 2004. In the Union's 2nd submission in bargaining, dated June 7, 2004, the Union proposed that Article 10.16 retain the existing language but that the last sentence be deleted. This proposal was withdrawn by the Union in its 4th submission, dated June 18, 2004. As a result, Article 10.16 was not amended in the 2004 negotiations.

The Union also proposed in its 2nd submission in item 75, that Article 16.05 be amended to read as follows:

75. 16.05 Resubmit

Change to Read

If it becomes necessary to hire an employee whose residence is more than 1.5 hours from the job site, board and lodging will be provided by the Employer at the agreed camp rate.

The proposal in item 75 was resubmitted in subsequent submissions and then withdrawn in the Union's 7th submission, dated July 14, 2004.

The Union also proposed in its 2nd submission, dated June 7, 2004, in item 96 that a new article be added, as follows:

96. Camps - Resubmit

New

In any year that the Company provides for outside board and lodging facilities to house employees as provided for under Article 16.05, not less than two (2) company owned camps will also be in operation when operations are ongoing. The outside board and lodging facilities must be a licensed establishment for this purpose.

During the period when the company camps are operating, the cookhouse will be staffed in accordance with the collective agreement. It is further understood that the cookery staff will work in their specific classifications for the duration of the applicable employment commitment as outlined in the collective agreement.

The Union resubmitted the proposal in item 96 in further submissions, with some amendments, and subsequently withdrew the proposal in its 7th submission, dated July 14, 2004.

Rick Fudge testified that the Union's proposals in the 2004 negotiations were an attempt to "shore up" the fact that the workers benefit from the working and living conditions in camps, as protected by the Collective Agreement. Mr. Fudge testified that the Union feared that the Company might close the camps. The proposal in item 96 contained language identical to the resolution of the 2001 grievance. The Union withdrew item 96 in order to keep the negotiations moving along. The Union withdrew items 75 and 96 with a view that the existing language was strong enough to require the Company to maintain two camps.

The collective agreement language was changed in 2004, with respect to seniority. Prior to 2004, seniority could be exercised on the basis of residence within a commuting area. Commencing with the 2004 Collective Agreement, seniority applied on a bargaining unit wide basis. Recall by seniority on a bargaining unit wide basis is not an issue at the beginning of the harvesting season because all woods contractors start operations at about the same time. As a result, employees may still be recalled to work for the same woods contractor for whom they have worked in prior years. However, when there are operations conducted outside of the regular season, employees are recalled in order of seniority on a bargaining unit wide seniority basis to work in those operations, may not be working for the same contractor for whom they work in the regular season.

Union Submission

The Union submitted that during the harvesting operation at Skidder Brook, from September to December, 2005, the Employer violated the Collective Agreement because it did not accommodate employees who lived outside the commuting area in a camp. All employees, except for one resident of Buchans, lived more than 1 ½ hours travel by road from the work site. The Employer closed the Portage Lake camp as a result of closure of the Stephenville paper mill. The cutting operations were not relocated as a result of any issue of the Pine Marten habitat. The Employer's letter dated June 3, 2004, undertaking to relocate the camp when the Pine Marten issue was resolved, was inconsistent with the Employer's actions to close the camp. Article 10.16 imposed a mandatory obligation on the Employer. The Employer agreed to "maintain camps", and the use of the plural "camps" meant the Employer will maintain at least two camps. The various provisions regarding camps in Article 10 indicate an intention to maintain a certain standard of accommodation. These standards may not be available in hotels or boarding houses. The last sentence of Article 10.16 refers to certain times of the year when camps may be closed, which is consistent with an intention of the parties that during other times of the year the camps are required to remain open. Article 10 imposes an obligation on the Company to have camps, for example, Articles 10.17 and 10.28 refer to the obligation that the Company will provide camps. The last two sentences of Article 10.16 were added in the 1998 to 2004 Collective Agreement. Article 10.16 imposes an obligation on the Employer to operate a camp for persons who live outside the commuting area. The commuting area was defined in Article 16.02 and meant communities with agreed marshalling points. The Employer committed in Article 17.03 to ensure that walking and riding time from the marshalling point to the work place does not exceed 1 ½ hours. Only one employee engaged in the Fall, 2005 operation resided in a community within 1 ½ hours of the workplace. It was not a commuter operation. There is a distinction in Article 12.08 between normal operations and commuter operations. The application of seniority in Article 12.08 was changed in the current Collective Agreement. Articles 10.16 and 16.05 may be reconciled by reading both articles together. In that regard the Union referred to two arbitration cases, *CEP, Local 60N and Corner Brook Pulp and Paper*, March 27, 1996 (Oakley) (the "Lidstone" case) and *CEP, Local 60N and Corner Brook Pulp and Paper*, January 27, 2004 (Oakley) (the "Re Camps" case). In the *Lidstone* case, the same language as Article 16.05 was considered. The arbitration board found that the grievor was not entitled to exercise seniority in the commuting area when he was not a resident of a community from where there was an agreed marshalling point. In the *Re Camps* case, the employer was commencing operations in a new area and was not required to establish a camp. However, the *Re Camps* case can be distinguished because the collective agreement did not have

articles equivalent to Articles 10.16 or 10.28 in the current Collective Agreement. The bargaining history of proposals presented during negotiations, cannot be considered unless there is an ambiguity in the language or the requirements for an estoppel are met, and neither of those situations applies in this case. There was no representation at bargaining by the Union that the Employer could accommodate employees in a motel when it operated outside commuting areas or that if the Stephenville mill closed then the Employer would not be obligated to maintain camps. The Union requested that the Arbitration Board order the Employer to comply with the Collective Agreement and to make whole any employee who suffered a monetary loss.

Employer Submission

The Employer submitted that the intent of the parties was to be determined from the words used in the Collective Agreement. The unilateral expectation of one of the parties was not determinative. The onus was on the Union to establish a mutual intent to confer a benefit on employees. In that regard, the Employer referred to the arbitration award of *Bristol Myers Products Canada and Teamsters, Local 351*, April 11, 1983 (Hope). There would be a benefit conferred on employees if the Employer was required to construct a camp. There is a significant cost for the Employer to construct a camp compared to the other options available to the Employer. The Employer has the option to choose whether to have a camp operation or a commuter operation, having regard to the location of the harvesting operation. Article 10.16 was to be considered within the context of the opening sentence which placed a limit on shacking and batching. Article 10.16 did not impose an obligation on the Company to construct a camp. The requirement to “maintain camps” meant to maintain the standards of the camps set out in the Collective Agreement. The standards applied whenever camps were maintained outside commuting areas. A commuting area existed whenever there was walking and riding time of 1 ½ hours or less from the workplace to a community with a marshalling point. Prior to the current Collective Agreement, seniority could be exercised within a commuting area. However, Article 12 was amended and seniority is now exercised on a bargaining unit wide basis. There is no requirement in the Collective Agreement that any particular percentage of employees must live in a community within 1 ½ hours of the work place. An employee is entitled to be recalled to work by their bargaining unit wide seniority, without regard to whether the employee lives within a commuting area. The change to the seniority article is part of the context within which Article 10.16 should be interpreted. Articles 10.16 and 16.05 were not in conflict. There are two types of operations contemplated. When determining the type of operation, the Employer may have regard to the fact that there have been changes in harvesting methods.

Mechanical harvesting operations are prevalent, with the effect that fewer persons are employed compared to manual harvesting operations. There is an improved road transportation system and improved accommodation facilities are available in communities. Article 12.08 refers to normal operations, which may be both camp and commuter operations. Woodrow Fudge operated a camp operation from the Portage Lake camp and then operated a commuter operation at the Skidder Brook cut. When there was a commuter operation, there was no guarantee that the employees recalled to work would live within the commuting area. When there is a commuter operation, the Employer is required by Article 16.05 to provide board and lodging for employees living outside the commuting area. It would be a violation of Article 17.03 for the Employer to continue to accommodate employees at the Portage Lake camp and operate at the Skidder Brook cut, because the walking and riding time would exceed 1 ½ hours. To maintain a camp does not mean create a camp for commuters who live outside the commuting area. The parties amended the seniority provisions but did not amend Article 16. During collective bargaining, the Union proposed changes to require that there be two camps maintained whenever there were employees accommodated in board and lodging. The Union did not succeed at the bargaining table and was now seeking to achieve the same result in arbitration. The parties had agreed that the Employer was not required to establish a new camp in District 12 until the Pine Marten issue was resolved and the issue was not resolved. The Union filed a policy grievance and full redress was not available to individual employees for a policy grievance. The only redress available was to direct the parties to comply with the Collective Agreement. The Employer requested that the grievance be denied.

Considerations

The issue to be considered by the Arbitration Board is whether the Employer violated Article 10.16 or other Articles of the Collective Agreement by failing to accommodate employees in a camp and accommodating them at the Red Ochre Inn in Buchans in the fall of 2005. The Arbitration Board will consider whether the Collective Agreement imposes an obligation on the Employer to accommodate employees in a camp in this situation. The Board will consider the relevant facts and the interpretation of the Collective Agreement.

When considering the interpretation of the Collective Agreement, the Arbitration Board will consider principles of interpretation applied by arbitrators. The Arbitration Board refers to the principles of interpretation discussed in Brown & Beatty, *Canadian Labour Arbitration*, 4th edition, in particular, that the object of construction is to determine the intention of the parties from the

express provisions of the collective agreement (paragraph 4:2100), that the language should be viewed in its normal or ordinary sense (paragraph 4:2110), that it should be presumed that all the words used were intended to have some meaning (paragraph 4:2120), that preceding collective agreements may be used as an aid to determine the intention of the parties with respect to any changes made (4:2240), and that the language is to be interpreted within the context of the collective agreement as a whole (paragraph 4:2150) and the industrial relations practices of the parties (paragraph 4:2300).

The principles of interpretation are also discussed in Palmer, *Collective Agreement Arbitration in Canada*, 3rd edition, commencing at page 121 as follows:

2. Examples of Rules of Construction Used as Aids to Interpretation

A. WORDS TO BE GIVEN ORDINARY MEANING

- 4.9. As a rule of construction, the clear words of a collective agreement are to be given their ordinary and plain meaning. . .
- 4.10. This basic rule has been qualified, however, by other rules of construction which follow.

...

B. THE COLLECTIVE AGREEMENT TO BE READ AS A WHOLE

- 4.14. It is widely accepted by arbitrators that the collective agreement is to be construed as a whole. Therefore words and provisions must be interpreted in light of the entire agreement. As a result:

It is elementary that all the terms of the agreement must be read together and that any board of arbitration should be highly skeptical of an interpretation of one article which would nullify or render absurd the effect of another article.

...

E. EACH WORD SHOULD BE GIVEN SOME MEANING: THE RULE AGAINST REDUNDANCY

- 4.20. This rule has been expressed as follows:

It is a recognized canon of construction that in interpreting documents they should be construed so as to give effect to every

word, and a word should not be disregarded if some reasonable meaning can be given to it. It has further been held that it is a good general rule that one who reads a legal document, whether public or private, should not be prompt to ascribe - should not without necessity or some sound reason - impute to its language, tautology or superfluity.

...

There is no significant dispute with respect to the relevant facts. The bargaining unit is comprised of employees in the wood harvesting operations of the Company on the Grand Falls timber limits. The employees engaged in wood harvesting operations are either accommodated in camps or commute to the work site.

Prior to September 19, 2005 there were two camps used to accommodate employees in the wood harvesting operations, namely, the Black Duck Camp and the Portage Lake Camp. The harvesting operations conducted from the Portage Lake Camp were conducted by wood harvesting contractor Woodrow Fudge. Wood harvested by this operation was transported to the Stephenville mill prior to September, 2005. The wood was harvested in areas of the timber limits of Districts 12 and 13 that were closest in distance to the Stephenville mill. These are the areas of the timber limits that are furthest in distance away from the Grand Falls mill. In September, 2005 the Stephenville mill stopped receiving wood as a result of the announced closure of the Stephenville mill by the Company.

There have been two or more camps in operation for as long as witnesses could recall. The number of camps has declined over the years. Camps have been relocated as required in order that the camp be located close to the work site of the wood harvesting operations. Having the camp in close proximity to the work site is a benefit to both employees and the Company. The Company provides free transportation from a camp to the work site. The Company is obligated to pay employees under certain conditions for the time spent in transportation to the work site. By Article 17.02, where the walking and riding time exceeds ½ hour each way, the Company pays an hourly rate for walking and riding time. By Article 17.03 the walking and/or riding time shall not exceed 1 ½ hours each way. To comply with Article 17.03, a camp or marshalling point is located within 1 ½ hours walking and/or riding time of the work site.

The operation of a camp is regulated by Article 10 and by Provincial legislation. Article 10 provides for certain standards for working and living conditions in a camp. For example, camps are required

to accommodate employees with not more than two persons per room, and new camps are to be constructed with not more than one person per room. There is a requirement for a separate drying room, a recreation room, and proper washing facilities. There are requirements for certain quality and types of food, such as fresh fruit and fresh meat for takeout lunches.

The camp buildings at the Portage Lake camp were constructed using trailers. The trailers may be moved when the camp is relocated. The cost for the Company to construct a new camp has increased with increased regulation of camps. For example, an independent engineering study is now required for water and sewer systems.

The Collective Agreement is for the term of January 1, 2004 to December 1, 2008. The Collective Agreement was negotiated in 2004. At the time of the negotiations there were two camps in operation, and the operation conducted from the Portage Lake camp was supplying wood to the Stephenville mill. At that time there had been no announced closure of the Stephenville mill.

The Union relies on Article 10.16 and other Articles. Article 10.16 was amended in 1998. Prior to 1998, Article 10.16 did not include the words “the Company agrees to maintain camps to accommodate people who live outside commuting areas”. Article 10.16 in the current Collective Agreement reads as follows:

10.16 The Employer agrees that there shall be no shacking or batching on the Newfoundland Woodlands operations except by mutual agreement between the Company and the Union and under conditions mutually agreed to before any shacking or batching commences. The Company agrees to maintain camps to accommodate people who live outside of commuting areas. This does not interfere with the Company’s right to conduct commuter operations at certain times of the year while camps are shut down.

Article 10.16 in the 1996 to 1998 Collective Agreement reads as follows:

10:16 The Employer agrees that there shall be no shacking or batching on their Fibre Resources operations except by mutual agreement between the parties and under conditions mutually agreed to before any shacking or batching commences.

Article 10.16 was not amended during the 2004 negotiations. There were amendments proposed by the Union that were withdrawn.

On September 19, 2005, the Woodrow Fudge operation moved from the wood harvesting location at the Mount Brook cut to the location at the Skidder Brook cut, both located in District 12. The wood harvesting employees were moved at that time from the Portage Lake camp to the Red Ochre Inn, a motel in the Town of Buchans. The distance to the Skidder Brook branch was 73 kilometres from the Portage Lake camp and 11 kilometres from the Town of Buchans. It was less than ½ hour walking and riding time from Buchans to the Skidder Brook work site. It was more than 1 ½ hours walking and riding time from the Portage Lake camp to the Skidder Brook work site. The Skidder Brook cut was closer to the Grand Falls mill than the areas previously harvested from the Portage Lake camp. It was more economical for the Employer to harvest wood for the Grand Falls mill from a location that was closer to Grand Falls.

The Portage Lake camp was dismantled during September and October, 2005. Some of the structures were demolished and some trailers were moved to Millertown and placed in storage. The Employer witness, William Evans, testified that some of the cooks and bunkhouse staff were relocated to the Black Duck camp when the woods harvesting employees left Portage Lake and others stayed at the Portage Lake camp until it was dismantled and were then relocated to Black Duck. Mr. Evans testified that the cook and bunkhouse staff continued to receive the same wages and did not suffer any loss of income. Union witnesses testified they were informed some employees had a loss of income. There was no documentation submitted at the hearing to support the claim for loss of income. The Union maintained that it was prepared to submit documentation showing loss of income in the event the grievance is allowed.

The Employer's reply to the grievance stated that "an alternate site for the camp had not been chosen and because a decision on the future location of the camp was inhibited by the unresolved issues surrounding the critical habitat for the Pine Marten, the camp had to be closed." The Company submits that it would be uneconomical to construct a camp when it cannot make long term plans with respect to the location of the wood harvesting operation at Skidder Brook or any other location.

The Company submits that because the Pine Marten was declared an endangered species, and areas of

Districts 12 and 13 are proposed Pine Marten critical habitat areas, the Company is unable to plan

its wood harvesting in Districts 12 and 13 for more than one year at a time.

The issue of the relocation of the Portage Lake camp was discussed during the 2004 negotiations and resolved as a local issue with respect to construction of a new portable camp. The letter from the Company dated June 3, 2004 states that the Company will relocate the Portage Lake camp to a location closer to the agreed harvest areas when the issues concerning critical habitat of the Pine Marten are resolved in a favourable manner. The issues related to the Pine Marten were not resolved in 2005 and were still unresolved as of the date of the hearing. There is no reference to closing the Portage Lake camp in the letter of June 3, 2004. The letter refers to the Company “relocating” and “moving” the Portage camp. However, the right of the Company to close the Portage Lake camp was not at issue in this grievance. The letter dated June 3, 2004 was issued by the Company as part of the resolution of an earlier grievance filed by the Union following a previous occurrence when the Company accommodated employees at the Red Ochre Inn at Buchans.

In the fall of 2005 the Company provided transportation for employees from the Red Ochre Inn in Buchans to the work site at Skidder Brook. One employee was a resident of the Town of Buchans. The other employees resided in other communities. The next closest community where employees resided was Millertown, which was slightly more than 1 ½ hours walking and riding time from the work site. The employees were offered accommodation at the Red Ochre Inn. The employees who continued to reside in Millertown and some other communities (about 8 employees in total) did not accept the offer of accommodations at the Red Ochre Inn. Those employees were not paid room and board or walking and riding time. The employees accommodated at the Red Ochre Inn paid for board and lodging at the agreed camp rate within the meaning of Article 16.05. They were not paid walking and riding time. Pursuant to Article 17.02, they were not required to be paid walking and riding time because it was less than ½ hour to the work site from the Red Ochre Inn.

The parties dispute the meaning of Article 10.16, in particular, the statement that “the Company agrees to maintain camps to accommodate people who live outside commuting areas”. The Employer submits that “maintain camps” means that the camps that the Employer decides to operate will be maintained to the standards required, such as the standards agreed in Article 10 of the Collective Agreement. The Arbitration Board has considered the principle that the words used in the Collective Agreement are intended by the parties to have some meaning and that the language of the Collective Agreement should not be interpreted to cause the language to be redundant. The interpretation that “maintain camps” means to maintain the camp standards specified in the

Collective Agreement, would cause the language to be redundant because the words in article 10.16 would not add to the language already stated in the rest of Article 10. The Union proposes that the reference to “maintain camps” means that the Employer is committed to operate two camps, the number of camps in operation when the Collective Agreement was negotiated. However, there is no reference in Article 10.16 to any specific number of camps required to be operated. It will be necessary to interpret Articles 10.16 so that the language is not redundant.

The Board has considered the context of the language. The words “maintain camps” in Article 10.16 refer to the situation where camps are required “to accommodate people who live outside commuting areas”. It is therefore necessary to examine the meaning of “people who live outside commuting areas”. Article 16 is headed “Commuting”. The meaning of “commuting area” may be determined by reading Article 16 in its entirety, together with other articles in the Collective Agreement. Article 16.01 states that a commuter is a person not obtaining board and lodging in a camp or attached to a camp operation. Article 16.02 states that “Each community from which employees commute will have an agreed central place or places as a Marshalling Point for the purpose of commuting, except as mutually agreed between the Company and the Union.” Article 16.03 states that the Employer will provide free transportation for commuters from the marshalling point to the work site. Article 16.05 states that if an employee is not a bonafide resident of a community from which free transportation is provided, board and lodging will be provided in that community.

The Employer submits that Article 16.05 applies in this situation, i.e. that free transportation was provided from the Red Ochre Inn in Buchans to the work site, and employees who were not resident in Buchans were provided with board and lodging in that community. The Employer’s position is that there was a commuter operation from Buchans to the Skidder Brook work site, and that Buchans was the commuting area for the Skidder Brook operation.

The parties dispute whether Buchans can be a commuting area in the absence of evidence that the parties agreed on a place as a marshalling point. At issue is whether there can be no commuting from a community if there is no agreed marshalling point in that community. There was no evidence that the parties agreed on a place or places as a marshalling point within the meaning of Article 16.02. The Union’s argument is that because the parties did not agree on a marshalling point, the effect of Articles 16.02 and 16.03 is that there is no community from which employees commute. This issue requires a closer examination of Article 16.02. Does Article 16.02 have the effect that the Union can veto a community as a place for a commuter operation, by the Union not agreeing on a

place as a marshalling point? Reading Article 16.02 in its entirety does not lead to that conclusion. Article 16.02 establishes a process so that there will be agreement on a place or places as a marshalling point in a community, or the parties may mutually agree otherwise. The Company has authority within its management rights as stated in Article 10.02, except as limited by other articles of the Collective Agreement, to establish camp or commuter operations. When the Company establishes a commuter operation, there is an obligation under Article 16.03 to provide free transportation from the marshalling point. If the Union objects to the place proposed as a marshalling point, then Article 16.02 provides that the parties will agree on the place. The agreement to be reached under Article 16.02 is related to the place chosen as a marshalling point, and the failure to agree does not mean there will be no marshalling point. The concluding phrase in Article 16.02 which states “except as mutually agreed”, in the context of the Article, means that the parties may agree not to have a marshalling point in a community. It follows that in the absence of such agreement there will be a marshalling point. Article 16.02 does not give the Union the authority to reject a community as a place for a commuter operation, based on the ordinary meaning of the words used in Article 16.02, and a reading of Article 16 as a whole.

In this case, the Company established Buchans as a community for a commuter operation and provided free transportation from the Red Ochre Inn. The Red Ochre Inn was the marshalling point. The procedure of Article 16.02 would allow the Union to propose another place in Buchans as a marshalling point and then the parties would be required to agree on the place. Article 16.02 does not have the effect that the Union has authority to reject Buchans as a place for a commuter operation by not agreeing on a place for a marshalling point.

The accommodation of employees at the Red Ochre Inn in Buchans complied with the obligation of the Company under Article 16.05. The Arbitration Board has considered that Article 16.05 refers to hiring “a man who is not a bona fide resident of a community from which free transportation is provided”. Buchans was a community from which free transportation was provided to the work site. Although only one employee was a bona fide resident of Buchans, Article 16.05 does not place a limit on the number of employees or the percentage of the wood harvesting crew, who may be provided board and lodging. To place such a limit on Article 16.05 would have the effect of adding language to the Collective Agreement, which is beyond the jurisdiction of the Board.

There would be an inconsistency between Articles 16.05 and 10.16, if the result of compliance with Article 16.05 was a violation of Article 10.16. The Articles of the Collective Agreement are

required by the principles of interpretation to be interpreted to be consistent with each other and with the Collective Agreement as a whole.

The Board finds that Buchans was a commuting area for the Skidder Brook harvesting operations. The distance from Buchans to the Skidder Brook operation was less than ½ hour walking and riding time. The distance from Buchans to the work site did not exceed 1 ½ hours, and therefore complied with the maximum allowable walking and riding time under Article 17.03.

As noted above, the language of Article 10.16 needs to be interpreted so that it is not redundant. The agreement by the Company to “maintain camps to accommodate people who live outside commuting areas” may be given meaning having regard to other Articles, in particular, Articles 16 and 17. In the event that a wood harvesting operation was located more than 1 ½ hours from Buchans and any other community from which there was a commuter operation, then the Company would be obligated to accommodate the employees in a camp, in order to comply with the maximum permissible walking and riding time in Article 17.03. In addition, where the harvesting operation is within 1 ½ hours of the community, but the Company does not provide board and lodging under Article 16.05 (for example, where there is no place available for board and lodging), then the Company would be obligated to accommodate people who live outside the commuting area in a camp. By this interpretation, the language of Article 10.16 would have a meaning in addition to a requirement to maintain the standards of camp accommodation set out in Article 10. Article 10.16 would also include an obligation to provide camp accommodation under the circumstances described.

The Union suggests that there is an obligation under Article 10.16 to provide camp accommodation for any employee whose place of residence is more than 1 ½ hours from the wood harvesting operation. It is suggested that such an interpretation is obvious on the facts of this case where only one person was a resident of Buchans and the rest of the crew resided more than 1 ½ hours from the work site. However, there is no language in Article 10.16 that refers to any particular number or percentage of employees, and it would be outside the Board’s jurisdiction to add such language. Also, this interpretation would render Article 16.05 redundant and the Board refers to its discussion of Article 16.05. The Board has also considered the interpretation of the last sentence of Article 10.16 which states: “This does not interfere with the Company’s right to conduct commuter operations at certain times of the year while camps are shut down”. This sentence means that during the applicable times of the year, the obligation of the Company to “maintain camps to accommodate people”, as described in the Award, does not apply. The last sentence of Article 10.16 does not alter

the obligation of the Company to maintain camps other than to describe the circumstances when the obligation does not apply.

Is there an obligation on the Company in this situation arising from the Company's letter dated June 3, 2004? The letter states that a new location for the Portage Lake camp cannot be determined at the time of the letter, and that discussions on the critical habitat for the endangered species, the Pine Marten, must be concluded in order to decide where harvesting can take place in District 12. The letter commits the Company to moving the camp within 12 months of satisfactory resolution of the Pine Marten issue in District 12. At the time of the grievance and continuing at least to the date of the arbitration hearing, the Pine Marten issue had not been resolved. Therefore the commitment in the letter does not apply in relation to the facts of this grievance. It could be argued that the letter refers to relocating the camp and moving the camp, which implies that the camp will continue in operation at Portage Lake until such time as a new location is chosen. However, stronger language would be needed to interpret the letter as a commitment not to close the Portage Lake camp and the right of the Company to close the camp is not at issue. The Company stated that it closed the camp following the closure of the Stephenville mill and the need to cut wood closer to the Grand Falls mill. The wood harvesting operations at the Skidder Brook cut from September to December, 2005, occurred in District 12. The commitment in the letter dated June 3, 2004 was not conditional upon the continued harvesting of wood for the Stephenville mill. Had the Pine Marten issue been satisfactorily resolved at the time of the grievance, then the commitment in the letter would apply to a harvesting operation in District 12. However, as noted above, the commitment did not apply at the time of the grievance.

It is also noted that the letter dated June 3, 2004 was issued during collective bargaining following an earlier grievance about accommodation of employees at the Red Ochre Inn in Buchans. The Company did not commit to operating two camps whenever the Red Ochre Inn was utilized. The Company did not make the same commitment to operate two camps that it made in 2001 in response to a grievance about accommodating employees at the motel in Badger. There was no basis from the June 3, 2004 letter to conclude that the commitment made for Badger would apply in Buchans.

The evidence of proposals made by the Union and withdrawn during the 2004 negotiations will not be considered as an aid to interpretation. The Collective Agreement articles at issue in this case may be interpreted by applying the principles of interpretation.

The Arbitration Board finds that the *Re Camps* case between Local 60N and Corner Brook Pulp and Paper Limited is helpful with respect to how similar issues may be analyzed, but the decision was based on different collective agreement language and a factual context where the company had not

operated a camp for about 12 years. In the circumstances of that case, the Company was not obligated to establish a camp, and could provide board and lodging in a community while it established a commuter operation. There are obligations on the Company in this case to provide accommodation in a camp in certain circumstances where Article 10.16 or the letters issued by the Company apply. However, as stated, the obligations do not apply on the facts of this case.

In summary, the Company operated a commuter operation from Buchans in the Fall of 2005. The walking and riding time from Buchans to the wood harvesting operation at Skidder Brook cut was less than 1 ½ hours, within the limit of Article 17.03. Buchans was the commuting area. The obligation to maintain a camp under Article 10.16 did not apply because the wood harvesting operation was within 1 ½ hours of Buchans, a community from where there was a commuter operation, and where employees were provided board and lodging in compliance with Article 16.05. Although the employees lived outside the commuting area within the meaning of Article 10.16, it would lead to an inconsistent interpretation of the Collective Agreement to find a violation of Article 10.16, by failing to provide accommodation in a camp, when there was compliance with Article 16.05. The Company's commitment in the letter dated June 3, 2004 did not apply because it was conditional on satisfactory resolution of the Pine Marten critical habitat issue and the issue has not been resolved. Therefore, there was no violation of the Collective Agreement.

Decision

For the reasons stated in the Award, the grievance is denied.

DATED this 12th day of February, 2007.

James C. Oakley, Chairperson

Robert B. Andrews, Q.C.

Dissent
Ray Cluney
