

newly appointed regular employee attempted to use his previous temporary employee recall rights to attain vacation benefits.

I further find that the Labour Standards Act has no effect on Mr. Ezekiel's collective agreement benefits, which are already greater than those in the Act.

I also find that the parties are entitled to define "continuous service" and "continuity of service" as expressed in Article 28 - Vacations, which they have discussed in negotiations and shared for many years without challenge or protest. Despite Mr. Jenkins' recent contrary position, I find that the Union is estopped from claiming that the method of backdating for vacation purposes is wrong or illegal.

For all the foregoing reasons, Mr. Ezekiel's grievance is denied.

Respectfully submitted as the decision of the arbitrator.

Dated at Mount Pearl, Newfoundland and Labrador, this 2nd day of June, 2009.

**David L. Alcock
Sole Arbitrator**

received if the LSA determined his vacation entitlement. On the basis of the foregoing considerations and my findings on the interpretation of the collective agreement, I do not accept that the notion of “continuous employment” expressed in the Act should be substituted for the concept of “continuous service” in Article 28 of the collective agreement.

In my view, as was their right to do so, the parties have long indicated their mutual understanding of how continuous service for vacation purposes shall be calculated for temporary employees who become regular employees. That understanding is the method used in Mr. Ezekiel’s circumstances. As such, it is not a method that is open to change unless by agreement of the parties. And since the essence of the change being sought by the Union places the meaning of “continuous service” and “continuity of employment” at issue -- both terms expressed in Article 28 of the collective agreement -- the next round of negotiations upon expiry of the collective agreement on May 31, 2009 would seem to be the logical forum for such discussions.

DECISION

On the basis of the evidence and by the foregoing considerations, I confirm March 31, 2001 as Mr. Ezekiel’s backdated date for vacation purposes. I also find that the method of determining that date did not violate Article 7.12 or Article 28.13 of the collective agreement.

I further find that the language of Article 7.12 did not alter the long standing meaning of Article 28 as providing vacation benefits solely for regular employees. I also find that the recall rights of temporary employees conflict with those of regular employees and that the parties did not intend them to co-exist among regular employees, as would occur if a

time of his grievance in 2008 amounted to approximately seven (7) years as of May 31st. This put him within the range of continuous service under Schedule B, namely, four (4) years but less than nine (9) years. By all accounts, he would reach 9 continuous years by May 31st, 2010 and would be entitled to four (4) weeks vacation at that point.

If the grievor's vacation were to be determined solely by the LSA, and hypothetically if he were entitled to count all the years from the date he was first hired in September 1995, he would accumulate fifteen (15) years of continuous employment on September 16, 2009 and be entitled to three (3) weeks of vacation at 6% of total wages. The LSA does not require the Employer to grant that amount of time off immediately; in fact, the requirement under section 8. (1.1) would be to give the employee three (3) weeks vacation within ten (10) months after September 16, 2009. In other words, the extra time off would have to be granted by July 2010.

However, since Mr. Ezekiel at the time of his grievance had already reached the level of three (3) weeks vacation provided under the collective agreement, he has already attained the maximum possible vacation entitlement under the LSA. Therefore, it is really of no consequence whether Mr. Ezekiel accumulated 15 years "continuous employment" by counting all of his years of service with the Employer since September 1995. Had the LSA been the sole determinant of his vacation benefits, for several years now, he would have been receiving two (2) weeks of vacation instead of three (3) weeks.

The important point to remember here is that one cannot apply the qualifying criteria of the LSA to attain collective agreement vacation benefits. The Act requires "continuous employment" for the purpose of attaining LSA vacation benefits. The collective agreement requires "continuous service" for the purpose of attaining Article 28 vacation benefits. I am satisfied that the "continuous service" method used to determine Mr. Ezekiel's date for vacation purposes has resulted in greater vacation benefits for him than he would have

The implication of the Labour Standards Act on the grievor's circumstances

The evidence is that, while he was a temporary employee, Mr. Ezekiel's vacation benefits were governed by the LSA. I agree with the Union that sections 7. and 8. of the LSA make no distinction among types of employees. As long as one is an employee, the minimum standards of employment for vacation apply. Of course, a collective agreement may provide other vacation benefits as long as they do not conflict with the LSA.

What the parties' instant collective agreement does in Article 28, schedule A, for a regular employee who has completed one (1) year but less than four (4) years of continuous service, is provide a range vacation time from 4 days to 10 days depending on the number of hours a regular employee worked in the previous Agreement year. Pay is in accordance with the LSA.

Clearly, under Article 28, a regular employee hired under Article 7.02 who had not completed one (1) year of "continuous service" as of May 31st would not be entitled to vacation time off or pay in that year. He would be entitled to the schedule A vacation schedule as of May 31st of the following year. The notion that one earns vacation credits in one year and cannot take them until the next year is mirrored in section 8.(1) of the LSA for employees who have "continuous employment." Depending on the wording of one's collective agreement, one's "continuous service" might not always be the same as one's "continuous employment." Nevertheless, if one's vacation benefits are determined under a collective agreement and by the criteria established by the parties, they must at least meet the minimum vacation benefits under the LSA, as determined by the criteria in the Act.

For the purpose of examining the impact of the LSA on Mr. Ezekiel's vacation benefits, I do not need to decide if continuous service is the same as continuous employment. The evidence is that Mr. Ezekiel has been receiving three (3) weeks vacation under Schedule B by counting his continuous service from March 31, 2001, which at the

because of the change from 3 weeks to 4 weeks break in service.

While the Memorandum may have never been accepted by the Union, the effect of the recalculation for its members on the basis of a 4 week break in service was not challenged. At no point did the Union advise the Employer that Mr. Sheppard's backdated date for vacation purposes was wrong, or unacceptable, and must be corrected. I am satisfied that the Union was fully aware at the time of Mr. Sheppard's increased vacation benefit and it chose not to protest its accuracy. Indeed, I am also satisfied that, at no point did the Union advise the Employer that the fundamental method of determining such vacation dates was incorrect, or that the method itself was invalid. What the Memorandum addressed was a variation (from 3 weeks to 4 weeks) in the calculation of an established method. The principle of that method (using 3 weeks) had long been established by the Employer and had remained unchallenged by the Union through at least the negotiations in 1998/1999 and persisted through the 2005 negotiations. All that changed in the April 9, 2005 Memorandum was the break in service from 3 weeks to 4 weeks. The fundamental principle upon which vacation dates were determined for temporary employees who had become regular employees remained intact. By not formally accepting the Memorandum, yet willingly accepting the benefit for its members, the Union failed to indicate to the Employer that it wished to end its agreement to the methodology. At the very least then, the relevant components for estoppel are established. The Union is estopped from pursuing such action until the next round of bargaining.

On the basis of the foregoing, I confirm March 31, 2001 as Mr. Ezekiel's date for vacation purposes. It is unnecessary for me to determine whether his vacation date should be backdated to January 1, 1999 or June 1, 1999 because neither date is a consideration.

benefits solely to regular employees and that continuity of service for such benefits commenced as of the date of hire of a regular employee under Article 7.02. Mr. Ezekiel was not hired as a regular employee under those conditions. He was simply made a regular employee by the Employer with the acceptance of the Union. At that point, he became entitled to vacation benefits under Article 28. The application of Article 28.13 to his regular status occurred on October 1, 2002.

The recall rights mentioned in Article 28.13 have always been those of a regular employee as contemplated in Article 7.01 – Seniority, Article 7.03 – Layoffs, Article 7.05(a) and (b) – Recall Notice and Article 7.07 – Termination of Seniority and Continuous Service. In my opinion, the recall rights enjoyed by temporary employees under Article 7.12 have no application to Article 28.13 upon a temporary employee’s appointment to regular status because it would result in conflicting recall rights among regular employees at that point. On balance, I reject the notion that one’s temporary recall rights, which do not conflict with regular employees recall rights while they have different employment status, somehow become a retroactive right when one becomes a regular employee. As a matter of collective agreement interpretation, I find that the parties created mutually exclusive recall rights and did not intend them to co-exist in obvious conflict with each other at any time, which would be the situation were the Union’s interpretation to be accepted.

The Union relies on the fact that it did not accept the April 9, 2005 Memorandum of Agreement with CEP Local 64 and, therefore, it was not bound by the method of backdating for vacation purpose in Mr. Ezekiel’s case. I accept, however, that the Union did receive that Memorandum during conciliation proceedings in 2005 and it was aware that the vacation dates for three (3) of its members had been considered in that Memorandum and that significant benefit changes had been made in Ray Sheppard’s case

On balance, from the foregoing I am compelled by the logic that, if one must be a regular employee to avail of the vacation provisions of the agreement, the fact that temporary employees possess recall rights to the Capital Projects Crew, is irrelevant. Their temporary status precludes them from contractual vacation benefits. As a matter of interpretation, this means that the collective agreement benefits in Article 28 have always been intended to apply to regular employees only. Mr. Ezekiel was a temporary employee ranked and with recall rights for the Capital Projects Crew when the April 16, 2002 arbitration was awarded. As I see it, the effective result of that award is that his recall rights could never make him a regular employee merely because he worked 120 days after he was placed on the ranking list. Effectively then, until he was made a regular employee by the Employer on October 1, 2002, he was not entitled to claim Article 28 vacation benefits.

Once Mr. Ezekiel became a regular employee on October 1, 2002, he did become entitled to Article 28 vacation benefits. At that time his date for vacation purposes was determined to be March 31, 2001. No grievance was filed on that determination by Mr. Ezekiel or the Union on his behalf until the instant grievance of February 14, 2008. Up to that point, the Union had effectively accepted March 31, 2001 as his backdated date for vacation purposes. More to the point, the Union had not challenged the method of determining his vacation date for five (5) years. In my view, this is clear indication that the Union's interpretation of the collective agreement, as far as vacation benefits were concerned, remained unchanged until Mr. Jenkins' tenure. It also indicates the Union's continuing acceptance of the method of determining backdated vacation dates for its members, including Mr. Ezekiel, despite the language additions in Article 7.12.

To this point, as a matter of interpretation, I am satisfied that nothing in the wording of Article 7.12 changed the original interpretation that Article 28 provided vacation

establishment of a recall right of one (1) year that convinced Mr. Jenkins that “continuity of service for vacation service” under Article 28.13 was equally preserved for temporary employees who returned to work from layoff before their recall rights expired. In other words, the Union’s logic seems to be that Article 28.13 did not apply in the past because the only recall rights in the agreement belonged to regular employees, but when temporary employees were provided with recall rights, Article 28.13 applied to them as much as to any other employee with recall rights.

I take note that, prior to Mr. Ezekiel’s grievance, the Union did not claim the existing Article 28 collective agreement vacation benefits for temporary employees by relying on the ground that their own recall rights had preserved the continuity of their service under Article 28.13 for vacation purposes. That the Union did not make any such claim from, say early 1999 when the agreement was signed, until Mr. Ezekiel’s grievance was filed in February 2008, is in my view, a strong indication that Mr. Jenkins’ Union predecessors had agreed to a completely different interpretation of the collective agreement than he holds. Indeed, during 1998/1999 negotiations, the Union freely participated in the method of determining “Seniority for Vacation Purposes only” for seven (7) IAM&AW members who were classified as regular employees at that time. To the extent that grievances may have been filed in 2002 to obtain vacation and other collective agreement benefits, for temporary employees, including Mr. Ezekiel, the grounds were not what Mr. Ezekiel’s grounds are in the instant grievance. Rather the previous alleged grounds were that those employees had qualified to be regular employees by working 120 days after they had been placed on the ranking list. Arbitrator Thistle ruled against the Union in that case. Clearly, at that point, the established interpretation of the collective agreement was that temporary employees were not entitled to the vacation provisions of the agreement because they were not regular employees.

than 3 weeks. Mr. Ezekiel was but one of many whose date for vacation purposes was determined by that method.

Whether estoppel applies

Although not a matter of collective agreement interpretation, the method of determining backdated dates for vacation purposes at the point temporary employees became regular employees, is another indication of the parties' common view throughout a long bargaining experience. The results of this method were discussed at negotiations, including notification of individual vacation dates for relevant IAM&AW members. And subsequent seniority lists included this information for many years without challenge or protest by the Union, until Mr. Jenkins' recent presidency. This raises the question whether the equitable doctrine of estoppel applies in this situation. In my view, the doctrine would have applied insofar as the Union, by its silence, made a representation to the Employer that it accepted the method, which representation the Employer relied upon to its detriment over the terms of several collective agreements. To bring such an estoppel to an end, the Union would be obliged to give due notice to the Employer that it intended to do so. Meanwhile, the method would continue in full force and effect until the expiry of the existing collective agreement in effect at the time.

The effect of new language in Article 7.12

The question, of course, is whether anything changed in the newly worded Article 7.12 in the 1998 – 2004 agreement to provide temporary employees with an entitlement to Article 28 vacation benefits that never existed before?

Since there is nothing in the establishment of the ranking list itself that established more of a vacation entitlement than existed previously, I will presume that it was the

satisfied that the whole of Article 28, including then Article 28.14 was conceived and written for regular employees only. Throughout Article 28, there is persistent reference to “regular employees” among many of its various subsections and most convincing of all is that each of its vacation schedules A, B,C, D and E make it perfectly clear in their first sentences that their provisions are exclusively the domain of “*Regular employees* who, on May 31, have completed [the required range of] years of continuous service with the Company will be entitled to vacation with pay based on the number of hours worked in the previous Agreement year in accordance with the following schedule.” (Emphasis mine). It follows then that, even if temporary employees were somehow hypothetically able to access Article 28.14 (which they cannot), the vacation benefits they would be seeking would be unattainable because they have been reserved exclusively for regular employees. I am satisfied that, for vacation benefits under the collective agreement, the “continuity of service” expressed in Article 28.14 was intended to mean continuous service attained as a regular employee, not as a temporary employee. Indeed that was the nub of the problem in the April 16, 2002 arbitration award: temporary employees were hired under the Article 7.12 language; they were not hired as new employees on probation in accordance with Article 7.02. As such new employees had to start accumulating continuous service from the date of their hire under Article 7.02. Therefore, if temporary employees were appointed to regular status, it might be arguable that their continuous service should start from that point. However, in my view, the parties sensibly recognized that, for temporary employees who were appointed to regular status, some reasonable method was needed to apply the concept of continuous service to each person’s previous temporary service, so that he would be able to be placed immediately in one of the vacation schedules prescribed by Article 28. That, I submit, is where each person’s continuous service was originally determined to commence from the point of his most recent break in service of not more

Effective date of signing of the Labour Agreement, the following employees will be ranked as per Clause 7.15(a).

Since Article 7.15(a) made no mention of ranking, the foregoing could only mean the new ranking list language that was being negotiated as Article 7.12 at the time. In the 1998 – 2004 agreement, Article 28.14 was renumbered to Article 28.13, but the wording remained unchanged. From that point on, Article 7.12 and 28.13 have continued unchanged.

What emerges from the foregoing bargaining history is that, since 1984, the wording of Article 7.17 (and later 7.15) has always provided that:

[Temporary employees] ... will be entitled to the wages established for the work performed and to all other applicable provisions of the Collective Agreement with the exception of the Welfare Plan except for what is provided for in Appendix “C”. Temporary employees will have the right to the grievance procedure except for cases of promotion, demotion, lay-off or termination of employment. The Union will be given a forty-eight (48) hour notice when temporary employees are to be laid off.

At the same time the wording of Article 28.14 (later 28.13) has never changed. Yet the evidence is that the Employer had never been subject to any claim that vacation benefits under Article 28, particularly via 28.14 or 28.13, were “applicable provisions of the collective agreement” to which temporary employees were entitled. In my view, this long bargaining experience strongly indicates the parties’ common view that Article 28 was not “an applicable provision” for temporary employees. Put another way, this long period of acceptance by the Union was valid indication of the parties’ mutual interpretation of agreement language entitling temporary employees to applicable provisions of the collective agreement, namely not all provisions were applicable, and particularly not Article 28.

Arbitrator’s interpretation

On balance, I concur with the foregoing interpretation of past agreements. I am

not formally accepted by the Union and not placed in the agreement, is the only written explanation provided in evidence of the method (using a break in service) originally used by the Employer to determine dates for vacation purposes at the point temporary employees become permanent employees. However, *viva voce* evidence establishes that the method (using a 3 week break in service) had been employed years earlier, at least as far back as 1998 negotiations. In order to flesh out and place that method in context, I consider it necessary to refer to extrinsic evidence, both written and verbal, of bargaining history and previous agreements, as well as to relevant seniority lists from previous years containing vacation dates for IAM&AW members.

Local President Cory Jenkins' position is that the language change in Article 7.12, establishing the ranking list for the purpose of lay-off and recall (effective January 1, 1999) effectively made Mr. Ezekiel entitled, via section 28.13, to the vacation benefits in Article 28.

The evidence clearly establishes that at least since the June 1, 1984 – May 31, 1988 collective agreement, there have been counterpart clauses to the current Articles 7.12 and 28.13 in each successive agreement, including the term of the June 1, 2004 – May 31, 2009 agreement. Throughout the years, until the June 1, 1990 – May 31, 1993 agreement, the wording of both clauses (then Article 7.17 and Article 28.14) had been identical. In the June 1, 1993 – May 31, 1998 agreement, Article 7.17 became Article 7.15, but the wording remained identical in that Article and Article 28.14.also remained unchanged.

Mr. Ezekiel was originally hired during the term of this agreement in 1995 as a temporary employee working with the Capital Projects Crew. In the June 1, 1998 – May 31, 2004 agreement, Article 7.12 became the operative clause and its wording was changed to establish the ranking list. Exhibit KE#10 "For Memorandum of Agreement Only" listed five IAM&AW members, including Mr. Ezekiel, and stated:

break in service of more than 3 weeks. In 2005 negotiations, the break in service was increased to not more than one (1) month, which significantly increased the vacation entitlement one of three IAM&AW employees involved in that calculation, as noted in an April 9, 2005 Memorandum of Agreement between the Company and CEP Local 64 signed by the Company's representative. The evidence claims that the Machinists Union did not agree to this Memorandum.

Mr. Ezekiel's dates on the Seniority List continued unchanged through the June 30, 2008 posting of the list.

The parties' positions

On the one hand, the Union's essential position is that, by the wording of Article 7.12, which became effective on January 1, 1999, and the wording of Article 28.13, the grievor's date for vacation purposes should be backdated to June 1, 1999. It was the Union's opinion that it never agreed to the April 9, 2005 Memorandum of Agreement and, therefore, it was not bound by its contents or the principle it described.

On the other hand, the Employer's essential position is that Article 28.13, indeed all the sections of Article 28, apply solely to regular employees, not to temporary employees. It also takes the position that the grievor has received everything to which Article 7.12 entitles him and that the Union is bound by the previously negotiated method of backdating dates for vacation purposes.

Analysis

Bargaining history and what it indicates about the parties' understanding and interpretation

The April 9, 2005 Memorandum of Agreement with Local 64, which the evidence indicates was put in the hands of Lodge 1567 during 2005 conciliation proceedings but was

Another related issue is the extent to which the vacation with pay provisions of the Labour Standards Act, particularly section 8.(1) and (1.1), affect the grievor's circumstances.

Facts not in dispute

It is common ground that the grievor was originally hired in 1995 as a temporary employee under Article 7.15 to work on The Capital Projects Crew. When he was laid off each year, he received 4% vacation pay as required by the Labour Standards Act.

Article 7.15 became Article 7.12 in the June 1, 1998 – May 31, 2004 agreement and for the first time included the provision creating a ranking list for the purpose of lay-off and recall within the Capital Projects Crew. This provision became effective on January 1, 1999. During negotiations for that agreement, an unsigned “Memorandum of Agreement Only” document (KE#9) detailing seven (7) employees' dates for “Seniority of Vacation Purposes” was attached to a “Settlement of Main Agenda” document (CJ#2) between the parties on February 9, 1999, which was accompanied by a mutually signed “General Agreement for the Renewal of a Collective Agreement” document (CJ#1).

An April 16, 2002 arbitration award ruled that, since Mr. Ezekiel had not been hired as a new employee to undertake a probationary period of 120 continuous days work under Article 7.02, he was not a regular employee.

Mr. Ezekiel was hired as a permanent employee on October 1, 2002, at which time his Mill, Department and Classification seniority were all established as October 1, 2002.

On the January 1, 2003 Seniority List, Mr. Ezekiel's date for vacation purposes was determined to be March 31, 2001 as calculated by a method previously negotiated with all 6 Mill Unions for all temporary employees on the Capital Projects Crew. This method was based upon the date from which an employee's service was continuous, i.e., without a

June 15, 1999, that being the actual date the Union claims he completed 120 days – although the Employer does not really understand where that date came from.

Union Rebuttal

The Employer's position is essentially that, when a temporary employee is laid off, he has no ties to the collective agreement. That is not so; Article 7.12 provides recall rights for one (1) year. The fact of the matter is that Mr. Ezekiel's employment relationship began in 1995 and has continued ever since. It has never been severed because his recall rights never expired. That means that the grievor had continuous employment since 1995 and is entitled under the Labour Standards Act to count that continuous employment toward additional vacation time and pay. He is also entitled to the better vacation benefits that were negotiated in the collective agreement.

CONSIDERATIONS

The Issues

The primary issue before me is whether the Employer violated Article 7.12 and/or Article 28.13 by failing to have Mr. Ezekiel's vacation time and pay backdated to June 1, 1999, rather than to March 31, 2001, as it has long appeared on the Seniority List. This is largely a matter of collective agreement interpretation.

A related issue is whether the Union is bound by a signed April 9, 2005 Memorandum of Agreement between the Company and CEP Local 64 signed by the Company's representative. In 2005 negotiations, the break in service was increased to not more than one (1) month, which significantly increased the vacation entitlement of Ray Sheppard who is an IAM&AW member.

The Union relied heavily on Article 7.12 in its argument. However, the Employer's view is that Mr. Ezekiel received everything he was entitled to receive under that clause. For the grievor, there were no applicable provisions in the collective agreement regarding vacation. The vacation provisions of Article 28 were solely for regular employees who were hired under Article 7.02.

What the Union is doing here is asking the arbitrator to use an employee's temporary status to permit a claim for regular employee vacation entitlements. That is contrary to the finding of arbitrator Thistle, who essentially found that there is a wall between temporary employees and regular employees. Clearly, if it were otherwise, the Union would not have needed to negotiate a different vacation service date in 1999. It could not be more obvious that the bridge between the two groups was created in negotiations in 1999, and only then for the purpose of creating a ranking list. Although the Union is alone in viewing this matter differently, by its actions, it would strip away the benefits of its own members and it would challenge the actual ranking list itself. In essence, there is no way that the Union can achieve what was never intended at the bargaining table.

In the result, the arbitrator is asked to deny the grievance and conclude that the arrangements on backdating for vacation purposes were made with the knowledge of the Union. Similarly, the arbitrator is asked to rule that the Union knew of improved benefits enjoyed by its members as a result of the change from 3 weeks to 4 weeks break in service.

If the arbitrator should rule that the Union never accepted such an arrangement, then the Company has no choice but to remove the separate vacation dates for all IAM&AW members. If the Union succeeds, there are some individuals in CJ#2 who have dates based on the 3 week break in service arrangement, which go back previous to 1999. The only person who would gain here is Mr. Ezekiel, whose vacation date would be set at

was a temporary employee, he was entitled to 4% vacation pay, nothing more.

What the Union has done is disavow any knowledge of the change in break of service from 3 weeks to 4 weeks. That benefit was negotiated by the Union. While it may be true that the Union did not sign the Local 64 Memorandum of Agreement, it certainly took advantage of it by not challenging that its members were beneficiaries of that method of calculation. In the Employer's view, CJ#2 is proof that Lodge 1567 signed off on the principle of determining dates for vacation purposes.

It should be noted that continuous service is found in the seniority list and in Article 7.01; it is the cornerstone on which Mill Seniority is founded. Since Mr. Ezekiel was hired as a regular employee in October 2002, all subsequent seniority lists indicate that his initial date of hire and his Mill Seniority are the same. The parties have accepted that one's initial date of hire and his Mill Seniority are synonymous. Article 7.06 provides a mechanism for an employee to have changes made to inaccuracies on those lists. Yet the instant grievance does not allege that the seniority list is incorrect as far as the grievor's information is concerned. The only allegations are that Articles 7.12 and 28.13 have been violated. Although initial date of hire and Mill Seniority are considered synonymous, the evidence is that a seniority list can express a different service date for vacation purposes. That is true for all the Unions who negotiated a Mill agreement. Clearly then, if this grievance alters the backdating already done for members of the Machinists Union, then everybody will lose. There will be those who will be hurt by an award in the Union's favour. Under the circumstances, the Union cannot claim that it did not know about those employees. The Union saw the Memorandum of Agreement; it knew its own members were beneficiaries of the arrangement, and it knew that what was agreed in negotiations was actually carried out. Therefore, in the Employer's view, the Union is now estopped from claiming that the arrangement never existed.

The Union argued that because the grievor went on the Article 7.12 ranking list in 1999, he was entitled to all other applicable provisions of the collective agreement. However, it is clear that Article 28.13 was not a provision applicable to him at that time. Indeed, every provision in Article 28 – Vacations is strictly for regular employees.

Musing on the details of Mr. Ezekiel's circumstances, counsel for the Employer estimated for example that, from the date of his hire as a permanent employee in October 2002 until the date of the grievance in 2007, Mr. Ezekiel would have come under Section 28.02 -Schedule B, namely, "a regular employee who, on May 31st, [had] completed four (4) years but less than nine (9) years of continuous service..." To advance to the next level, he would have to complete 9 but less than 11 years of continuous service. By May 31, 2007, he would have had 6 years of continuous service. Backdating his vacation date to March 31st, 2001, would have given him 7 years continuous service, and by May 31, 2008 he would have completed 8 years of continuous service, which was still short of the 9 years required to advance him to an additional week of vacation. The Union now wants him to be backdated to January 1, 1999, which would put him at the next level.

In any event, the Employer indicated that "continuous service" is the issue. Counsel was unsure how the LSA comes into the Union's perspective on the subject of the grievor's vacation. In the grievor's case, when he was a temporary employee, he was not a probationary employee or a regular employee. He was laid off every year, which constituted a break in continuous service each time. It is common sense that a temporary employee who was on and off like that could not have been continuously employed. Even if Mr. Ezekiel did work 120 days in each of three (3) consecutive years, all that entitled him to was a place on the ranking list. The other provisions in Article 7.12 regarding benefits were already part of the clause. They were not new. Therefore, qualifying for the ranking list did not give the grievor extra vacation, or make him a regular employee, etc. While he

do not accumulate seniority. When they are laid off, they are not subject to any consequences if they refuse to answer recall. In contrast, regular employees with recall rights under Article 7.05 must report for work within ten (1) days of notification or their names will be removed from the seniority list and they will be terminated from employment.

Clearly, Article 28.13 was never intended to have anything to do with Article 7.12. The provision now expressed in 28.13 existed in the parties' collective agreements long before the language of 7.12(a) introduced the recall list for temporary employees in the Capital Projects crew. As such, the continuity of years of service for vacation purposes in Article 28.13 applied solely to regular employees, not to temporary employees, and it continues that way in the current collective agreement. In 2002, arbitrator Thistle distinguished regular employees from temporary employees, ruling that, to be a regular employee and be entitled to the benefits of a regular employee, a person must be hired as a new employee under Article 7.02, not hired as a temporary employee under Article 7.12. In particular, that award found that Mr. Ezekiel was not a regular employee. In other words, only regular employees were entitled to the vacation benefits in Article 28. Temporary employees were entitled only to 4% of wages as prescribed by the Labour Standards Act because they were laid off prior to the 10 month period after the end of the continuous 12 month period (see section 8.(1) and (1.1)). Arbitrator Thistle said that the grievors were not new employees subject to probation for 120 continuous days worked after their hire under Article 7.12. Therefore, since they never completed the probation requirements in Article 7.02, they never became regular employees. In the Employer's view, if that continuous 120 day period could not be used to entitle them to regular employee status, no 120 day period worked by temporary employees can be used to entitle them to vacation benefits to which only regular employees are entitled.

Mr. Ezekiel's previous grievance was on the issue of seniority. His current grievance is about service.

In support of its position, the Union submitted Canadian Labour Arbitration, 2nd Edition, *Credited service for vacations*, at pp. 586 – 589, which indicates that the length of time and the amount of pay for vacations depends on the length of an employee's employment. If there are periods when an employee remains off work, the authors suggest that:

. . . where the amount of vacation pay or duration of vacation is calculated on the period of time a person has been "continuously employed" or "in service," in the absence of some clear expression of intention to the contrary, most arbitrators have held that employees who have engaged in a lawful strike, were off work because of illness, disability, leave of absence, maternity leave, or because they had been laid off during the course of the year, were entitled to count such time that they were not at work. . . .

For all the foregoing reasons, the Union requested that the grievance be upheld and the grievor's new date for vacation purposes be set at June 1, 1999, i.e., the date the language of Article 7.12(a) became effective.

The Employer

Article 28.13 must be looked at in light of the fact that, whether expressed in Article 28.13 or 28.14 in all the previous collective agreements, it never changed when temporary employees were brought in under a ranking list or by any other means. The fact of the matter is that Articles 28.13, 28.14 and 28.15 reflect the circumstances of regular employees only. In the Employer's view, it is a very long and unrealistic stretch to suggest that Article 28.13 speaks to employees on a ranking list right of recall that did not exist until January 1999.

Clearly the recall in Article 7.12 is not at all the same as the recall provided by Article 7.05. Temporary employees under Article 7.12 do not undergo probation and they

ARGUMENT

The Union

The grievor was first hired as a temporary employee in 1995 and was later hired as a permanent employee on October 1, 2002. The question is how much vacation time he was entitled to receive at that point. The Company says that he had no right to accumulate vacation until he was hired as a regular employee, but the Union says that the Labour Standard Act entitles all employees working 90% of the normal working hours in a continuous 12 month period to receive at least 2 weeks vacation and 4% of wages earned in that period. When 15 years of continuous employment is attained, an employee is entitled to not less than 3 weeks vacation and 6% of wages earned. Under the collective agreement, Mr. Ezekiel worked under the enhanced rights provided by Article 7.12, one of which was entitlement to vacation. Although the Company always paid out 4% to temporary employees, that action did not prevent the grievor from accumulating vacation time while he was a temporary employee. Since the LSA permitted the grievor to accumulate time while he was temporary, the Employer had no right to nullify anything he had accumulated prior to becoming permanent.

In the Union's view, last year Mr. Ezekiel was entitled to one extra week of vacation. Article 28.13 supports that view: that clause does not exempt temporary employees; it requires that an employee have continuous service (recall before expiration of one's recall rights does not constitute broken service), which was precisely Mr. Ezekiel's situation.

The Company suggests that there was some sort of negotiated agreement for dates for vacation purposes for employees on the ranking list. Although there was a ranking list, there is no evidence that there was an agreement with Lodge 1567 on backdating vacation entitlement.

is not always identical to the others, the likely exception being something that may affect that Union only. In the last round of negotiations, the CEP Locals received a signed letter from Doug Kendrick concerning vacation dates (DK#3). During the conciliation process, the employees in the Machinists Union received the same letter. That letter is not in the CEP agreements or in the Lodge 1567 agreement. Mr. Kendrick explained that all the previous Union Presidents accepted the content of that letter, but the current Machinists Union president does not. In Mr. Kendrick's view, once signed, a Memorandum of Agreement has the same force and effect as a collective agreement. While DK#3 was a Memorandum of Agreement between the Company and CEP Local 64, the Machinists Union also received it. Of the eight (8) employees mentioned in that Memorandum, three (3) were members of Lodge 1567, namely Aaron Gillam, Al Morey and Ray Sheppard. However, it appears that the Machinists Union now disagrees with this letter.

Mr. Kendrick agreed that temporary employees are included in the term "employee" in the Labour Standards' Act and he further agreed that the law entitles them to vacation benefits. In that regard, the temporary employees under the Lodge 1567 collective agreement received precisely the vacation benefit that was required by section 8.(1) and (1.1) of the LSA (see excerpt DK#4).

By way of re-direct examination, Mr. Kendrick confirmed that the Memorandum of Agreement DK#3 did state the principle of determining Seniority dates for vacation purposes. This document was written during 2005 negotiations after considering the circumstances of every person on the Capital Projects crew list. One of the three (3) Machinists on that list, Ray Sheppard, received a significant benefit as a result of the change from 3 weeks to 4 weeks break in service. However, neither the Union nor Mr. Sheppard protested or challenged the application of this principle to him.

The Employer

Mr. Doug Kendrick, Manager of Administration, introduced DK#1, the April 16, 2002 arbitration award which denied Mr. Ezekiel's grievance on seniority. In 2002, arbitrator Thistle found that the grievor was not hired under Article 7.02; he was hired under Article 7.12 and as such did not attain status as a regular employee. Therefore, he was not entitled to the vacation and other benefits of regular employees.

Referencing the second last page of CJ#2, Mr. Kendrick testified that vacation dates for all the Mill Unions were determined by negotiations. The "Seniority Date for Vacation Purposes" in 1996 was based on a break in service of three (3) weeks (originally a break in service meant a break of any duration, but the Unions asked for 3 weeks in order to cover a group of employees who had been off for 3 weeks) and the next time it was negotiated in 2005 it was based on a break in service of one (1) month. According to DK#3, "This principle was established during the 1998 negotiations and applied in the Local 96 Memorandum of Agreement only." However, Mr. Kendrick indicated that the same principle was applied for all the Unions, including Lodge 1567. The changes that occurred in employees' vacation dates because of the change from 3 weeks to 1 month varied from significant to insignificant among employees. For example, the details of Aaron Gillam's circumstances were provided in DK#2. Mr. Ezekiel's vacation date was determined by exactly the same method.

In the case of regular employees, Mr. Kendrick explained that the date of hire is used, i.e., the date such employees finish probation. Essentially, if no notation for vacation exists in the comments column on the Seniority List, the date for vacation purposes is always considered to be the employee's Mill Seniority date.

In cross examination, Mr. Kendrick explained that, in the Mill, there are five (5) CEP Locals and one (1) IAM&AW Local. He indicated that the Machinists collective agreement

continuous service with no break of more than 3 weeks. When Kevin Ezekiel became a regular employee in October 2002, his vacation entitlement was backdated from a break in service of one month, i.e., March 31, 2001. That date has remained on the Seniority List since January 1, 2003.

Mr. Jenkins testified that it is the Union's position that the grievor will receive more vacation as a result of this grievance. He also recognizes and is prepared for the fact that other bargaining unit members will lose vacation benefits as a result of an arbitration decision in the grievor's favour.

Asked what continuous service meant to him, Mr. Jenkins indicated it starts from an employee's last date of hire. He agreed that the grievor's date of hire as a regular employee is October 1, 2002, but for vacation purposes it should be from 1996 onwards, i.e., when he worked 120 days in three consecutive years, 1996, 1997 and 1998. However, Article 7.12 effectively determines his vacation entitlement date as January 1, 1999. As for Article 7, it deals with seniority. However, Article 28.13 has nothing to do with the grievor's seniority dates; continuity of years of service is the necessary requirement for vacation entitlement and the grievor has met that requirement.

Finally, Mr. Jenkins testified that he did not know why his Union had negotiated a vacation date based upon an extended break in service. Essentially his point was that he was not responsible for that because he was not involved at that time. As far as he is concerned, the operative "principle" for vacation entitlement is expressed in Article 7.12(a). In his view, all the other deals on dates for vacation purposes were simply dates, not principles. He insisted that all the other Unions had a copy in their collective agreements of what the Employer describes as the principle (see KE#9), but his Local never did sign that arrangement.

Article 7.05(b) are tied to Mill Seniority and Mr. Ezekiel did not have Mill Seniority (or any seniority at all) while he was a temporary employee, Mr. Jenkins' view was that Article 7.12 does give recall rights to temporary employees who have no seniority. Although he agreed that the only recall right for such employees was to remain on the ranking list for a year and they can retain recall rights if they refuse to work, he acknowledged that regular employees can lose their seniority (and therefore their recall rights) if they refuse. See Article 7.07. Nevertheless, Mr. Jenkins' view was that Article 28.13 does not distinguish "recall rights." Therefore, Mr. Ezekiel's recall rights were just as valid as any other employee's recall rights. In the result, his vacation entitlement is determined by the provisions of the collective agreement, not by any negotiated method to which the other Mill Unions agreed. Lodge 1567 did not agree to and has never accepted that method. When the Employer gave the grievor the date of March 31, 2001, it did so illegally. Mr. Jenkins agreed that this date must be removed for the grievor and be replaced by June 1, 1999. Article 7.12 came into effect on January 1, 1999.

In his view, the 120 days in 7.12 applies to those who worked from January 1, 1999 to January 1, 2002. Although the relevant excerpts from collective agreements as far back as 1984 make no mention of a ranking list, Mr. Ezekiel must have been called back to work each year by some kind of a list prior to 1999.

In the previous arbitration award, despite Mr. Ezekiel having met the 120 day requirement in three consecutive years, the arbitrator ruled that the fact he was hired under Article 7.12 wording did not make him a regular employee, i.e., he could only be a regular employee if he were hired under Article 7.02. The evidence is that this did not happen until October 1, 2002.

Mr. Jenkins indicated that the reason the seven employees were backdated to dates prior to attaining their Mill Seniority in 1999 was because of a negotiated deal based on

method, resulted in all seven employees having their vacation entitlement backdated to different dates. This method determined the date from which each employee had continuous service without a break of more than three (3) weeks. KE#10 placed five (5) employees, including Mr. Ezekiel, on the ranking list effective the date of signing of the agreement.

Mr. Jenkins agreed that the same system was used for backdating the seven (7) IAM&AW members for vacation purposes in KE#9 as was used for all the other Mill Unions. Mr. Jenkins confirmed that Mr. Ezekiel previously grieved that his seniority was incorrect and that he was entitled to all benefits, including vacation benefits, as a regular employee. He further agreed that the arbitration award ruled that Mr. Ezekiel was not a regular employee and was therefore not entitled to those benefits. He further agreed that a subsequent collective agreement was negotiated in 2004. Notwithstanding the foregoing, Mr. Jenkins felt that he had done a thorough investigation of the facts on Mr. Ezekiel's current grievance by contacting the former Union President, canvassing the collective agreement provisions and obtaining information from the Company. His concern was not the grievor's seniority, but his vacation entitlement.

Mr. Jenkins acknowledged that Article 28 – Vacations applies to “regular” employees and that Mr. Ezekiel was not a regular employee until October 1, 2002. However, because the Labour Standards Act entitles all employees (including temporary employees) to vacation, Mr. Jenkins felt that it does not matter if there are some “grey matters” concerning vacation in the collective agreement. Mr. Ezekiel received 4% vacation pay in accordance with the LSA while he was a temporary employee. Now that he is a regular employee, Article 28.13 applies to him in terms of continuity of his service. His service was not broken while he was laid off as a temporary employee because he always returned to work before his one (1) year recall rights expired. Despite the fact that recall rights in

recall rights expired, the application of Articles 7.12(a) and 28.13 together establish that continuity of his years of service for vacation purposes was never broken. Therefore, it was Mr. Jenkins' view that the grievor's entitlement to vacation benefits should be backdated to June 1, 1999. It was also his view that the Company had applied a principle for backdating Lodge 1567 members that had been agreed to by other Mill Union locals but had never been agreed to by Lodge 1567.

In cross examination, Mr. Jenkins agreed that there were more than tradesmen on the Capital Projects crew. There was also an arrangement with the other mill Unions regarding the Capital Projects work crew and on the method of backdating temporary employees for vacation purposes. It was Mr. Jenkins' opinion that the Company was wrong to use that backdating method for IAM&AW members.

Mr. Jenkins confirmed the following 1999 negotiating documents:

CJ#1 is a General Agreement For The Renewal Of A Collective agreement between Corner Brook Pulp and Paper Company Limited and The International Association of Machinists and Aerospace Workers, Lodge 1567. This document is signed by the authorized representatives of the Company and of the Union, including Roy Locke, Special Representative. The document agrees that, subject to ratification, the previous agreement would be modified to include the changes specified in CJ#2, which is a Settlement Agreement between the parties presented on February 9, 1999. The parties agreed that the terms and conditions set out in CJ#2 constitute the new collective agreement binding on the parties. Attached to CJ#2 are the two documents KE#9 and KE#10, both "FOR MEMORANDUM OF AGREEMENT ONLY", which were not included in the actual collective agreement. KE#9 lists seven employees classified as Millwrights and Welders who became regular employees with seniority on the date of signing, but a special category of "Seniority for Vacation Purposes Only" was created, which by application of a specific

backdated further than that.

By way of redirect examination, Mr. Ezekiel testified that he was in the same employment situation as Mr. Morey and Mr. Sheppard, but nobody has explained why they got backdated more than he did and received an extra week vacation last year. That point was part of his recent grievance. He filed a grievance earlier because he saw other employees who were going to grieve and he decided he would tag along.

Mr. Corey Jenkins has been a Millwright 1st Class since July 2002 and President of the Local for 2 years. He indicated that, in 2007, three employees, including Mr. Ezekiel, approached him saying that their vacation date on the Seniority List was incorrect. He spoke to Mr. Shane Young with the Company who agreed to investigate the matter and get back to him. Three weeks later, Mr. Young held a meeting with the three men and Mr. Jenkins. The employees' Mill Payroll Records showed that two of the men did not have the time worked to qualify, but Mr. Ezekiel did have the time required in Article 7.12. Mr. Young said he would check to see what could be done for him. The membership agreed that the grievance would go ahead for Ken Ezekiel, but not for the other two men.

After the Seniority List was posted in January 2008, Mr. Ezekiel filled another grievance. Mr. Jenkins had been told previously that Mr. Ezekiel was entitled to his claim. He qualified for the ranking list because he had worked 120 days in three consecutive years and for the same reason he was entitled to "the wages established for the work performed and to all other applicable provisions of the Collective Agreement" in accordance with Article 7.12(a). In Mr. Jenkins' view, vacation benefits were among those applicable provisions. Article 28.13 provides that "continuity of service for vacation purposes shall not be broken for employees who, after being laid off, return to work before the expiration of recall rights." Since Article 7.12(a) entitled Mr. Ezekiel to one year of recall rights on the ranking list, and since the records show that he returned to work from layoff before his

The grievor agreed that the date of October 1, 2002 (when he became a regular permanent employee) appeared on the January 2003 Seniority List in accordance with Article 7.06. He also agreed that the date for his vacation entitlement was backdated to March 31, 2001, and continued unchanged on succeeding Seniority Lists, including the one posted on June 30, 2008. At no time previously did Mr. Ezekiel file a grievance to have the information on the Seniority Lists corrected. He insisted that he is not attempting to have his seniority changed. He also testified that he has no idea why March 31, 2001, was stated as his vacation entitlement date. Referring to page 2 of C#3, his Mill Payroll Record of Employment, Mr. Ezekiel acknowledged that he did not work between the weeks ending January 20, 2001 and March 31, 2001, i.e., that period was more than a one (1) month layoff and also that there was no other period between March 31, 2001 and October 1, 2002, when he was laid off for more than four (4) weeks. He recognized all the names listed on KE#9, which was "For memorandum of Agreement Only," and agreed that all seven of those employees had their vacation entitlement backdated as indicated. Again, however, he did not know how that backdating was done and he was not aware of any negotiations agreeing to the content of KE#9. Mr. Ezekiel also recognized the list of names on KE#10, which ranks five (5) employees, including himself, who qualified for the list after working 120 days in each of three consecutive years. In his view, his layoff may have been longer because he was placed on this priority list.

Mr. Ezekiel agreed that he did not receive any of the foregoing information from the Union before he grieved. He simply knew of other employees who were backdated more than he was.

In 2008, the grievor took three (3) weeks of vacation because he was in the 4 – 9 years of work category. In essence, Mr. Ezekiel could not explain why he was backdated to March 31, 2001 for vacation purposes and he also could not explain how he could be

employees, Messrs Morey and Sheppard, immediately following Mr. Ezekiel on the seniority list had the same date for all three categories. Four employees immediately above Mr. Ezekiel had Mill Seniority as of February 19, 1999. Messrs Hall, Quigley and Strickland had June 3, 2003 for both Department Seniority and Classification Seniority, while Mr. Warren had July 1, 2001 for both of those categories. In the final column titled "Comments," which I have been told represents a backdated date for the purpose of vacation entitlement; a different date is stated for each of these seven employees, viz:

Hall Eugene	Vac May 6/96
Quigley Joseph	Vac May 27/96
Strickland Ben	Vac Apr 6/98
Warren Terry	Vac Nov 16/98
Ezekiel Kevin R	Vac Mar 31/01
Morey Allan	Vac Sept 4/99
Sheppard Raymond	Vac Jan 27/01

From September 16, 1995 to October 1, 2002, when he became a regular permanent employee, Mr. Ezekiel received the usual 4% vacation pay each time he was laid off. Since he complained that his co-workers with the same status as his were assigned much earlier vacation entitlement when they were hired as permanent employees, the root of the instant dispute is the method by which backdating for vacation entitlement is determined.

Mr. Ezekiel agreed that he never sought vacation benefits via a grievance while he was a temporary employee. However, his current grievance asks the Employer to agree that, for vacation purposes, he was a permanent employee prior to becoming a regular employee in 2002. The evidence is that there was a previous grievance dated July 26, 2007 by Millwrights Kevin Ezekiel, Don Martin and Roger House requesting that their vacation time be backdated to the first day they were employed by the Company. While Mr. Ezekiel confirmed that the arbitrator in 2002 disagreed that the 120 days worked in each of three consecutive years as a temporary employee gave him status as a regular employee, he could not recall the details of that award.

28.13 –

Continuity of years of service for vacation purposes shall not be broken for employees who, after being laid off, return to work before the expiration of recall rights.

.....

28.19 –

Vacation allowances will be determined as of May 31 of each year. However, if an employee completes a period of four (4) , nine (9), seventeen (17) or twenty-three (23) years of continuous service after May 31, he will become entitled to the additional vacation period and pay established in schedules B,C.D or E respectively, as of the date on which he completed such a period of continuous service.

THE EVIDENCE

The Union

Mr. Kevin Ezekiel was originally hired on September 16, 1995 as a temporary Millwright under the June 1, 1993 – May 31, 1998 collective agreement in accordance with (then) Article 7.15, which provided for such hirings “for the purpose of performing specific and predetermined modernization and construction work.” As a temporary employee, the grievor did not accrue seniority. In the June 1, 1998 – May 31, 2004 agreement, Article 7.12 became the operative clause for hiring temporary employees for the purposes stated above. For the first time, the language of that provision made reference to “a ranking list for the purpose of lay-off and recall within the ‘Capital projects Crew.’ Since temporary employees did not accrue seniority, an additional sentence was added to the agreement to deal with certain recall rights during layoff, namely, “When laid off, a ranked temporary employee will remain on the ranking list for one (1) year.” That language has continued into the 2004 – 2009 agreement. By all accounts, Mr. Ezekiel continued as a temporary employee until he was hired full time as a regular employee on October 1, 2002.

The January 1, 2003 Seniority List (KE#2) established the grievor’s Mill Seniority, Department Seniority and Classification Seniority all as of October 1, 2002. Two

corrected on any subsequent list. The Union will be supplied with a copy in addition to those posted throughout the department.

....

7.12 –

a) The Company may hire from time to time temporary qualified tradesmen for the purpose of performing specific and predetermined modernization and construction work. Such employees will pay Union Dues in accordance with Article 4.01 and will not accrue seniority. Effective January 1, 1999, a temporary employee who has worked one hundred and twenty days in each of three (3) consecutive years will be assigned to a ranking list for the purpose of lay-off and recall within the “Capital Projects Crew”. When laid off, a ranked temporary employee will remain on the ranking list for one (1) year.

Temporary employees will be entitled to the wages established for the work performed and to all other applicable provisions of the Collective Agreement with the exception of Welfare Plan except for what is provided for in Appendix “C”. Temporary employees will have the right to the grievance procedure except for cases of promotion, demotion, lay-off or termination of employment. The Union will be given a forty-eight (48) hour notice when temporary employees are to be laid off.

....

Section 28 – Vacations

The following provisions will apply to vacations taken in the period June 1 to May 31 of each year.

28.01 – Schedule A

Regular employees who, on May 31, have completed one (1) year but less than four (4) years of *continuous service* with the Company will be entitled to vacation with pay based on the number of hours worked in the previous Agreement year in accordance with the following schedule. (Vacation year is June 1st to May 31st.) Pay for these vacations will be in accordance with the Newfoundland Labour Standards Act). [Emphasis mine.]

....

28.02 – Schedule B

Regular employees who, on May 31st, have completed four (4) years but less than nine (9) years of *continuous service* with the Company will be entitled to vacation with pay on the number of hours worked in the previous Agreement year in accordance with the following schedule. [Emphasis mine.]

28.03 -- Schedule C

28.04 – Schedule D

28.05 – Schedule E

(All the forgoing contain similar language, all referring to “regular” employees with “continuous service”).

....

below will be assigned the following **seniority for vacation purposes only**:

Employee Number	Employee Name	Old Seniority Date (yr/month/day)	Revised Seniority Date (yr/month/day)
6304	Flynn, John	1998/03/14	1998/03/14
3871	Gaudet, Ken	1999/03/07	1998/02/21
3716	Gillam, Aaron E.	1998/03/30	1998/03/28
3866	Penney, Terrence	1999/03/07	1995/03/04
3618	Morey, Al	1998/03/14	1998/03/14
6296	Sheppard, Ray	2001/01/31	1999/02/13
3869	Walsh, Bernard	1997/03/01	1995/03/18
3924	White, Gary	1999/03/07	1998/10/10

DK#4 Excerpt from RSNL 1990 Chapter L-2- Labour Standards Act -- Annual Vacation with pay.

The relevant collective agreement provisions are as follows:

7.01

“Classification Seniority” is defined as the employee’s length of service in a particular classification as listed in **Clause 7.13** and shall apply to lay-offs, recalls to work, permanent and relief promotions within the Bargaining Unit, the filling of vacancies and transfers.

“Department Seniority” is defined as the employee’s length of service in a particular Department.

“Mill Seniority” is defined as the employee’s length of service in the Mill, established by continuous service since his last date of hire.

. . . .

7.02 Probationary Period

New employees shall be on probation for a period of one hundred and twenty (120) continuous days worked and if retained in the service of the Company beyond that date, shall be considered a regular employee and shall acquire seniority back to his date of hire.

. . . .

7.06 Seniority Lists

Seniority lists will be published and posted by the Company in January and July of each year and will show each employee’s date of hire, date of entry into his present department and date of entry into his present classification. Seniority lists will be subject to correction for a period of thirty (30) calendar days from the date of posting and errors not brought to the Company’s attention during that period will not be considered and the list will stand as corrected except that such errors may be

employees will be classified as regular Millwrights and Welders. These employees may be assigned work in the trade in the Maintenance or Capital Projects.

- 1) G. Hall
- 2) J. Quigley
- 3) B Strickland
- 4) T. Warren
- 5) K. Willett
- 6) D. Doody
- 7) A Gillam

Their seniority shall begin as of date of signing of the Labour Agreement, except for vacation purposes which will be as follows”

**Seniority for Vacation
Purposes only**

1) G Hall	06.05.96
2) J. Quigley	27.05.96
3) B. Strickland	06.04.98
4) T. Warren	16.11.98
5) K Willett	20.03.95
6) D. Doody	22.12.97
7) A Gillam	30.03.98

KE#10 Item for Memorandum of Agreement Only:

Effective date of signing of the Labour Agreement, the following employees will be ranked as per Clause 7.15 a):

MILLWRIGHTS

T. Williams

A. Morey

R. Sheppard

K. Ezekiel

WELDERS

N. Barrett

CJ#1 February 9, 1999, signed General Agreement for the renewal of the June 1, 1996 to May 31, 1998 collective agreement. .

CJ#2 Settlement of the Main Agenda, Presented February 9, 1999.

DK#1 April 16, 2002 Arbitration Award (Thistle) between the parties denying a grievance on the issue of whether the grievors were new employees during the period of 120 consecutive days worked.

DK#2 Mill Payroll Records of Employment from Jan 01/1994 to Jan. 01/2004 for Aaron Gillam.

DK#3 Memorandum of Agreement between Corner Brook Pulp and Paper Limited and CEP Local 64

SENIORITY DATE FOR VACATION PURPOSES

Effective the date of signing of the Labour Agreement, the employees listed

Appearances for the Employer

Mr. Doug Kendrick, Manager of Administration

The following documents were introduced by consent:

1. Collective agreement June 1, 2004 to May 31, 2009;
2. Grievance form, February 14, 2008, including the Employer's response, Feb. 19, 2008, claiming no violation of the collective agreement. Also included in the Union's reference to arbitration was the Union's disagreement with the Employer's position, stating:

According to the Collective Agreement "Section 7.12, & Section 28.13", Kevin's years of service for vacation purposes should not have been broken because he returned to work before the expiration of his recall rights. Therefore, the Collective Agreement was violated and we will be seeking arbitration.

3. Mill Payroll Records of Employment for Kevin Ezekiel from Jan. 01/1995 to Dec. 31/2006
4. Excerpt from the parties' collective agreement, June 1, 1984 to May 31, 1988;
5. Excerpt from the parties' collective agreement, June 1, 1988 to May 31, 1990;
6. Excerpt from the parties' collective agreement, June 1, 1990 to May 31, 1993;
7. Excerpt from the parties' collective agreement, June 1, 1993 to May 31, 1998;
8. Excerpt from the parties' collective agreement, June 1, 1998 to May 31, 2004.

The following documents were introduced into evidence by witnesses:

KE#1 (Only the portion summarized as follows):

In applying 7.12 a), Kevin would have been assigned to a ranking list for layoff and recall in December of 1998, as follows:

- o In 1995 worked less than 120 days
- o In 1996 worked 120 days plus
- o In 1997 worked 120 days plus
- o In 1998 worked 120 days plus
- o In 1999 worked 120 days plus
- o In 2000 worked 120 days plus
- o In 2001 worked 120 days plus
- o In 2002 worked 120 days plus

KE#2 Seniority List, January 1, 2003;

KE#3 Seniority List, December 22, 2003;

KE#4 Seniority List, January 19, 2004;

KE#5 Seniority List, June 24, 2005;

KE#6 Seniority List, June 29, 2006;

KE#7 Seniority List, June 30, 2007;

KE#8 Seniority List, June 30, 2008;

KE#9 Item for Memorandum of Agreement Only:

Effective date of signing of the Labour Agreement, the following

Findings and Decision in a Dispute

between

CORNER BROOK PULP AND PAPER LIMITED

(Hereinafter referred to as "the Employer" or "the Company")

and

I.A.M. & A.W. , LODGE 1567

(Hereinafter referred to as "the Union")

THE GRIEVANCE

On February 14, 2008, a written grievance was filed by Kevin Ezekiel, Millwright, claiming that his vacation time was not properly backdated when he was hired permanent. Violations of articles 7.12 and 28.13 were alleged.

The requested redress was that the Employer be required to backdate the grievor's vacation time to June 1st, 1999, and that he retroactively receive any vacation to which he is entitled.

The hearing was held at Deer Lake, Newfoundland and Labrador, on February 27, 2009.

For the Union:	Mr. Roy Locke, International Representative, <i>et al.</i>
For the Employer:	Mr. Harold Smith, LLB., <i>et al.</i>
Sole Arbitrator:	Mr. David L. Alcock

The parties agreed:

- 1) to the selection of the arbitrator;
- 2) that the arbitrator had jurisdiction to deal with the dispute;
- 3) that the arbitrator would remain seized of the matter to deal with issues of clarification arising out of the award, including the *quantum* of compensation, if any, should the parties not be able to agree;
- 4) that witnesses would not be excluded;
- 5) that statutory and/or collective agreement time limits for filing the award were extended.

Appearances for the Union

Mr. Kevin Ezekiel, Millwright, grievor

Mr. Corey Jenkins, Millwright, Local President