

Ref:

Re: Objection on Jurisdiction

AWARD IN A PRELIMINARY OBJECTION ARISING IN A DISPUTE

between

THE CORNER BROOK PULP AND PAPER LTD.

("the Employer")

and

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA,

LOCAL 60N

("the Union")

Grievor: Mr. Lindy Vincent

APPEARANCES:

For the Employer:

Presenter: Mr. Harold Smith, Q.C.

Advisor: Ms. Jessica Couture

For the Union:

Presenters: Ms. Sheila H. Greene, Q.C.

Advisors: Mr. Gary Healey, National Representative (CEP)

Witnesses: Mr. Lindy Vincent, Grievor

Mr. Rick Fudge, President CEP Local 60N

The statement of grievance reads: "The company is not providing the employee the Insurance benefit as negotiated (*sic*) in the Agreement REF Articles 20:01 and Appendix A, 12:01, 12:02, 12:06 and others."

The settlement desired reads: "The Company recognize the employee preauthorized leave, under classification as meeting the condition of his own occupation in APP. A and that the company provide this employee the negotiated (*sic*) insurance benefit."

The Step 1 Management response reads: "Grievance denied based on STD plan and policy."

The Hearing took place in Corner Brook, Newfoundland on June 22 & 23, 2011.

THE PARTIES AGREED THAT:

- the Arbitrator was properly appointed and had authority to hear the case;
- the Arbitrator's notes of the evidence and argument as recorded in the final award will prevail in the event of conflict;
- all matters pertaining to the grievance procedure and all time limits, whether statutory or arising from the collective agreement, were either properly observed or are waived;
- there is an objection to the Arbitrator's jurisdiction raised by the Employer;
- all witnesses were excluded until all their testimony had been heard;
- issues of quantum, if any, would be considered separately and if the parties do not reach agreement within thirty (30) calendar days they will be referred to the Arbitrator for resolution;
- the Arbitrator will remain seised of the matter for period of thirty (30) calendar days after its publication should issues of interpretation of the Award arise;
- witnesses would be excluded from the hearing until their testimony was heard.

ITEMS TAKEN INTO EVIDENCE:

- Consent** #1 Collective Agreement expiring December 31, 2008
- " #2 Grievance # 2010-01 submitted September 30, 2010
- " #3 Letter: Sept. 11, 2000 Mr. Vincent to Mr. R. Kearley
- " #4 Letter: Sept. 18, 2000 Mr. R. Kearley to Mr. Vincent
- " #5 Letter: Sept. 4, 2002 Mr. Vincent to Mr. Shane Young
- " #6 Letter: Sept. 11, 2002 Mr. Shane Young to Mr. Vincent
- " #7 Memo: Nov. 2, 2000 Lyne Lebel to Douglas Kendrick
- " #8 Memo: Dec. 28, 2002 R. Kearley to Paul Brake
- " #9 Letter: Aug. 3, 2005 Mr. Shane Young to Mr. Ricky Fudge
- " #10 Seniority list processed 2008/11/04
- " #11 Letter: May 20, 2010 Mr. Ricky Fudge to Mr. Rodney Wiseman
- " #12 email communications: Dec 17, 2008 & Jan 14, 2010 Nora Lundrigan to CEP Local
- " #13 Final Recall List April 19, 2010
- " #14 fax: 2 medical notes for Grievor (May 6, 2010 & May 13, 2010) faxed to Rod Wiseman
- " #15 Final Recall List June 7, 2010
- " #16 email June 17, 2010 Mr. Wiseman to Ms. Nathalie Bernard
- " #17 Summary of Grievor's GWL Insurance "Benefits at June 07, 2010"
- " #18 May 20, 2010 confirmation of Grievor's termination of coverage (Policy #156950)
- " #19 June 27, 2010 Grievor's Notice of Claim (Policy #41206890)
- " #20 Letter: July 12, 2010 Mrs. Ginnette B. to Mr. Vincent
- " #21 Letter: July 19, 2010 Mrs. Ginnette B. to Mr. Vincent
- " #22 email exchange: July 12, 14 & 18, 2010 Ms. Mosgrove, Mr. Wiseman & Mrs. Brossard
- " #23 email exchange: July 12-27, 2010 various parties
- " #24 email exchange: July 20, 2010 Mr. Wiseman & Mrs. Brossard
- " #25 Letter: Sept. 3, 2010 Mrs. Anne B. To Mr. Vincent
- " #26 email: Jan. 10, 2011, Mr. Fudge to Ms. Greene with "responses to the issues..."
- " #27 email: Oct. 22, 2010. Mr. Wiseman to Mr. Fudge re "update on Lindy"
- " #28 email: Jan. 10, 2011, Mr. Fudge to Ms. Greene re "responses to the L60N issues...."

Consent #29 Letter: Nov. 9, 2010 Ms. Louise C. To Mr. Vincent (Policy #41206890)
" #30 Letter: Nov. 23, 2010 "To Whom it May Concern"
" #31 Letter: Dec. 2, 2010 Ms. Louise C. To Mr. Vincent (Policy #41206890)
" #32 email: Dec 8, 2010 (with attachments) Mr. Tompkins to CEP Local 60N
" #32a Letter: Dec. 8, 2010 Mr. Tompkins to Mr. Fudge
" #33 Letter: Apr. 18, 2011 Mr. Fudge to Mr. Tompkins
" #34 Letter: June 16, 2011 Ms. Brigitte D. To Mr. Vincent
" #35 Email: Dec. 4, 2009 Mr. Healey to Mr. Giguere
LV #1 Maintaining Benefits Form
RF #1 Letter: Feb. 24, 2011 Ms. Yolande L. to Mr. W. Hamlyn

ARTICLES CONSIDERED

ARTICLE 1 - Purpose

1.01 - It is the general purpose of this Agreement to set forth the working conditions, living conditions within the power and/or ability of the Employers to control the hours of work, the rates of pay and all other items that both parties have agreed to through the process of collective bargaining. This Agreement, moreover, seeks to ensure to the utmost extent possible the safety and physical welfare of the employees, economy of operation, quality and quantity of output and protection of property, and also seeks to provide for fair and peaceful adjustments of all disputes that may arise between the parties. It is recognized as a duty of the parties hereto and of all employees to co-operate fully, individually, and collectively for the advancement of the conditions set forth herein.

ARTICLE 8 - Adjustment of Grievances

8.03 - A grievance under the provisions of this Agreement is defined to be any difference including the degree or extent of disciplinary action between the parties or between any one of the employees and his Employer covered by this Agreement, involving the interpretation, application, administration, or alleged violation of any of the provisions of the Agreement. It is understood that the procedure relating to grievances hereafter described is between Corner Brook Pulp and Paper Limited, the Union and the employee concerned.

8.07 - It is understood that the function of the Arbitration Board shall be to interpret and apply this Agreement, and that it shall deal only with the specific questions as submitted and shall have no power to alter, add to, or amend this Agreement...

ARTICLE 12 - Seniority

12.01 - (i) The Company recognizes the principle of seniority, so that in promotions, demotions, transfers, layoffs, and recalls from lay-offs, seniority shall govern subject to the employee having the ability to perform the work required. In the application of the above, and where all other conditions of this Article are met, the junior employee shall at all times be the first laid off and the last recalled...
(ii) (a) There shall be two (2) types of seniority:
(a) Total Seniority
(b) Classification Seniority
(c) Subject to conditions stipulated in 12.02, employees will accumulate seniority for all time worked

in a particular classification, it being understood that an employee may have more than one type of Classification Seniority. When an employee is absent as per 12.02, the employee will accrue seniority in the classification he held at the time of departure.

(d) When considering seniority for promotions and demotions, the first consideration shall be Classification Seniority. Where Classification Seniority is equal, position on the ranking list will be considered. For the purpose of recall and lay-off, the first consideration shall be an employee's position on the ranking list amongst those with Classification Seniority.

It is recognized in principle that an employee listed in a classification as per 12.01 ii) c) meets the requirements of 12.01 i).

(e) When a temporary vacancy of less than one (1) month occurs on an operation, it will be filled by transferring, by order of seniority in that classification, an employee not working in the classification. If the vacancy continues beyond the time limit specified above, or as soon as possible when it is known that the absence will be for more than one (1) month, the position will be filled by the employee with the most classification seniority in the commuting area who is not working in that classification at that time and wishes to accept the position....

(h) If it is known at the beginning of a calendar year that a senior employee on the ranking list will not be recalled while, a junior employee on the ranking list will be because of classification seniority rights, the Company will find alternate work for the senior employee during that year....

12.02 - Total seniority for the purpose of this Agreement shall mean all days worked plus working days which normally would have been worked but were lost because of vacation, sickness, or injury (certified by a licensed physician, dentist, chiropractor, optometrist, or registered nurse in an outport hospital or clinic) and authorized leaves of absence up to a maximum of thirty (30) days in any calendar year.

An employee who has accrued seniority and is then employed by the Union, or is on authorized leave of absence on Union business, shall accrue seniority for a period not exceeding twelve (12) months. An employee who has accrued seniority and is then employed in a management position shall accrue seniority for a period not exceeding twelve (12) months. In both cases, twelve (12) months dating from when the first such change of employment status took place, unless one (1) year has expired since the last change of employment status.

Notwithstanding the foregoing, sub-foremen shall accrue and retain seniority while working in that capacity, it being understood and agreed that sub-foremen are within the bargaining unit.

12.06 - Subject to the provisions of 12.02, employees who are prevented from continuing work because of sickness or accident may accrue their seniority during the period of absence required to recover from such sickness or accident. However, the period during which an employee may accrue seniority will not exceed the eligibility period for LTD. At the end of the applicable period, if still disabled, he will cease to accrue seniority and will retain seniority accrued at that time. It is to be understood that a medical certificate of fitness shall be required for purpose of rehiring if eligible.

ARTICLE 20 - Fringe Benefits

20.01 - The Group Insurance Plans consist of the following:

- 1) Life Insurance Plan;
- 2) Accidental Death and Dismemberment Plan;

- 3) Short Term Disability Plan;
- 4) Long Term Disability Plan;
- 5) Dental Plan;
- 6) Health Insurance Plan; and
- 7) Vision Care.

The Group Insurance Plans will be maintained in force for the term of the present Collective Agreement.

In all cases, the provisions of the Group Insurance Plan is set out in the Master Policies. The interpretation, application and administration of the Group Insurance Plan shall be governed exclusively by the provisions of such Master Policies.

Copies of Master Policies will be made available to the union annually upon request.

A summary of the revised group insurance plans appears in Appendix "A". The description of the benefits included in Appendix "A" forms part of the Collective Agreement.

20.02 - A Pension Plan shall be maintained in force for the term of the present Collective Agreement. The provisions of the Pension Plan are set out in the Pension Plan Text. The interpretation, application, and administration of the Pension Plan shall be governed exclusively by the provisions of such Pension Plan Text.

APPENDIX "A"

SUMMARY OF REVISED GROUP INSURANCE PLANS

This document is a summary of the provisions of the Group Insurance Plans as set out in the Master Policies and does not create or confer any contractual or other rights. In all cases, the provisions of the Group Insurance Plans are set out in the Master Policies. The interpretation, application and administration of Group Insurance Plans shall be governed exclusively by the provisions of such Master Policies.

The Company agrees to modify its group insurance program and will make the following amendments to its insurance policies. All other provisions of the master policies will remain unchanged.

Subject to the provisions of the master policies, the following modifications will come into effect on the 1st day of the month following ratification, unless otherwise specified, and will cover only those regular employees who are members of the bargaining unit and actively at work on the effective date of these changes, as well as new regular employees who will join the bargaining unit thereafter.

PREMIUMS

Unless stated otherwise, premiums for the benefits are paid by the Company....

BENEFITS - SUMMARY

6) SHORT TERM DISABILITY

a) Effective January 1, 2003, \$585 per week for any disability that commences on or after the above specified date that prevents an employee from performing his own occupation for a maximum period of fifty-two (52) weeks.

Effective on the first day of the month following ratification, the Short Term Disability benefit will increase to \$615 per week for any disability which will commence on or after that date....

c) Miscellaneous

i) Any employee not actively at work on the effective date or dates of changes in benefits will not be eligible for the increase of benefits until the date of his return to active employment...

7) LONG TERM DISABILITY

Long Term Disability benefits will commence at the later of 52 weeks of disability or expiration of Short Term Disability benefits, provided the employee is still disabled due to illness or accident.

a) The employee will qualify if his disability prevents him from performing the duties of his own occupation.

b) Amount of benefit

Effective the first day of the month following ratification, the maximum monthly benefits for any eligible employees who are actively at work on that date will be \$1,760.00 per month...

c) Benefits shall be payable until the earlier of the following occurrences:

- i) the employee is no longer totally disabled or derives a salary or profit from his work;
- ii) he received benefits for a period of 156 months; (This will only apply to new disabilities beginning effective the date of ratification.)
- iii) the date on which he becomes entitled to receive early retirement benefits without actuarial reduction, if the amount of pension is greater;
- iv) the employee is not under continuing medical care or treatment recommended by his doctor for his rehabilitation;
- v) the insurer requests, but does not receive, further proof of total disability;
- vi) the employee fails to take a physical examination and/or mental evaluation that the insurer has requested;
- vii) the date of the employee's dismissal with just cause;
- viii) the date on which he dies;
- ix) the date he attains age 65.

d) The employee receiving Short Term Disability or Long Term Disability Benefits must undergo rehabilitation, if requested. The rehabilitation program aims at returning people to active work either within the woods industry or outside. This will provide the employee with improved skills allowing him to find gainful employment. Benefits will not be cut during the rehabilitation process, nor will they be cut for the sole reason that the rehabilitation process is completed. The elements of the rehabilitation program will be discussed with the union.

The above Short Term Disability or Long Term Disability Benefits shall be reduced by any benefits or replacement income that is payable, or would have been payable has (*sic*) a satisfactory request been submitted to the government, under the CPP/QPP (primary benefits only), and under any Workers' Compensation Act...

10) GENERAL CONDITIONS...

b) Insurance coverage while totally disabled

Employees receiving Short Term Disability benefits:

Benefits are maintained and the employee and the employer pay their portion of the cost on the same basis as if the employee was active.

Employees receiving LTD benefits:

Coverage for accidental death and dismemberment and dependent accidental death cease.

The employee may have his life, dependent life, health care (includes hospital, major medical and vision care) and his dental care coverage extended, provided the employee pays the full premiums, until the cessation of Long Term Disability benefit payments.

However, the employee receiving Long Term Disability benefits may be eligible for a waiver of his life and dependent life premiums.

c) Insurance Coverage During Lay-Offs

During the first three (3) months of lay-off, benefits other than Short Term Disability and Long Term Disability, are maintained and the employer and employee pay their portion of the cost on the same basis as if the employee was active.

After the first three (3) months of lay-off, employees will be entitled to retain their benefits other than Short Term Disability and Long Term Disability as long as he retains seniority rights under the Collective Agreement provided he is paying the entire premium.

d) Resolution of Claims

After an employee goes on claim and is in receipt of Short Term Disability or Long Term Disability benefits, the Company and/or insurer reserves the right to require periodic physical examinations throughout the duration of the employee's absence due to disability. Such examinations shall be conducted by physicians designated by the Company and/or insurer.

When there is a medical dispute as to the validity of claim following a decision made by the insurer, the dispute will be referred to an appropriate specialist who will render a final and binding decision.

Cost of physical examinations, transportation and reasonable out of pocket expenses related thereto will be paid by the insurer.

When proper medical evidence has been submitted and there is a dispute to the validity of the claim, upon request from an employee, the Company will make advance payments at the normal intervals until a final decision is reached as per above. If the decision to refuse the claim is maintained, the employee will reimburse the Company for the money so advanced...

Based largely on scheduling considerations, the Arbitrator decided that a decision on the Employer's objection would be prepared and published prior to hearing evidence and argument on the merits, if required. By agreement, the Union lead evidence on the objection.

OPENING STATEMENTS

FOR THE EMPLOYER, Mr. Smith introduced an objection to the Arbitrator's jurisdiction, arguing that the Arbitrator has no jurisdiction to order the remedy requested as it is set in the grievance since the Employer is not an insurance company, and therefore is not in the business of providing insurance benefits under the Collective Agreement. (He pointed out that seniority issues involving Articles 12.01 and 12.02 have been resolved, so these articles do not constitute an issue at this time. Similarly, in his view, Article 12.06 no longer constitutes a problem.)

Mr. Smith directed the Arbitrator's attention particularly to the "settlement desired" portion of the grievance form (Consent #2) which reads, in part: "...and that the company provide this employee the negotiated (sic) insurance benefit." There are no grounds for thinking that the company is required to provide a benefit which is, in fact, only available under a policy with a third party, Great West Life.

Mr. Smith pointed to Brown and Beatty *Canadian Labour Arbitration* (4th ed.) which assists in the determination of the objection.

4:1400 Pension, Insurance and Welfare Plans

Pension, insurance and welfare plans are types of extrinsic documents or agreements which are commonly found physically separate from collective agreements. Whether they form part of the agreement or are otherwise relevant as aids to interpretation depends upon the surrounding circumstances, together with the specific language used in the collective agreement. Commonly, the relationship between such ancillary documents and the collective agreement will fall into one of four categories. In one, the plan or policy is not mentioned in the agreement. In the second, the collective agreement specifically provides for certain benefits, while in the third it only provides for the payment of premiums. In the last, specific plans or policies are incorporated by reference into the agreement.

Where the collective agreement contemplates that the employer will arrange and pay the premium for an insurance policy and also provides for the benefits in varying degrees of detail, disputes can arise as to whether the arrangement falls within the second category, in which case grievances over the benefits will be arbitrable. Alternatively, it may be asserted that the parties contemplated that the arrangement fell within the third category, in which case the dispute is not arbitrable. In some such cases, the collective agreement provisions in question have been labelled "hybrid". Nevertheless, as always, the issue is one of construction of the provisions of the collective agreement to determine the intention of the parties. As one arbitrator has noted:

While these categories are of assistance, it is necessary in every case to assess the particular provisions of the collective agreement which the parties themselves have negotiated, and to understand them in the general context of the collective agreement.

However, a lack of reference to benefit plans in the collective agreement may not insulate their application from arbitral review. Such a review may result indirectly from the application of other provisions of the agreement such as, for example, where the agreement contains a general "no discrimination" provision or where an estoppel may be created through representations made at the bargaining table. As well, even where the obligation is met by provision of benefits through a plan which is in accordance with the agreement, the administration of a plan may also be subject to arbitral review as discriminatory and unauthorized by the collective agreement itself.

The objection is based on the Employer's claim that the instant Agreement represents a category 3 situation in the categories listed in *Brown and Beatty*, and thus the grievance is not arbitrable. At Article 20.01, the Agreement reads, in part, as follows:

"In all cases, the provisions of the group insurance plan is (*sic*) set out in the Master Policies. The interpretation, application and administration of the group insurance plan shall be governed exclusively by the provisions of such Master Policies."

Mr. Smith predicted that Counsel for the Union, Ms. Greene, would argue that recent Supreme Court of Canada rulings encourage to take a broad view of their jurisdiction in such circumstances. That is not the case, in the Employer's submission. The Supreme Court, as always, insists that the matter of jurisdiction be tied to the collective agreement.

In the instant Collective Agreement, what the Company has undertaken to provide is the details of the plans as described in Appendix "A". Those promised details are set out in Appendix "A". The Company has not undertaken, under this Collective Agreement, to pay the benefits. Appendix "A" makes this clear (at p. 43), where it expressly says that:

"This document is a summary of the provisions of the Group Insurance Plans as set out in the Master Policies and does not create or confer any contractual or other rights. In all cases, the provisions of the Group Insurance Plans are set out in the Master Policies. The interpretation, application and administration of group insurance plans shall be governed exclusively by the provisions of such Master Policies."

This Collective Agreement, as agreed by the Parties, does not make the Employer liable for the payment of benefits. It is possible to ask whether the plans conform to the requirements of the Collective Agreement. But that is not, in fact, the issue as it is set out in this grievance, and it is not the issue between the Parties. There is no allegation that the benefits set out in the plans do not comply

with what was negotiated.

Eligibility for coverage under the Policies is set out in the plans. The matter, therefore, is covered by the policy and not by the Collective Agreement, since the actual determination of benefits is in accordance with the Policies, as is made very clear in the Collective Agreement itself.

The grievance complains of a failure to pay a short term disability benefit. The Arbitrator has no authority, under this Collective Agreement, to order the Employer to pay that benefit. The single live issue, in the Employer's submission, relates to Article 20.01 and Appendix "A". But that issue, clearly, is expressly described in these two provisions as subject to determination by Great West Life exclusively. Great West Life is not a party to the Collective Agreement. Thus, the Arbitrator has no jurisdiction to order the Great West Life to pay that benefit.

It is noteworthy as well, that Appendix "A" specifically refers (at paragraph 3) to the employee being "actively at work" and that issue occurs again on page 47 (at c.i). The Grievor did not, in fact, return to active employment. So under the terms of Appendix "A" Mr. Vincent is, unfortunately, not entitled to benefits under that provision. Whether he may be entitled to benefits under some other insurance policy, is for the insurer to determine.

The June 16th letter (Consent #34) from Great West Life, addresses the Grievor's ineligibility for the benefit from September 2000 up to December 2009. As the evidence shows, The Employer stopped paying the premiums during this time. Article 20.02 shows that, while Mr. Vincent did retain seniority, the seniority was without benefits other than life insurance.

The Employer's objection is based on the grievance on its face which indicates that this dispute is to be decided on the basis of Appendix "A" and Article 20.01. But these issues fall clearly under category 3 of the Browne & Beatty list of categories. They are not arbitrable, as the jurisprudence supporting the Employer's position will show. Mr. Smith acknowledged there was something of "a comedy of errors" in the circumstances surrounding this matter. There is some confusion in Mr. Wiseman's correspondence. But there is no doubt that the issue must be determined by Great West Life. The correspondence does not affect that fact. The Parties are bound by the fact that the insurance policy governs the issue, not the Agreement.

There are ways in which an appeal can be launched with Great West Life, or even through the courts. The Grievor might be able to take action under the *Accident and Sickness Insurance*

Act (at S30). But this is not a matter for arbitration, notwithstanding the expanded jurisdiction the Supreme Court of Canada has given arbitrators. The Collective Agreement provides the ground for the Employer's objection in its express reservation of Policy-related disputes to Great West Life.

FOR THE UNION, Ms. Greene pointed out that the Agreement is between the Union (CEP) and Corner Brook Pulp & Paper, and that there is no relationship between the CEP and Great West Life except through this Collective Agreement. The grievance has arisen because Mr. Vincent claims a violation of that Collective Agreement.

The Union argues that the objection must be denied, because the Supreme Court has, in fact, ruled that arbitrators do have jurisdiction to deal with matters of this sort. According to the Supreme Court's ruling in *Weber*, unless there is a statement in the Collective Agreement that provides for some other adjudication of a dispute – as there is, for instance, in the Correctional Officer's Collective Agreement – the Arbitrator has jurisdiction.

For the Supreme Court, the issue lies in whether the grievance has its genesis in rights set out in the Collective Agreement. How did Mr. Vincent secure the rights at issue? It is clear, on the evidence, that any rights at issue arise through this Collective Agreement.

The four categories set out in Brown and Beatty (*Canadian Labour Arbitration* (4th ed.) at para. 4:1400) predate the Supreme Court's ruling. The Employer, has argued that this matter falls within category #3, and is not arbitrable, because, in its view the Employer "only provides for the payment of premiums". But in fact this "collective agreement specifically provides for certain benefits" (category #2) in Appendix "A". In the Union's view, the "specific plans or policies are incorporated by reference into" (category #4) this agreement. That is, the specific plans are incorporated by reference in the Collective Agreement together with an explicit description of the benefits secured in collective bargaining that are set out in Appendix "A". Therefore this Agreement satisfies category #2 and/or category #4, but not category #3.

While it is certain that the Employer does not "administer" the plan, it is clear that the Employer has employees who do detailed clerical work related to the plan. As correspondence in evidence clearly shows, there is a deep interplay between Great West Life and Corner Brook Pulp & Paper throughout the procedures involved in managing the fringe benefits.

For instance, in June 2010, Great West Life disallowed the Grievor's claim because, in its view, he was not disabled from performing the work of a Union representative (Consent #21). In correspondence with Great West Life (Consent #23), Mr. Wiseman points out that this is not the job from which Mr. Vincent was claiming to be disabled, and pointed out that the Insurance company was linking its coverage to the wrong job. Mr. Wiseman is clearly dealing with details of this particular claim.

The Arbitrator should also note that there has been a radical change in position between Great West Life's July 19, 2010 denial of coverage (Consent #21) and its very recent (June 16, 2011) revised denial of the same coverage (Consent #34), which sets out entirely new reasons. It is very important that the Arbitrator look carefully at the interplay between Corner Brook Pulp & Paper and Great West Life that leads up to this change, because that interplay between the staff of the Employer and Great West Life eliminates any ground for the Employer's objection here. The Human Resources involvement reflects accurately what regularly goes on between Great West Life and the Employer and the Union in dealing with these fringe benefits. It shows that the Employer is responsible for more than "payment of premiums" as would be the case in a category #3 situation.

THE FIRST UNION WITNESS was the Grievor, Mr. Lindy Vincent, an employee of Corner Brook Pulp & Paper as a "conventional logger" for about 25 years, ten of which was on Union leave. He is 55 years of age. "Conventional logger" is the only employment position he has held with Corner Brook Pulp & Paper. It is a seasonal operation with layoffs normally in November, "but sometimes into December," and recalls in June.

Mr. Vincent had held various Union positions since 1989 with Local 60N before serving as Secretary Treasurer. In 2000 he ran for the position of Secretary Treasurer of the Local, a full time paid position, and was successful. In 2000 he requested, and was granted, leave of absence by the Corner Brook Pulp & Paper. He was off on Union leave for ten years.

Each year I'd have to apply for leave of absence, but after the first three or four years Doug Kendrick changed that. I used to have to go back for one day a year, and after Doug's decision he said that the one day return was 'bull shit'. So after three or four years that ceased... Up until 2005 I did return for one day each year, according to the Collective Agreement requirements... Before 2005 I'd actually go in the woods for that one day each year. It was negotiated out under Article 12.02.

Asked to explain the fringe benefits available to him under the leave of absence, he said:

When I applied, I could retain the benefit, providing the premiums were paid by me, and when I started with the CEP Local they paid the premiums from September 2000 to December 2009; and also they covered the 90 days up to March 2010. Article 20 shows what benefits were covered, including life insurance, accidental death and dismemberment, dental plan, health insurance, and vision care. Short term and long term disability weren't covered. The Union had to get an independent broker to get coverage for short term and long term disability plans. They got those plans with Great West Life.

Mr. Vincent's leaves were for more than the twelve months specified in Article 12.02, but a Great West Life policy for his short term and long term disability was secured separately from Great West Life through a private broker. He confirmed he had also been covered for all the other benefits under Great West Life with the Corner Brook Pulp & Paper. He served as Union representative from 2000 until 2009.

In that period as a Union representative he had helped his bargaining Union members deal with issues arising from the group insurance policies, including the LTD and STD coverage, provided under the Collective Agreement with Corner Brook Pulp & Paper. In helping the membership he was in contact with "everybody other than the janitor at Corner Brook Pulp & Paper." Specifically Mr. Vincent mentioned Mr. Shane Goodyear and Ms. Julie Mosgrove "who helped on several claims." He did not deal directly with Great West Life.

Asked whether it was the Employer or the insurance company that he had dealt with in handling group insurance issues, Mr. Vincent answered: "The company, Corner Brook Pulp & Paper." Asked who administers the policy, in his view, Mr. Vincent answered:

Corner Brook Pulp & Paper... It was Corner Brook Pulp & Paper who would tell the insurance company who was working and who was not, who was on recall or going on weekly indemnity.

Mr. Vincent confirmed that:

In December 2009, there was an election for Secretary Treasurer and ... Yes, I lost. ... There was an email sent to Daniel Giguere telling him the results... As a result of the election I was no longer an employee of the Local 60N as of 7:30 PM on December 4th. The day after the election, I was no longer a Union employee but an employee of Corner Brook Pulp & Paper. But there was no work available for me on December 4th because that was during the seasonal layoff period.

Mr. Vincent said that he understood himself to have recall rights as of December 4, 2009,

as an employee who was laid off seasonally until June when the conventional logging operation would start up again. He also testified that, after December 3, he had not sought work beyond the 20 hours per week allowed under the Collective Agreement.

Asked whether coverage for the fringe benefits, other than STD and LTD, continued with CEP paying the premiums, Mr. Vincent said:

Yes, up to March 2010. For the other policy, privately negotiated with Great West Life and paid for by CEP, I was given the option to pay the premiums by myself and to continue coverage.

Mr. Vincent said he had taken that option, and that it continues "Yes, right up to the present day."

Asked if he had any contact with the Corner Brook Pulp & Paper office after December 4, 2009 when he had lost the election, he said:

Yes, on a couple of occasions I talked to Rod Wiseman: once about my seniority adjustment, which was not then done, and the next one was about recall... I got a call from Rod Wiseman to schedule me for an FCE (Functional Capacity Evaluation) assessment, and I was informed that the assessment was scheduled for May 19, 2010. There had been a couple of conversations before that about the seniority adjustment, but this was the first call about the assessment. When he told me the date, I told him that my family doctor told me that I would not be able to return to work using the power saw. He said, he'd have to check. He then called me back to say that there was no need to, if I was not coming back to work: 'Save a day's pay and the cost of travel over.' ... That's the normal practice with this company; and I was told I owed three months' premium coverage to the Corner Brook Pulp & Paper Company for the benefit coverage up 'til April month. I told Rod that I was supposed to get a form, and then he called back and said: 'Forget about the premium. We'll forget about that.'

Mr. Vincent identified, as LV #1, a form entitled "Corner Brook Pulp & Paper Managing Benefits Form 2008-2009 Woodlands Lay-off". Asked if he had even received a form from Corner Brook Pulp & Paper Company asking him to choose which coverage he wanted to keep, Mr. Vincent answered: "No. There was no mention of the form after that first conversation."

Mr. Vincent confirmed he had received a copy of the "Corner Brook Pulp & Paper Ltd. Woodland's & Thinning divisions statement of benefits" dated June 7, 2010 (C #17). He said: "Yes, that's a Great West Life document." He also confirmed receipt of Great West Life's July 19, 2010 letter (Consent #21) which advised him that his short term disability benefits had been declined.

Mr. Vincent further confirmed that Consent #34, dated June 16, 2011, sets out reasons for denying him the STD benefit that differ from those in the June 19, 2010 letter, (Consent #21).

Mr. Vincent understands that he continues to be covered for the other four fringe benefits under Corner Brook Pulp & Paper's policy with Great West Life "up to the present day".

{Mr. Smith, for the Employer, intervened to point out "for the record" that those fringe benefits "have ceased as of June 16th of this year". He also stated that it is "not in dispute" that the Grievor was covered for the benefits "until June 2011."}

The Grievor also confirmed that the other privately secured policy from Great West Life did not cover him for health and medical benefits at all, so that he is now without any health and medical coverage at all. He had filed the notice of claim with Great West Life (Consent #19) on June 7th, 2010, and that he had received notification (Consent #21) that his short term disability benefits claim had been declined dated July 19th.

They said that, since for the last ten years I've been a Union Rep, they considered that as my regular job, and I was not disabled from that job.

Mr. Vincent also confirmed he had received a November 9, 2010 letter from Great West Life (Consent #29) informing him that Great West Life considered itself "unable to accept claim for payment of benefits" under the private plan he had negotiated through the Union for short term disability, since he was not considered not to be disabled from performing the duties of a Union Representative. Mr. Vincent said he had never received benefits under that private policy.

He confirmed he'd been aware of email exchanges between Mr. Wiseman, for the Corner Brook Pulp & Paper, and Ms. Ginnette Brossard for Great West Life, both dated July 2010 (Consents #22 & #23) concerning his claim.

Yes, I saw both of them... not through Great West Life. I got access through the Union.

Asked why he had filed a grievance dated September 30, 2010 rather than availing of other appeal procedures mentioned in correspondence from the insurance company, Mr. Vincent said: "I guess I put all my faith in the Union, and I'd follow through with that."

Asked to explain his claim that the way he has been treated by Corner Brook Pulp & Paper is properly described as "discrimination", Mr. Vincent said:

Being familiar with the Union's dealings for years, and with some of our members who did get returned to work and STD and LTD always were covered. Mr. J Doe (a pseudonym) he's one with 60N who was on layoff... There was a temporary layoff, and while he was on layoff he became ill. He applied for STD and was approved.

Mr. Vincent then recalled another bargaining unit member who fell ill while he was on layoff and, on recall, he found that he would not be able to do the work.

He applied for weekly indemnity and was approved... I was not afforded the same benefits. I was laid off on a temporary layoff, and when I was recalled – due to be on the 7th of June – but, because I had a medical problem, I was not given the same benefits as other employees of Corner Brook Pulp & Paper.

Asked whether the FCE was a normal procedure, in his experience, Mr. Vincent said:

I would not say it was a common practice, but they have requested a FCE be done for some of their employees, yes.

Asked if he has any idea why he might be treated differently, Mr. Vincent said:

Because of the years as a Shop Steward and as a Secretary Treasurer... I think it is "payback time". Those are my feelings on it... It's because of my Union activity.

Asked whether he had ever spoken directly with Great West Life at any time, Mr. Vincent said he had called "Jeanette B" and asked if the Great West Life position had changed from the July 2010 statement of it. "That was about three and a half or four months ago. She said, 'No.' The company's position was the same as the July 2010 position." Mr. Vincent also testified that he had first seen the June 16, 2011 letter (Consent #34) "Yesterday. I saw it in a conversation with yourself (Ms. Greene)." He confirmed that this was the first time he had seen this rationale for the denial of the Great West Life benefit, and added that he does not agree with it.

ON CROSS EXAMINATION, Mr. Vincent confirmed he was aware that he would lose coverage if he were to work more than 20 hours per week (*cf.*, reference to "Termination of Insurance provisions in the Policy... #7(b)" in Consent #34). He said he was also aware that, under the plan, all but one of the listed benefits are paid for by the company and that he, himself, pays for dental coverage. "That's set out in 20.01." He added that he could opt out after the 90 days layoff.

He also confirmed that his leave of absence was granted under Article 12.02, not under Article 22.01 as stated in his Sept. 4, 2005 letter requesting it (Consent #5).

At that time it must have been done in error. I should have referenced Article 12.02 not 22.01. That is made clear in Shane Young's letter (Consent #6).

He further acknowledged that the leave of absence he was granted was without pay and benefits except as provided in the November 2, 2000 letter (Consent #7) where certain of the benefits are continued provided that he pay the full premium. "Yes, except for LTD and STD." Asked whether he was, therefore, excluded from STD & LTD coverage under the plan, Mr. Vincent answered:

Yes. I guess that I was not allowed the two under the Corner Brook Pulp & Paper, plan but got those two benefits, LTD and STD through a private broker and the Union paid the full premium.

Mr. Vincent's attention was directed to a January 14, 2010 email (Consent #12) about his "maintaining benefits". He said:

I can't recall seeing this... But LV #1 seems to relate to the issue... I was aware that the Union was paying premiums up until March 2010 as indicated in the handwritten note on Consent #12.

Asked where Mr. Healey's Dec. 4, 2009 email to Mr. Giguere about the new President of the Local (Consent #35) informs Corner Brook Pulp & Paper that his own leave of absence is over, Mr. Vincent said:

I did not notify anyone in the company that my leave of absence was to end. I had no idea who Mr. Giguere, was and I was not copied on Consent #35.

He explained that:

The reason I was no longer employed as Secretary Treasurer was not because I lost an election for the position of Secretary Treasurer but because I lost the election for President. But you must remember, please, that we restructured the local.

Mr. Vincent confirmed he had not taken any special steps to inform the company of his situation, and the company was continuing to receive premium payments up to the end of March. Asked whether the Company still viewed him as holding some sort of management position with the Union, he said, "Yes." Asked when he received the Record of Employment (ROE), he said:

I'd say I got it the week after the election... 'shortage of work' was the reason for being unemployed ... Yes, I filed for EI and got it.

Asked whether he had received an ROE Corner Brook Pulp & Paper, Mr. Vincent said, "No. At

the end of the season I get a week's layoff notice from Corner Brook Pulp & Paper." Mr. Vincent agreed that he had not, in fact, been laid off by Corner Brook Pulp & Paper. Asked whether he had ever notified the Company that he wanted to end his leave of absence, he answered:

A week after the election I had a call with Rod about the adjustment of seniority. He knew about my situation, and asked what I was up to.

Asked whether, early in the spring of 2010, he had told Mr. Wiseman that he would have to return to work to be on the recall list, he said, "Yes." His name appears on the April 19, 2010 Recall List (Consent #13). Mr. Vincent said he was not involved in the process or in discussion about that list, "But Union persons would be involved in that. I assume there was consultation." His name did not appear on the June 7, 2010 Recall List (Consent #15). But Mr. Wiseman's June 17, 2010 email to Ms. Bernard (Consent #16) does show Mr. Vincent as among employees who "have been recalled effective June 7, 2010."

Mr. Vincent also had a conversation with Mr. Wiseman about an FCE scheduled for May 19th, but at about that time he provided medical notes (Consent #14), one dated May 6, 2010 and the other May 13, 2010. These were forwarded to Mr. Wiseman by Mr. Vincent and received by the Employer on May 18th. Mr. Vincent did not know when the FCE was cancelled, but does know that: " As of May 6th, I was aware that I would be 'off work'."

Asked why he had secured a second medical note (dated May 13th) Mr. Vincent said it had been because of "requirements for EI and other benefits". He also confirmed that the company has been requesting FCEs from time to time. Asked whether he knows why the company was concerned, he said:

I can recall an incident when they were going to take an Operator and were going to put him back as a Conventional Cutter, but the FCE assessor actually confirmed that he could not do the Cutter job. In my position, ten years with the Union, I'd not be able to do that job as a woodcutter, eight hours a day. It would be an occupational health and safety issue.

Asked if, in his view, the FCE is a "big deal", Mr. Vincent answered, "Not to me it's not, no."

Asked whether the condition preventing him from returning to work in the woods had arisen in 2008, Mr. Vincent said that:

I applied to the private plan sometime in May 2010, I think; prior to applying under the group plan.... Yes, I applied under both plans because the insurance agent explained to me that I was eligible to recover from both plans... I'm telling

you what I was told by the agent: that the private plan would continue to pay even if the group plan paid the benefit.

Mr. Vincent testified he had not appealed Great West Life's decisions to deny the benefit either under the private plan or under the group plan.

Asked if he knows of anyone who was denied benefits, Mr. Vincent named one bargaining unit member, but added that he does not know the details. He is not aware of any occasion on which Great West Life "has denied a claim once a recall was sent out."

Asked, once again, whether the condition preventing his return to work as a Conventional Cutter had begun sometime in 2008, he said:

I may have had the condition, but it got to the stage that I could not go back to a conventional cutter... I'd say that my condition has changed since 2008. My doctor has added an extra inhaler since 2009.

Asked if, in his view, he had the ability to return to the woods as a Conventional Cutter as of May 31st or June 7th: "No, not able to work with the gear, no."

Asked how people are notified about a return to work, Mr. Vincent answered:

Human Resources notifies the contractor that I'd go with, and I'd get a call some time during the week to go to work.

Mr. Vincent said he had not received such a call.

Mr. Smith noted that Mr. Wiseman's June 17, 2010 email to Ms. Bernard (Consent #16) indicates to Great West Life that Mr. Vincent had been recalled. Asked if, in fact, the individuals listed were actually recalled, or whether Mr. Wiseman had made a mistake, he answered:

I don't know if all were. I know some were. I was not recalled by the contractor, no... I don't know if I would call it a 'mistake' or not.

Mr. Vincent also confirmed that he had received a statement of his "Benefits at June 07, 2010" (Consent #17) which includes a note at the bottom that reads:

"This summary is not a legal document and is subject to change. If there is a difference between this summary and the provisions of the group policy, employee application form or change form, the forms and policy provisions will prevail. For more detailed information, please refer to your benefits booklet. If you find a discrepancy in this summary, please contact your plan administrator."

Mr. Vincent also confirmed that the reinstatement of benefits reported in Consent #17 follows the June 17th email from Mr. Wiseman. This is made clear at the bottom line of Consent

#17, which reads "Printed on June 18, 2010", and also confirmed by the Human Resources "received" stamp which appears to read, "06-25-2010". Mr. Vincent testified he had paid no premiums for dental coverage, and there had been no payroll deduction for dental coverage. Asked if he had received a maintenance form, Mr. Vincent answered, "No." Asked if he had been doing work during the preceding period, Mr. Vincent again answered, "No".

Asked whether he would not, therefore, agree that Mr. Wiseman's email was clearly a mistake, Mr. Vincent answered:

I don't know if that is correct or not. While on weekly indemnity you are automatically covered for the first year for those benefits. What Rod Wiseman did is what people down there have been doing for ten years for others. As of June 7th I assumed that I was covered, so why would I think any different.

Asked whether he would not agree that under the general conditions (Appendix "A" at Section 10, p. 50) the employee is required to pay his portion, Mr. Vincent again confirmed that he had paid nothing, and added...

When I got that letter from whoever as of June 7th, why would I wonder? The wife got dental work done on the basis of that... I don't know who (the statement of benefits, Consent #17) came from. I was happy to get it when I got it.

Asked if he would accept that there is a difference between his situation and the situation of those who, he testified, had received the benefit that he is being denied, Mr. Vincent said:

They were working as Conventional Cutters, and may or may not have maintained benefits. But when the recall came out they could apply and be covered.

Mr. Vincent was asked if he would accept that:

- he had been on leave for 9½ years with the Union, and not on a layoff...
- the benefits were paid by the Union...
- he had been laid off from the Union, not by Corner Brook Pulp & Paper...
- it was not until the end of April that he was seen as ending his leave of absence ...
- prior to recall he had told Corner Brook Pulp & Paper that he could not return to work.

Mr. Vincent answered:

I guess someone decided on me, and they are using it, in my opinion, as a Union representative. There is a message and a strong warning for the Union activity.

Asked how, if that were the case, he can explain Mr. Wiseman's documented efforts to represent his interests, Mr. Vincent said: "In some circumstances, I try to represent myself as well."

{The hearing took a short break at this point for Grievor to take medication.}

When the hearing resumed, the Grievor confirmed he has been employed for 25 years with Corner Brook Pulp & Paper, and is presently on medical leave.

He said he does not know of any occasion when Corner Brook Pulp & Paper has paid benefits which Great West Life had denied. "At one time they made advances, but not for years."

Asked whether his grievance is essentially aimed at changing the insurer's, Great West Life's, mind. Mr. Vincent answered, "Yes." Asked what benefits listed in Appendix "A" he is seeking to receive, Mr. Vincent answered, "As of Friday, all of them." When pressed what amount in his view he is due under STD, Mr. Vincent answered, "\$650 weekly".

Asked whether he has ever been "in active employment" (as required in Appendix "A" at page 43), with Corner Brook Pulp & Paper over the last 9 ½ years, Mr. Vincent answered:

Not as a Conventional Cutter since 2005, when I had to do the one day. Under the current Agreement I'm not required to do the one day work... I may have worked one day back in 2004... I did not work, but when I got the result of the election, everyone knew about this. I was finished as of December 3rd... In my actions on behalf of Union members, we would normally contact Corner Brook Pulp & Paper, who would provide the information to the insurance company... No, the administration of the plan is not in the hands of the Corner Brook Pulp & Paper. They are just assisting in helping to see to it that the benefits are available. Yes, it's part of their duties down there.

Mr. Smith pointed out that he understands the Union is alleging that Corner Brook Pulp & Paper is administering the policy. Ms. Greene, for the Union, intervened to say that she had not made such an allegation, but had simply insisted that the situation here being considered falls under Browne & Beatty categories 2 or 4, not under the category 3 as the Employer is arguing.

ON REDIRECT EXAMINATION, Mr. Vincent denied any awareness of any attempt to misinform Great West Life on his behalf, and is not aware of anyone ever having done so. He also testified that he was not aware of Mr. Wiseman's email (Consent #16) being sent to Ms. Bernard, and had been neither consulted nor advised of it. He had played no role and had no knowledge that the Corner Brook Pulp & Paper Company was sending "that list", (Consent #16), to the insurance company. Asked when he had found out about Consent #16, Mr. Vincent answered: "I guess when I got the benefits... I was aware as of Consent #17."

Asked whether he had played any role in generating the document (Consent #17), Mr. Vincent answered, "No." Asked whether it is possible, in the light of Mr. Healey's Dec. 4, 2009 email to Mr. Giguere about the election (Consent #35), that Corner Brook Pulp & Paper might not have been aware he had lost his paid position with the Union, Mr. Vincent answered, "No", and added that he does "not know who Mr. Giguere" is. Asked who was dealing with insurance issues in late 2009 into 2010, Mr. Vincent answered: "Numerous people, on times." Asked who would deal with terminating a leave of absence, Mr. Vincent answered:

I'd say it would be Rod Wiseman... I believe the HR people were watching for the Union election result.

Asked if he has any personal relations with Mr. Wiseman, Mr. Vincent said: "No. I don't have any buddies down there." Asked if the premium costs to Corner Brook Pulp & Paper would increase with increasing payouts, Mr. Vincent answered: "Every year the premiums went up." Asked whether he would have been eligible for recall after the Union leave ended in 2009, Mr. Vincent answered, "Yes."

THE SECOND UNION WITNESS was Mr. Rick Fudge, President of CEP Local 60N since 2000. Prior to that he had worked for Abitibi in Grandfalls since 1986. Mr. Fudge confirmed that his position is paid full time, and that he is not on leave from Corner Brook Pulp & Paper. Asked what the President of the Union has to do with fringe benefits under Article 20, he said:

We interpret the benefits, helping to administer the benefits through the Employer with whom we negotiate the benefits... Article 20 was negotiated... Yes. Last time we went through that clause meticulously, and tried to make improvements.

He also confirmed that Appendix "A" was negotiated in collective bargaining, and "it is not open to the Employer unilaterally alter any of the provisions." Mr. Fudge regards Appendix "A" as part of the Collective Agreement, even though ...

I can not recall any actual improvements to the page 46-47 short term disability clause... I knew there was in long term disability... No changes were made to Clause 6(b) and (c) as they appear in the Collective Agreement.

Asked what he does if a member of the bargaining unit has problems with either the short term or long term disability benefits, Mr. Fudge said:

I normally go to Human Resources. I've been here for ten years. For eight of which, it was very consistently handled. But now, if I had a benefits matter I'd go to Jessica or Ms. Mosgrove... I certainly would not go to Great West Life. The

other day I contacted Great West Life at the request of a member whose health problems gave her difficulty in speaking for herself. That's the only time.

Asked how long it takes to get a response from Corner Brook Pulp & Paper in such cases,

Mr. Fudge answered:

It varies. Sometimes it's quick. It depends on the denial and the binding arbitration dispute if there is a medical denial under Section 10(d) of the Collective Agreement (p. 50). Concerning all the rights to benefits we deal with somebody here. The Collective Agreement items, we normally pick up the phone and call somebody dealing with benefits. There are five or six different people in the past year... They have a claims manager out of head office. It's much needed by Corner Brook Pulp & Paper. Kruger is huge and diversified, and Ms. Lebel is involved in that. She does it well.

Asked whether the Employer asks employees to submit to FCEs, Mr. Fudge answered:

I've seen it a couple of times in the last few years. It happened a couple of years ago... Their own doctors said no. The company thought they were okay, and they were even going to drive them back. They could have gone back on mechanical harvesters. They checked it out with *Fit to Work*, a medical assessment company, and that company agreed with the Company's own doctors that they could not go back on chain saws. Today the Company only sends disabled people, not all the 150 people being recalled. The Company is sending people the Company says are disabled to *Fit for Work* for deselection.

Mr. Fudge's attention was directed to the December 4, 2009 email from Mr. Healey to D.

Giguere, (Consent #35). Mr. Fudge said that:

Mr. Giguere replaced Ms. Couture while she was off on leave. Mr. Giguere would know that Mr. Vincent was no longer Secretary Treasurer, and that I was President; so he was going to be back to work. We had contacts with Corner Brook Pulp & Paper, and during the following weeks we were doing most of the business less formally. More than once I told various administrators that Lindy would be back in the words in the spring. We'd had a discussion about Lindy's seniority, and we talked openly if Lindy was going to be able to do it... We are a woodland's union. I did not deal with mill people that often. Pat Thompkins is the top man in woodland's division.

Mr. Fudge described three or four people who involved with woodlands operations since December of 2009, including Mr. Wiseman, Ms. O'keefe, Ms. Couture, and Mr. Giguere.

It's not like when woodlands had its own Human Resources Manager: not like the days with Shane Young... For sure (Mr. Wiseman knew Mr. Vincent was coming back). Pat Thompkins and they all wanted to know how Lindy was doing, and where he was going, and when he'd be returning to work.

Asked what happens on recall when an employee gets sick in the off season, he answered:

In all my knowledge, some people get sick at work and others during layoff. It is administered that way. They are due the benefit on recall. With the Mr. Doe case, he too was being denied. This is a serious issue: his not getting the benefit because he was on layoff. I've never seen it before. I reviewed the claims. This is the way it's been done. I told Ms. Couture this three months ago. Then Mr. Doe said, 'I got my money today.' So he got his benefit, that was denied by Great West Life, after discussion. He put in the claim after he was no longer on layoff. It was when he realised his injury was not going to get better. He was entitled to be recalled on March 15th.

{At this point the Great West Life officer, who had been subpoenaed to appear, was asked to withdraw from the Hearing.}

Mr. Fudge testified that:

We have many other leaves and, as with Union leave, when they go back to their jobs, the benefits are continued through the vacation leave and still accrue seniority. Seniority was not actually adjusted until the end of the ten years in Mr. Vincent's case; that is, at the end of his leave of absence.

Asked for his view of how Mr. Vincent's case has been handled, Mr. Fudge said:

When he applied and was denied the benefit we were confused by the reply and the denial. We pursued the matter with the Employer, and put in a grievance. I was okay with the process until Friday, when the response to the grievance changed. I could not see 'discrimination', and I told Lindy that, too; but now they are saying that there are no premiums paid. Really, I think there is a travesty here, and they are trying to use a disability or age discrimination and Lindy was decided on the basis of Union involvement. And I'm concerned where this is headed in the last couple of days.

Asked when he had first seen the most recent letter from Great West Life (Consent #34),

Mr. Fudge said:

I saw it on Tuesday. I read it and did not like it. The insurance company still does not know why they are denying him. Nonpayment of premiums (raised in Consent #34) has never been a problem, or the over twenty hours (also raised in Consent #34). That's not fair treatment going on.

Noting that the letter (Consent #34) refers to "a request from... Kruger" for "a review" of Great West Life's "assessment" of Mr. Vincent's status, Mr. Fudge said he had not seen a copy of that request.

No. I was asking for a review. I spoke to Ms. Couture and to Mr. Wiseman and to Mr. Thompkins. It's a normal part of the grievance procedure to explore the issue.

That way we often correct these issues in the past... and then this response... Kruger says the 'Great West Life position is our position.'... Over the last ten years there's been a heavy investment by lots of people. A lot of them are over-worked. We're all running around with our heads cut off. I can give you loads of instances. Particularly benefits are a problem with inconsistency. We have been correcting inconsistencies. Everybody down there is overworked. I'm helping them manage their own benefits. We want people treated fairly and consistently. It works best for me.

ON CROSS EXAMINATION, Mr. Fudge agreed with Mr. Smith that, under the Collective Agreement, the Corner Brook Pulp & Paper Company does have a role in administering the Collective Agreement. He also confirmed that when the Corner Brook Pulp & Paper Company administers the Collective Agreement it must look at that Collective Agreement and decide what it says... Mr. Fudge agreed Great West Life makes decisions concerning the insurance policies:

Yes, for medical reasons, yes; but not, in my experience, about administration. The Company has always been on the hook.

Mr. Fudge identified as RF #1, a letter from Great West Life to another bargaining unit member dated February 24, 2011 advising that his "short term disability benefits have been accepted to January 2, 2011" and explaining the insurance company's reasoning. He said:

Originally he was denied. The Great West Life originally said 'No'. Then they said 'Yes for the period from November 15th until January 6th.'

Mr. Fudge acknowledged that Great West Life was the one who made the decision in both cases.

At that point they were making the decisions... We do not deal with Great West Life outside of the medical. We deal with the Employer. (On the one occasion I made a contact with Great West Life, I was simply reporting what the employee wanted said.) With reference to RF #1, they changed their mind in light of... their error in administering the file.... Clearly Mr. Wiseman did raise issues with the insurance company for Mr. Vincent... Somebody at Great West Life got it; hence Consent #34... The Corner Brook Pulp & Paper company has the ability to administer to a point. They pay the premiums, and have the advantage of asking to help direct Great West Life to administer its policy, rightly or wrongly. Up to now, Corner Brook Pulp & Paper has not pressed to have that clear report, especially in view of Friday's letter which still supports their position.

Asked why he thinks Corner Brook Pulp & Paper can tell Great West Life what to do, he said:

Corner Brook Pulp & Paper buys from Great West Life, and there is a business relationship between the two. And yes, they do have the ability to say to Great West Life, 'You have done wrong. Fix it. You need to accept that claim.'

Asked if Mr. Fudge has any evidence that Corner Brook Pulp & Paper directed Great West Life to deny the claim, Mr. Fudge answered: "No, I don't have any direct evidence." Asked if he is aware that Consent #34 mentions an appeal option and Mr. Fudge answered: "Yes, as does Consent #21." Asked why Mr. Vincent and the Union had not appealed, Fudge said:

We use appeals for medical issues. This was a wrongful decision, so we put it on the table with the Employer and then on to the grievance procedure.

Asked whether there was ever a case when the Corner Brook Pulp & Paper Company has paid a benefit which insurance company has denied, Mr. Fudge answered:

No... We did get cash advances. We had that happen this winter. He had been denied and, pending the decision, he was advanced... under Appendix "A"...

Mr. Smith pointed out that Appendix "A" specifies in its preamble, that:

"The company agrees to modify its group insurance program and will make the following amendments to its insurance policies..."

Mr. Fudge confirmed that he understands all the amendments set out in the remainder of Appendix "A" were made:

I think that it all got done and there may be other changes that got done. What we agreed was added to the plan, yes.

Mr. Fudge also answered questions about who was responsible for woodlands Human Resources issues over the last couple of years, and noted that Ms. Couture has been responsible from December 8, 2010 onwards, but added that: "We have evidence of Mr. Wiseman dealing with it after that."

Asked if he would agree that Mr. Vincent did not, in fact, lose his benefit because he was on layoff, Mr. Fudge answered:

He was on layoff because of being on long term leave. I don't know why he lost his benefit... We purchased the benefit. What he was not entitled to because of temporary layoff I don't know. The issue is that he was on temporary layoff as of December 4th.

Asked whether Mr. Vincent had actually lost the coverage because he was on leave of absence, Mr. Fudge answered, "He became an employee like any other employee as of December 4th."

ON REDIRECT EXAMINATION, Mr. Fudge again commented on Section 10(c) of the Collective Agreement (p. 50) and confirmed that Mr. Vincent was on temporary layoff from December 4th onward.

The Employer called no witnesses.

ARGUMENT

FOR THE EMPLOYER, Mr. Smith noted that the issue before the Arbitrator is important to both Parties, and ultimately of very real importance to Mr. Vincent, himself. It is critical to the Employer, not because it involves Mr. Vincent, but because of whether, the grievance, as it is stated is arbitrable. Mr. Smith cited the *Labour Relations Act* (RSNL 1990) at S 86.(1) where "arbitration" is linked to "those differences" that "arise out of the interpretation, application, administration or alleged violation of the agreement..." In the instant matter, in the Employer's view, the "difference" arises with the provider of the benefit sought, Great West Life, not with the other Party to "the agreement", Corner Brook Pulp & Paper.

Mr. Smith suggested that there are two ways of reading the grievance (Consent #2). Is the Grievor is making his claim about the STD insurance policy, or is it about a benefit under the Collective Agreement? The Union has not really made it clear.

Mr. Fudge said that the changes to the policy as set out in Appendix "A" do exist, and that the changes have been made, and that the benefits are in place. But Mr. Vincent says that the grievance asks the Arbitrator to determine an entitlement of a specific benefit provided for in that policy. He wants \$650 per week under that STD plan provided by Great West Life.

The Employer's objection is that, while the Collective Agreement provides jurisdiction to an Arbitrator to review matters that are remedial under that Agreement, the Great West Life insurance company is not a Party to that agreement. The Arbitrator lacks jurisdiction to interpret the insurance plan, and certainly lacks jurisdiction to make an award binding on Great West Life.

The Union appears to argue differently, claiming that, under Article 20.01, the plan is incorporated by reference into the Collective Agreement, and therefore the grievance falls either in category 2 or category 4 of the list set out in Browne & Beatty at paragraph 4:1400. In the Employer's view, the matter falls squarely into category 3, as not arbitrable.

Mr. Smith directed the Arbitrator to a decision of the December 1999 Decision of the *Court of Appeal for Ontario, London Life v. Dubreuil* (2000), Carthy, Goudge, & O'Connor JJ.A. 190 DLR (4th) 438 and to a Nova Scotia arbitration decision *RW/CAW Canada, Local 1015 and Pepsi Bottling Group, Calvin Williams, Grievor* Dec. 2001 Innis Christie, Arbitrator.

The Union claims that the Arbitrator has jurisdiction, both under its reading of Brown & Beatty and the Supreme Court's expansion of jurisdiction. But even if the plan is incorporated by reference, there is also, within the Collective Agreement itself, a provision specifically about who administers the plan under Article 20 and under Appendix "A". The Collective Agreement states unambiguously that the matter is administered by Great West Life. That is the question of law that the Arbitrator must determine.

If Mr. Vincent is right, and the question is whether he should be granted a \$650 benefit, then the Collective Agreement makes it very clear that the Arbitrator's jurisdiction does not extend to determining that matter. That question is for Great West Life to determine since there is clearly no right in the Arbitrator to interpret its policy. The determination of disputes arising out of medical issues is addressed in the Collective Agreement under Appendix "A" at Section 10(d). That is clear on the face of the agreement.

There are, therefore, two levels at which this objection must be sustained. First, the Great West Life company is a third party and not subject to the Arbitrator's jurisdiction. Second, the Collective Agreement explicitly says that it is Great West Life that will actually determine the eligibility for benefit and the extent of benefit.

There is also a secondary issue in law; that is, Is Mr. Vincent's claim to a \$650 benefit as of 2008 is justified in view of the Appendix "A" paragraph 6(c). The Union has insistently tried to argue that the Corner Brook Pulp & Paper Company is administering the plan, but there is no evidence to indicate this and none to support it. Administration is not a matter of record keeping such as in evidence in management of seniority forms or in productivity records. The Agreement does not require the Employer to provide forms to facilitate production.

Corner Brook Pulp & Paper does pay the premiums and has an interest in seeing to it that the purchased benefits are provided. Mr. Fudge actually testified that it is unusual for him even to get involved with matters like the stresses and strains of fighting for benefits. Article 20.01 sets out what the relationship is between the Employer and Great West Life. If that constitutes incorporation by reference, then the Arbitrator does have possible jurisdiction. But even if it is incorporated by reference, the Collective Agreement makes it very clear that the Arbitrator can not meddle in the policy or in the medical aspects of the issue.

Mr. Smith also pointed out that the matter at issue is fundamental to the jurisdiction of arbitration. Arbitral jurisprudence makes it extraordinarily clear that the jurisdiction under which an arbitrator remains seised of a matter arises from the Collective Agreement. The *Labour Relations Act* 1990 at sections 86 and 88 make this very clear. That is the root of the issue, as is made clear in the arbitral jurisprudence and in the Courts.

Mr. Smith invited the Arbitrator to review *RW/CAW v Pepsi Bottling Group* (pp. 12 - 16). This case, arbitrated by Innis Christie, is to be differentiated from the *Weber* case. The Arbitrator should review both very carefully. The Arbitrator does not require access to the plan to determine whether the policies were, in fact, maintained in force as required.

The Arbitrator does not have "*in personam*" jurisdiction as described in paragraph 39 & ff of the Supreme Court of Canada Decision in *Concordia University & Concordia University Faculty Association v. Richard Bisailon et al.* LeBel J. *et al.* (Bastasache *et al.*, dissenting). This Supreme Court ruling actually supports Arbitrator Christie's approach, and the Employer's view that the objection must be sustained under provisions of the Collective Agreement, because an Arbitrator cannot provide Mr. Vincent the benefit he seeks.

It is equally clear that neither the Union nor the Employer want to have denials arbitrated. Nor does the Supreme Court order this. The Supreme Court does not want the Arbitrator telling the Employer to pay denied benefits. Under the *Occupational Health and Safety Act Regulations* (2009) at S 26.(1), for example, the courts have jurisdiction where it is a question of a worker...

with a medically documented physical or mental impairment... assigned to work where those impairments endanger the health and safety of that worker or other workers.

The arbitrator lacks the required exclusive jurisdiction.

FOR THE UNION, Ms. Greene argued that there is no lack of clarity in the Union's position. The only ground on which Mr. Vincent has any rights under the policy with Great West Life is that he is a member of the Local 60N of CEP certified to Corner Brook Pulp & Paper. That is the heart of the matter as the Supreme Court of Canada has determined it.

There is no doubt about what the Grievor wants. He wants \$650 a week pursuant to the provisions of the Collective Agreement. The Union wants the Grievor paid short term disability benefits. The Union wants the short term disability provisions of the Collective Agreement

honoured. The Union is perfectly content with the language of this Agreement. The definition of the grievance appears at Article 8.03 and in Article 20. There is no ambiguity about where the difference lies. It lies between the Union and the Employer as the two Parties to the Agreement

The Supreme Court of Canada in *Weber v. Ontario Hydro La Forest, L'Heureux-Dube, Sopinka, Gonthier, McLachlin, Iacobucci and Major JJ, 1995* has made it clear that arbitrators should look to the genesis of a grievance and determine whether it lies within the Collective Agreement or not. Mr. Vincent's right to the Great West Life benefits he claims arise in the Collective Agreement. Since 1995, under the *Weber* judgement, the Supreme Court has told Mr. Vincent to take his issue to arbitration. *Weber* (at para 43) makes this very clear as it does also at paras 50, 51 and 52. (The Arbitrator should look particularly at paragraph 52.) There is no reason for the Arbitrator to look at the Great West Life policy documents. The Agreement is all that is required.

The Union presented a number of other drawn from the Arbitral Jurisprudence for the Arbitrator's consideration, including: *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners* [2000] 1 S.C.R. 360; *Supreme Court of Canada, Allen v Alberta, March 2003*, McLachlan C.J. & Iacobucci, Major, Bastarache, Binnie, Arbour; *Supreme Court of Canada Vaughn v. Canada* [2005] 1 S.C.R.; *Linden Welding & Fabricating Ltd., v International Assn. of Bridge, Structural, Ornamental, & Reinforcing Iron Workers Shopments' Local 712 (Entitlements Benefits Grievance)*, 2009 Dalton L. Larson, Arbitrator; *Supreme Court of Canada Concordia University & Concordia University Faculty Association v. Richard Bisailon et al. LeBel J. et al. (Bastarache et al., dissenting)*.

That this matter is arbitral is very clear in *Weber*. There is no other dispute resolution mechanism available to the Grievor, since this is not a medical issue. Browne & Beatty para 4:1400 also deals with the issue of discrimination, and the Arbitrator should pay attention to it. It is clear from the evidence that Mr. Vincent is owed the benefit. The level of confusion around this matter also requires adjudication as to the issue of discrimination. The Union urges the Arbitrator to resume the hearing and hear evidence and argument on it merits.

IN REBUTTAL ARGUMENT, Mr. Smith argued that the Union has now effectively raised a new issue involving the *Human Rights Act's* requirement that an Employer accommodate. The

issue in this grievance does not implicate any of the grounds prohibited under the *Human Rights Act*. There is no age discrimination at play. No evidence was led to justify it. On Mr. Fudge's own view, the issue of discrimination is without merit. Mr. Smith suggested that discrimination has no merit on its face, and cited the Supreme Court of Canada in *Central Okanagan School District No. 23 v. Renaud* [1992] in support of the Employer's position on accommodation and discrimination. There was no hint of discrimination at all, either under age or union activity. The Employer has done all it could do to provide the appropriate information to Great West Life. The June 16th letter (Consent #34) makes the connections.

The Arbitrator should look at the clear words of the Collective Agreement and be guided by them. The Employer's obligation under the Collective Agreement was to modify the plan. That does not mean that it has the responsibility or liability to provide the benefits if they are denied by the insurance company. The Appendix does not provide a substantive right to the Grievor, but directs that matters be resolved through consulting the master policy. The Union says there is no available dispute resolution mechanism, and therefore the Grievor's concerns must be addressed through the Collective Agreement. But Consent #s 21 & 34 both direct the Grievor to an appeal process, which he is invited to use.

In reviewing all the jurisprudence put forward by both Parties, the key issue that emerges is to determine what the Parties were looking for. That is what grounds the grievance. In this case, the Arbitrator simply does not have jurisdiction to provide the relief that the grievance as it is framed seeks. Therefore, it is not arbitrable under the Browne & Beatty schedule of categories or under the Supreme Court's ruling in *Weber*. The *Concordia* case, advanced by the Union, actually supports the Employer's position.

CONSIDERATIONS

At issue between the Parties is the Employer's objection that, by virtue of the provisions of the Collective Agreement and the direction of the Supreme Court of Canada, the Arbitrator is without jurisdiction to hear the grievance as presented (Consent #2).

The Employer argues that the settlement the Grievor seeks is not in the Arbitrator's jurisdiction to provide. Corner Brook Pulp & Paper is not contractually obligated by the instant Collective Agreement to "provide ... insurance benefit." Thus, the Employer, relying in part on Brown and

Beatty *Canadian Labour Arbitration* (4th ed.) at para 4:1400, and on a line of Jurisprudence that draws on the award of Arbitrator Innis Christie in *RW/CAW Canada, Local 1015 and Pepsi Bottling Group, Calvin Williams, Grievor* Dec. 2001, argues that the Arbitrator is without jurisdiction both because the settlement, as specified in the grievance, is not within his power to grant, and because the Collective Agreement expressly and repeatedly makes Great West Life "exclusively" responsible for the administration of the benefits and their provision.

The Employer also urged the Arbitrator to dismiss any claim of discrimination as without merit and contradicted by evidence already tendered.

The Union, relying principally on *Weber* and the line of Court decisions and awards that flows from it, argued that, since 1995, the Supreme Court of Canada has directed Arbitrators to examine the genesis of disputes like this one, and to assume jurisdiction if its genesis and the essential character of the difference at issue lies within the Collective Agreement. In the instant situation the Grievor would have no claim to benefits from Great West Life but for the fact that he is covered by the Union's Collective Agreement with Corner Brook Pulp & Paper.

The Union also argued that there is no lack of clarity in either the Grievor's testimony or in its articulation of the Grievor's position. The Grievor wants the benefit to which he is entitled by virtue of his membership in the bargaining unit certified. That is what the grievance says.

The also evidence shows that the Employer is intimately involved in the process that secures provision of that benefit, which shows that this is not a Brown and Beatty category #3 issue. It is not the Great West Life policy, plans, or administration that the Arbitrator must examine. It is the Employer's behaviour that is at issue. As the evidence shows, that behaviour is marked by so many confusions that discrimination is a concern.

In the Union's view, the Employer's objection must be overruled, and the Arbitrator proceed to hear evidence and argument on the merits of the case.

The Questions I must, therefore, settle in order to decide the objection are:

1. Where does the difference lie? That is, does the grievance, as it is presented in the grievance form, (Consent #2) , make a claim about administration of the STD Insurance plan or policy, or about a Collective Agreement provision?
2. Does the grievance fall, as the Employer claims it does, into Brown and Beatty category #3?

3. Does the confusion described and documented in evidence provide credible grounds for a allegation of discrimination?

Question #1 Where does the difference lie?

The grievance as stated:

The Collective Agreement requires at Article 8.03 that:

A grievance under the provisions of this Agreement is defined to be any difference including the degree or extent of disciplinary action between the parties or between any one of the employees and his Employer covered by this Agreement, involving the interpretation, application, administration, or alleged violation of any of the provisions of the Agreement. It is understood that the procedure relating to grievances hereafter described is between Corner Brook Pulp and Paper Limited, the Union and the employee concerned.

I must point out that, in considering this issue, I am aware of the importance attached by this particular Collective Agreement to "specific questions as submitted". Article 8.07 reads:

It is understood that the function of the Arbitration Board shall be to interpret and apply this Agreement, and that it shall deal only with the *specific questions as submitted* and shall have no power to alter, add to, or amend this Agreement. (emphasis added)

The "Statement of Grievance" reads: "The company is not providing the employee the Insurance benefit as negotiated (*sic*) in the Agreement REF Articles 20:01 and Appendix A..." The "Settlement Desired" reads: "The Company recognize the employee preauthorized leave, under classification as meeting the condition of his own occupation in APP. A and that the company provide this employee the negotiated (*sic*) insurance benefit."

The wording of the Statement of Grievance suggests its focus is the Collective Agreement that the Parties negotiated ("negotiated") in the two provisions cited:, *viz.*, "...Articles 20:01 and Appendix A..." But this focus becomes somewhat blurred for me when I read the statement of "Settlement Desired".

This asks that "The Company" do something. Given the nature of the document and the content of the Statement of grievance, I am initially inclined to understand "The Company" to mean "Corner Brook Pulp & Paper". But if that is so, I have difficulty understanding the phrases specifying what the grievance is requesting "the Company" (Corner Brook Pulp & Paper?) to do.

First, what does it mean to "... recognize the employee preauthorized leave, under

classification as meeting the condition of his own occupation in APP. A..."?

In the light of the testimony and documentation in evidence, I understand this to mean that the grievance asks that the Grievor's work during his long period of union leave from work within his Conventional Cutter "classification", be "recognised" by "the company" (Corner Brook Pulp & Paper?) as fulfilling an occupational requirement set out in Appendix "A" ("meeting the condition of his own occupation in APP. A.")

When we examine Appendix "A" to find what "condition of ... own occupation" the grievance might be referring to, we see that references in Appendix "A" to any "condition" relating to an employee's "own occupation" occur in the BENEFITS - SUMMARY Section 6(a) (p. 46) and 7(a) (p. 47). Section 6(a) addresses "SHORT TERM DISABILITY". It reads, in part:

- a) Effective January 1, 2003, \$585 per week for any disability that commences on or after the above specified date that prevents an employee from performing his own occupation for a maximum period of fifty-two (52) weeks. (emphasis added)

Section 7 addresses "LONG TERM DISABILITY". It reads, in part:

Long Term Disability benefits will commence at the later of 52 weeks of disability or expiration of Short Term Disability benefits, provided the employee is still disabled due to illness or accident.

- a) The employee will qualify if his disability prevents him from performing the duties of his own occupation. (emphasis added)

I conclude that the that the grievance is here asking the "company" (Corner Brook Pulp & Paper?) to "recognise" the Grievor's approximately 9.5 years as Secretary Treasurer of Local 60N as fulfilling his "Conventional Cutter" occupational requirement as it is specified in Section 6(a) of Appendix "A". I conclude, from the testimony and documentation in evidence, that this request is being made in order that the Grievor can be eligible for the STD benefits that Great West Life had denied on June 19, 2010, based on the fact that he "... did the job of Union Representative for the last 10 years...." (Consent # 21).

The Collective Agreement makes it unambiguously clear, however, in Appendix "A" itself and elsewhere, that the Corner Brook Pulp & Paper company does not determine such matters of "administration" such as "recognition" based on the Collective Agreement, but that:

"...In all cases, the provisions of the Group Insurance Plans are set out in the Master Policies. The interpretation, application and administration of Group Insurance Plans shall be governed exclusively by the provisions of such Master

Policies." (Preamble to Appendix "A". Cf. Article 20.01)

But I have been appointed Arbitrator under the instant Collective Agreement between Corner Brook Pulp & Paper and CEP Local 60N, not under any "provisions of such Master Policies".

I conclude that, at least in this first portion of the "Settlement Requested", the grievance in fact addresses its request for recognition, not to the Corner Brook Pulp & Paper "company", which is not empowered by the Collective Agreement to effect such recognition, but to the Great West Life "company", whose "Master Policies" are expressly declared by the Agreement "exclusively" to govern the "interpretation, application and administration...". I note that Consent #21 shows Great West Life exercising "administration" on precisely this recognition issue.

I conclude that, under this Collective Agreement, the only "company" that the grievance as composed can reasonably be addressing on this insurance-related administrative recognition request is Great West Life, not Corner Brook Pulp & Paper.

Second, I must determine what is meant by the second action "desired" in the concluding clause in the "Settlement Desired". It reads "... and that the company provide this employee the negotiated (sic) insurance benefit".

Given my finding, immediately above, on the meaning of the first clause in this portion of the grievance, and observing consistency as a standard canon of construction, I conclude that this clause states the "desire" that the Great West Life "company" provide the "negotiated (sic) insurance benefit".

But as Arbitrator appointed under this Collective Agreement, which expressly requires that Great West Life's "Master Policies" govern such matters, I have no jurisdiction to order Great West Life to provide, or not to provide, anything.

So, to answer the first question ("Where does the difference lie?"), I find the "difference" – , as that term is used in Article 8.03 – set out in the statement of grievance (Consent #2) and made precise in the "Settlement Desired" portion, lies not between the Union (CEP Local 60N) and the Employer (Corner Brook Pulp & Paper), but between Mr. Vincent and Great West Life.

I believe that this finding is supported by the Supreme Court of Canada in *Weber* (particularly at para #s 43, 45, 51 & 52) and in *Concordia University* (particularly at para #s 29-41) and in *Regina Police* (particularly at para #s 25 & 30), as well as by Arbitrator Christie in

RW/CAW Canada, Local 1015 and Pepsi Bottling Group.

Question #2 Does the grievance fall into Brown and Beatty category #3?

Category #3 is characterised by Brown and Beatty, in para 4:1400, (quoted in full on p 8-9 above) as follows: "... the collective agreement ... in the third... only provides for the payment of premiums."

I note that the testimony and documentation provided in evidence reveals considerable activity on the part of several Corner Brook Pulp & Paper Human Resources personnel in respect of the fringe benefits described in the Collective Agreement. I note too that the Agreement provides, in the first main section following the preamble of Appendix "A" reads as follows:

"PREMIUMS

Unless stated otherwise, premiums for the benefits are paid by the Company."

I conclude that this Collective Agreement is one in which the Employer "provides for the payment of premiums." But is that all the Employer is required to do in respect of such benefits under this Collective Agreement? I note that Article 20.01 provides that:

"The Group Insurance Plans will be maintained in force for the term of the present Collective Agreement."

Clearly payment of premiums makes the Employer the "policyholder", and constitutes a central aspect in its seeing to it that the "Plans will be maintained in force". Documented testimony in evidence shows that the Company, as the "policyholder", also acts in other instrumental ways to "maintain" the "Plans". This is documented in Consent #34, which reads in part, as follows:

June 16, 2011

Mr. Lindy Vincent P.O. BOX 239
Triton, NL AOJ IVO

Dear Mr. Vincent:

RE: KRUGER INC.

Your Group Plan Number 156950 (the "Policy")

Your Employee ID Number E-581

We have received a request from the policyholder, Kruger Inc, to review our assessment as outlined in our letter of July 19, 2010.

Given this request we have reviewed your claim in its entirety. Based on the information we have received to date, it remains our position that disability benefits are not payable. We have, however, determined our initial decision should have been based on termination of insurance provisions contained in the Policy rather than the definition of disability. The following explains our position:

The Termination of Insurance provisions in the Policy include that insurance for an employee terminates on the earliest of the following dates:

1. the date this policy terminates;
2. the due date of the first premium to which he has not made a required contribution for employee coverage;
3. the date he ceases to be in an eligible class;
4. the first day of the month coinciding with our next following the date he reaches the long term disability maximum age shown on the Table of Benefits;
5. for life insurance, short term and long term disability income insurance, the date he ceases to be an insurable employee;
6. for all other coverages, the last day of the month in which he ceases, to be an insurable employee;
7. for all coverages except life insurance, short term and long term disability income insurance, the last day of the month in which he ceases to satisfy the actively at work requirement.

If he is not at work because of disease or injury, temporary lay-off or leave of absence, this date will be extended to the earliest of:

- a) The date the employer stops paying premiums or otherwise determines that insurance has terminated. This date must be determined on the same basis for all employees in like circumstances....
- b) The date he starts to work in another job more than 20 hours per week, except in an approved rehabilitation program...

The information obtained from Kruger Inc. provides that you were actively working on a full-time basis as a Union Vice-President since 2000. Therefore, even if disability premiums had been paid while you were on a leave of absence, your insurance would have terminated when you commenced working as Union Vice-President for more than 20 hours per week as per 7(b) above.

Based on the above contractual provisions it is our position that your disability benefit coverage terminated well before date of disability being claimed in 2010 due to non-payment of premium or your commencement of other work.

Appeal option

We would be pleased to review your claim again if you do not agree with this decision and want to appeal. Our appeal process is designed to encourage early appeals to bring resolution to claims in a timely matter. We ask that, if you plan to appeal, please do so by July 19, 2012. You can send the appeal to the address below....

I conclude that the Employer's obligation to pay the premiums, defining the Employer as the "Policyholder", is consistent with the Employer's general obligation, spelled out at Article 20.01, to ensure "The Group Insurance Plans will be maintained in force..."

I am also persuaded by the testimony of both the Grievor and the Union Local President, Mr. Fudge, that the evidence presented about the actions and correspondence of various Human Resources personnel is consistent with the Employer's Collective Agreement responsibilities to "maintain the Plans in force." Some of those efforts seem to have been less effective than others, and I note Mr. Fudge's testimony about some personnel being "overworked" on occasion, with some lack of consistency as a result.

But I do not find any evidence that the Employer is either bound by the Agreement – or has actually undertaken – to do more with the "interpretation, application and administration" of the benefit plans than to pay the premiums and consequently "maintain them in place" as the "Policyholder" in the clerical sense of that term, as described in testimony and documentation.

I note further, however, that the Union insistently argued that the facts of this case show that the Grievor's only rights in this matter arise from his being a bargaining unit member of CEP Local 60N, which is certified to the Corner Brook Pulp & Paper company. Thus, he would have no relationship with Great West Life but for the Collective Agreement between these two parties.

I accept this description of the situation as accurate, but it does not determine the issue. The fact is that the Collective Agreement that binds CEP and Corner Brook Pulp & Paper also expressly shows that these two Parties have agreed that Great West Life's "Master Policies" shall govern the administrative recognition issue before me.

I also note that the Union, relying in part upon Supreme Court of Canada in *Vaughan*, argued that there is no other independent adjudication available if the Arbitrator finds himself without jurisdiction in the instant matter. With respect, I am not convinced that this is precisely accurate. I note evidence (Consent #s 21 & 34) that there is an appeal process available, and also that the Supreme Court of Canada in *Vaughan* reviews (at para #21 ff) the residual jurisdiction of the courts in such matters.

Thus, on the basis of the Collective Agreement before me and of the evidence provided, I find, with respect, that this grievance falls squarely into Brown and Beatty category #3. I find

nothing in the Collective Agreement itself, or in evidence of the Employer's actions, that indicate that this matter falls within the Collective Agreement "either expressly or inferentially" (*Weber*). (Supreme Court of Canada in *New Brunswick v. O'Leary* at para #6)

I believe this finding is supported by the Supreme Court of Canada in *Allen V. Alberta* (particularly at para # 15) and in *New Brunswick v. O'Leary*, and by the *Linden Welding* award.

Question #3 Does evidence provide credible grounds for a allegation of discrimination?

The evidence shows confusion and mis-communication; but I do not find any credible ground, in the evidence provided, to find that discrimination is a genuinely probable factor in the Employer's actions. I am aware of the Grievor's testimony in this regard, and note, in particular Mr. Fudge's comment about what he finds disturbing in the most recent letter from Great West Life (Consent #34). That the letter appears to raise questions that may, in light of the whole fact situation, need to be asked. But, when viewed in the context of the testimony and documented evidence provided it is not persuasive, in my view, of a credible allegation of discrimination.

I find that I am not able, on the basis of the evidence before me, to retain jurisdiction on the sole basis of unsupported allegations of discrimination.

DECISION

Based on the foregoing considerations, I find, therefore, that

The Employer's objection is sustained.

I am without jurisdiction to hear the matter as grieved.

Respectfully submitted as the Decision of the Arbitrator.

John A. Scott, Ph.D.
Arbitrator

August 10, 2011