

LABOUR RELATIONS CODE
(Section 84 Appointment)
ARBITRATION AWARD

COMMUNICATION, ENERGY AND PAPERWORKERS UNION, LOCAL 76
UNION

CATALYST PAPER (POWELL RIVER DIVISION)
EMPLOYER

(Re: Retirement Benefits)

Arbitration Board:	James E. Dorsey, Q.C.
Representing the Union:	John D. Rogers, Q.C.
Representing the Employer:	Robert A. Sider
Dates of Hearing:	November 27; December 1 - 2, 2010
Date of Decision:	December 17, 2010

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1. Grievance, Board Declaration and Deferral, and Jurisdiction

[1] In the 1970s, when the Powell River mill was owned by MacMillan Bloedel Limited, it was the largest industrial complex of its kind in the world. Today, the mill is owned and operated by Catalyst Paper, a successor employer to MacMillan Bloedel and other intervening owners since 1998. Weyerhaeuser Company Limited purchased MacMillan Bloedel in 1999.

[2] In October 2009, Weyerhaeuser announced cost saving changes to the payment of health care benefits for MacMillan Bloedel and other retirees. It froze the amount it pays for B.C. Medical Services Plan (MSP) and extended health care premiums at 50% of the cost at January 1, 2010 for current and future retirees. “The amount Weyerhaeuser will contribute will be capped at 50 percent of the January 1, 2010 costs.” At the time, MSP monthly premiums, which had not increased since 2002, were to be increased effective January 1, 2010 and it was anticipated there would be future annual increases. Weyerhaeuser informed affected retirees: “In future years, when there are increases in premiums, you will pay the full amount of all increases.”

[3] On November 18, 2009, the union grieved Catalyst Paper breached its collective agreement obligation to pay the full cost of MSP and extended health benefit premiums to retired union members, regardless who was their employer at the time of retirement.

[4] Catalyst Paper denied the grievance saying the retirees affected by the Weyerhaeuser decision were covered by the Weyerhaeuser retirement plan and not the current Catalyst Paper retiree benefit plan, which it acknowledges applies

to retirees since 1998 who had been employed by Pacifica Papers Inc., Norske Skog, NorskeCanada Limited and Catalyst Paper. The employer says MacMillan Bloedel employees who retired before 1998 are not covered by the collective agreement and it has no responsibility to provide benefits to those retirees, their spouses or their dependents.

[5] The union applied to the Labour Relations Board for a determination of the employer's obligations. The Board declared Catalyst Paper to be a successor employer to MacMillan Bloedel, but deferred to arbitration for determination of the rights under this collective agreement and the collective agreements between the employer and CEP, Local 1 at Powell River and CEP, Locals 592 and 686 at Port Alberni.

I declare the Employer is bound by its predecessors' collective agreement obligations. Those obligations include rights that were enforceable against MacMillan Bloedel pursuant to grievance arbitration. The Employer is presently bound by those same obligations by virtue of its status as the successor to MacMillan Bloedel.

The parties differ about whether MacMillan Bloedel assumed an obligation enforceable under the grievance arbitration procedure, to provide the retiree benefits as claimed by the Unions. They also differ about whether the MB Retirees lost the right to claim existing retirement benefits (if any) against the Employer by electing to continue the receipt of benefits under the plan administered by MacMillan Bloedel and later Weyerhaeuser. The Board defers to arbitration under the Unions' respective collective agreements for the resolution of those disputes. (*Catalyst Paper (Port Alberni Division)* [2010] B.C.L.R.B.D. No. 94 (QL), ¶ 49 - 50)

[6] The union and employer agree I am properly constituted as an arbitrator under their collective agreement and the *Labour Relations Code* with jurisdiction to finally decide the merits of the grievance. The employer emphasizes my jurisdiction is limited to the terms of the collective agreement.

2. MacMillan Bloedel Post-Retirement Benefits

[7] Retired employees are not employees entitled to separate representation by a bargaining agent under the *Labour Relations Code*, but it is permissible for a union representing active employees of an employer to seek to improve the conditions of retired employees through provisions in a collective agreement, including negotiating to an impasse and strike. (*Pulp and Paper Industrial*

Relations Bureau [1977] B.C.L.R.B.D. No. 60 (QL); *Cominco Ltd.* [1979] B.C.L.R.B.D. No. 49 (QL))

[8] For generations since 1912, the mill and its owners provided employment and post-retirement benefits to members of the Powell River community. Since 1944, this local union has represented some of the mill employees. Its retired members continue to have a voice, but not a vote, in the affairs of the union, which advocates for and represents the interests of its retired members.

[9] In Powell River, the waning fortunes of MacMillan Bloedel, which owned the mill from the 1950s to 1999, led to layoffs and early retirement initiatives to reduce the number of employees. The union sought to protect its members' interests by negotiating enforceable corollary agreements to the collective agreement. (e.g. *MacMillan Bloedel Ltd.* [1997] B.C.C.A.A.A. No. 466 (Lanyon) (QL))

[10] MacMillan Bloedel consistently published and gave certain benefits as perquisites of employment with it for hourly bargaining unit employees and non-bargaining unit staff employees. At the time of retirement, benefits included a trip to Vancouver and gifts to retirees and their spouses to celebrate past service and retirement. Post-retirement benefits included access to company planes for emergency medical transportation and pass out access to the mill to borrow tools and take scrap materials.

[11] One significant benefit for MacMillan Bloedel retirees at Powell River and its many operations across Canada was payment of provincial Medical Services Plan and group extended health insurance premiums for the life of the retiree and his or her surviving spouse. Although not enforceable under the collective agreement, lifetime post-retirement benefits were heralded by MacMillan Bloedel as a benefit of employment with it.

[12] Retirement benefits were part of the fabric and culture of employment with MacMillan Bloedel at this and other mills. Their lifetime continuation for retirees and their spouses was reinforced by assurances from MacMillan Bloedel executives and its benefit specialist Glenn Nymark when encouraging employees and their spouses to elect early retirement under the terms of a 1994 early

retirement incentive agreement with the union. Almost one hundred employees elected to take early retirement. Whether this agreement is a collateral agreement to the collective agreement enforceable through grievance-arbitration against a successor employer to MacMillan Bloedel is not an issue in this arbitration.

[13] Apparently, the promise of lifetime payment of premiums for MSP and group extended health insurance was not secured by a dedicated, segregated fund or trust. In this arbitration, it was characterized by this employer and former MacMillan Bloedel management employees as a “gratuitous”, unenforceable benefit outside and beyond the reach of the collective agreement. Union President Mike Verdiel bristles at the suggestion health and welfare benefits for retirees and their spouses were given for nothing before 1998 and can be taken away now to the detriment of retired union members and their families.

3. MacMillan Bloedel Sale of Powell River Mill in 1998

[14] In 1998, MacMillan Bloedel was seeking to sell its Powell River Division through a wholly-owned subsidiary, MB Paper Limited, which was incorporated for the purpose of “acquiring, owning and operating” the paper production business at Powell River and Port Alberni, poplar farms, an engineering service and associated head office functions.

[15] The first step had been a January 1, 1997 purchase and sale agreement between MacMillan Bloedel and MB Paper under which MB Paper assumed all the collective agreement obligations and “the pension, post-retirement and other benefits that the Non-Active Employees are entitled to because of their employment with the Vendor [MacMillan Bloedel] prior to the Effective Date.” The over 800 affected employees were named in a schedule to the agreement.

[16] At the Powell River mill, there was no observable change in management, practices or operations. Pay cheques with an MB Paper logo continued to be issued by MacMillan Bloedel.

[17] MB Paper applied to the Labour Relations Board for a declaration it was a successor employer to MacMillan Bloedel as of January 1, 1997. The purchase

and sale agreement was disclosed to the union in that proceeding in February 1998. The union responded with an application to the Board that MacMillan Bloedel and MB Paper were a common employer. It did not want to have MacMillan Bloedel, “the entity with the real economic power”, divest itself of obligations to those represented by the union.

[18] In March 1998 submissions to the Board, counsel for MacMillan Bloedel and MB Paper argued there was a completed successorship between MacMillan Bloedel and MB Paper such that the element of control required for a declaration of common employer was not retained by MacMillan Bloedel. Counsel described that MB Paper had acquired assets from MacMillan Bloedel and:

... assumed current liabilities, employee obligations, including all liability for accrued statutory and floating holiday pay and regular and supplementary vacation pay and sick pay and other obligations in respect of the permitted encumbrances, the contacts and operating authorities and all other agreements, contracts and obligations relating to the business which had been entered into in the ordinary course of business by MBL including commitments made by MBL in the ordinary course of business for the purchase of pulp, logs, chips, hog fuel, sawdust, inventory and supplies or the sale of products of the business. Finally, MBPL assumed MBL’s responsibility for the operation of the business in the normal course. (March 31, 1998, p. 4)

4. 1998 Successorship and Collective Bargaining with Pacifica Papers

[19] On April 30, 1997, the term of the collective agreement between the union and MacMillan Bloedel. For a time prior to 1997, local pulp unions in communities across British Columbia negotiated jointly with pulp and paper mill employers to establish common collective agreement standards across the industry. After joint industry bargaining ceased in 1994, the unions collectively selected, targeted and, if necessary, struck one mill to establish a pattern for the round of collective bargaining. The Elk Falls mill was the target in the 1997 round and bargaining at Powell River was delayed pending a settlement at Elk Falls.

[20] The 1998 terms of settlement of a seven-month strike at Elk Falls included an agreement by the employer, Fletcher Challenge Canada Ltd., as a term of the collective agreement with the local union, to increase its share of MSP premiums for retirees from 50% to 100% and to provide a basic extended health benefit to

hourly retirees.

[21] In 1998 at Powell River, certain health and welfare benefits were provided through the carrier MSA BC Life, which had an electronic point of sale system that allowed pharmacies to electronically submit extended health drug benefit claims. Persons eligible for the benefit were issued an identification card they presented when a participating pharmacist filled a prescription for which a benefit was to be claimed. They did not have to pay and claim reimbursement from MSA. This system facilitated easier, and presumably less costly, administration and payment of the benefit and less cash outlay by the individual.

[22] In May 1998, the union and its sister local, CEP Local 1, proposed MacMillan Bloedel provide this point of sale identification card to all persons entitled to prescription drug benefits. The employer negotiators investigated and determined MacMillan Bloedel would not agree because its employees and retirees across Canada received benefits through various insurers. At the time, only MSA had this system. Agreement by MacMillan Bloedel could be seen as giving a benefit to some employees and retirees that was not available or given to others.

[23] It was generally known in the spring of 1998 that there was an impending sale of shares in MB Paper to a third party, Pacifica Papers Inc. This sale would completely divest the business from MacMillan Bloedel. The employer negotiators, then employed by MB Paper, believed the union proposal was a worthwhile objective, which they had costed in discussions with MSA, and that Pacifica would not have the concern that MacMillan Bloedel had.

[24] On May 29, 1998, the employer negotiators agreed, subject to the sale of the business and final agreement with the union, to provide the MSA identification card to Pacifica employees and future Pacifica retirees.

[25] The importance of this agreement is that the employer negotiators were focused and clear that they were limiting the cost and liability of Pacifica to current employees and future retirees, which did not include retirees formerly employed by MacMillan Bloedel or MB Paper. Mike Verdiel, President of CEP Local 76 since

1989, agrees the union was told in that round of collective bargaining that MacMillan Bloedel was to retain responsibility for past employees who retired before Pacifica acquired the business.

[26] On June 8, 1998, Pacifica announced the closure of the share sale in which it acquired the Powell River and Port Alberni pulp and paper divisions, with a perpetual contract with MacMillan Bloedel for the supply of logs and wood chips. Most of the MacMillan Bloedel Powell River Division management stayed in the Powell River community as management employees of Pacifica.

[27] On June 10th, counsel for MacMillan Bloedel and MB Paper informed the Board about the sale and that MacMillan Bloedel had “no further ownership, control or direction of the pulp and paper mills.” MB Paper had changed its name to Pacifica Papers Inc. MacMillan Bloedel counsel submitted the union’s certification should be amended to reflect this new name.

[28] On June 29, 1998, the Labour Relations Board declared Pacifica to be the successor employer to MacMillan Bloedel and amended the union certificate of bargaining authority to name Pacifica as employer.

[29] It was not until this arbitration proceeding that the union obtained excerpts of the purchase and sale agreement of the shares of MB Paper. The June 8, 1998 purchase modification agreement between MacMillan Bloedel, MB Paper and Paper Acquisitions Company Ltd. sells the shares in MB Paper on terms and conditions in an April 22, 1998 purchase agreement. In an amended Schedule D dealing with Pension and Benefits Separation Issues there is a division of responsibility before and after the closing date between MacMillan Bloedel and MB Paper.

[30] All of MacMillan Bloedel’s “rights, duties and obligations in respect of the group non-pension benefit plans for the Canadian hourly Employers, and the insurance policies through which these plans are funded” were assumed by MB Paper. The “Employees” are “all persons actively employed by the Vendor on the Closing Date in connection with the business and operations currently carried on by MB Paper.”

[31] A collective agreement was concluded between the union and Pacifica on August 28, 1998. It contains a local item agreement to provide prescription identification cards to “Pacifica Paper Inc. employees and future Pacifica Paper Inc. retirees.” Employer negotiator Richard Demchuk, previously employed by MacMillan Bloedel and currently employed by Howe Sound Pulp and Paper Limited Partnership, testified the phrasing was carefully chosen to reflect the dominant concern and position of Pacifica during those negotiations that, while it was a successor to MacMillan Bloedel, it was not assuming any liabilities with respect to MacMillan Bloedel Powell River retirees, including his father. Mr. Verdiel agrees it was an agreement on a “going forward” basis.

5. 2002 Collective Bargaining with NorskeCanada Limited

[32] NorskeCanada Limited purchased Pacifica in 2001 and acquired the Powell River and other mills. The collective agreements between NorskeCanada and seven unions at Powell River, Port Alberni, Elk Falls and Crofton were to expire April 30, 2003.

[33] To allay supply interruption concerns expressed by customers with whom NorskeCanada wished to renew long term contracts, NorskeCanada initiated early enterprise bargaining with the seven unions beginning in the last week of August 2002. An agreement was achieved September 5, 2002 and the collective agreements were extended to 2008. NorskeCanada changed its name to Catalyst Paper in 2005.

[34] Negotiations began with a common forum attended by representatives of NorskeCanada and the seven unions. Then local mill items were addressed in simultaneous, separate bull sessions between local mill management and local union negotiators. On completion of all bull sessions, economic and enterprise issues were negotiated at a main table attended by employer representatives, the seven local union presidents and a union regional vice-president.

[35] In 2002, Brian Johnston was Vice-President Powell River Division. He and Ed Dougherty, Powell River Human Resources, were the employer negotiators in the Powell River bull session. The employer wanted to take all steps to achieve

an agreement and did not propose any changes to the collective agreement.

[36] Mr. Verdiel recalls the union wanted provisions in the Powell River collective agreement similar to those in the Elk Falls collective agreement between NorskeCanada and Local 630 that provided for employer payment of MSP premiums and maintenance of an extended health benefit plan for bargaining unit retirees. Inclusion would give the union comfort the benefits would continue and, if not, the union could enforce their continuance. The union's bull session agenda included a proposal to this effect.

[37] At the time, Mr. Verdiel understood the inclusion of the existing practice in the collective agreement did not change or increase the employer's obligations and was a no cost item. Mr. Johnston recalls the union proposal was acceptable to the employer because it simply put the practice into the collective agreement.

[38] There was no discussion about the precise scope of the practice or about the premium benefit for MSP or the NorskeCanada extended health benefit plan applying to pre-1998 retirees of MacMillan Bloedel.

[39] Vern Phillips, Human Resources Manager, Mills Operations, testified no person who retired before June 1998 had or has applied for or received retirement benefits under the current collective agreement or the preceding two collective agreements with NorskeCanada and Pacifica. Mr. Verdiel knows none. Mr. Phillips testified there has not been a grievance by any employee or the union prior to this grievance for failure to pay any retirement benefits to persons who retired before June 1998. Mr. Verdiel says this is because the union was not aware until 2009 of any instance when a retired union member, spouse or dependent did not receive an entitlement.

[40] On August 29, 2002, the employer presented a draft memorandum of agreement on local Powell River issues that included: "Retiree Benefits: The attached letter shall be included as a supplementary agreement." The letter from Mr. Johnston dated August 28th and addressed to Mr. Verdiel states:

The Company agrees to provide the following coverage for employees who have retired from active service with the Local.

Full premium payment for B.C. Medical Plan for the retired employee's lifetime.

Full premium payment for a basic Extended Health Benefits Plan.

[41] In the letter included in the collective agreement on September 5, 2002 and carried forward in the current collective agreement, the date was changed to September 1st and the text was changed as follows:

For employees who have retired from active service with the Local, the Company agrees to provide for the employees, their spouses and their dependents, the following:

- Full premium payment for B.C. Medical Plan for the retired employee's and spouse's lifetime.
- Full premium payment for a basic Extended Health Benefits Plan.

Neither Mr. Johnston nor Mr. Verdiel has any recollection of why or when the language was changed between August 29 and September 5, 2002.

[42] Mr. Verdiel, whose reference point is union members and "our retirees", considers this employer drafted letter encompassed all retired union members regardless who employed them at the time of retirement. Mr. Johnston, whose reference point was a small number of retirees from Pacifica and NorskeCanada employees, considers the commitment was for them and future retirees and not the large number of persons who retired while employed by MacMillan Bloedel.

[43] The 1998 Elk Falls agreement with respect to MSP premiums was to increase employer contributions from 50% to 100%. There is no evidence whether or when NorskeCanada or Pacifica was paying 100% MSP premiums for retirees before the 2002 agreement.

[44] There has been an extended health benefit plan for Powell River retirees since 1975. In 2002, the basic extended health plan for retirees had a \$25,000 lifetime limit. The union was aware that the lifetime costs for some retirees were more than \$25,000. There is no evidence if this was the case in 2002 for pre or post-1998 retirees. Collectively, the local unions wanted coverage for a higher lifetime limit. In each bull session, the local union proposed enhancement of extended health benefits for retirees. These union proposals were referred to the main enterprise bargaining table.

[45] At the main table, NorskeCanada chief negotiator Vice-President Ron Buchhorn identified that, because there was a relatively small number of Pacifica/NorskeCanada employees who had retired since 1998, the employer could consider some extended health plan enhancement, but, because of their number and the long history of MacMillan Bloedel in the industry, the employer would not make any enhancement of benefits available to pre-June 1998 MacMillan Bloedel retirees. Mr. Verdiel recalls that this distinction between pre and post-1998 retirees was not raised by the employer in any other context.

[46] The agreement achieved limited the employer's liability and provided the union with a top-up to the lifetime limit without identifying any distinction between pre and post-1998 retirees. NorskeCanada agreed to "provide a lump sum payment of \$100,000 into the common fund, for all CEP locals of NorskeCanada, on May 1st of each contract year." The fund is administered by the unions who are "solely responsible for the governance and administration" of the fund and must provide an annual audited financial report to the employer.

[47] Mr. Verdiel chairs the body governing the fund. He testified the fund is used, in part, to pay for benefits for retired union members, regardless whether they retired while employed by MacMillan Bloedel or any of its successor employers at Powell River. While the evidence does not establish this practice is recorded in the audited financial reports or is communicated to the employer, Mr. Verdiel testified the employer has not objected to fund payments on behalf of pre-1998 retirees.

[48] The issue of employer payment of premiums for MSP and extended health care coverage for retirees was not raised in the 2008 round of collective bargaining. The employer contribution to top up the lifetime limit was changed to an annual payment of "up to" \$100,000 to "reach and maintain a minimum of \$400,000 in the fund."

[49] Mr. Verdiel acknowledges that after the 2002 collective bargaining the union did not notify its retired members who retired before 1998 that the union had obtained for them, their spouses and their dependents a benefit in the recent

collective bargaining with NorskeCanada that entitled them to have 100% MSP and extended health benefit plan premiums paid by NorskeCanada. The change would have been significant if it increased the employer contribution from 50% to 100% of MSP premiums. He testified he did not notify them because they were receiving a premium benefit from MacMillan Bloedel.

6. Two Employees – Messrs. Campbell and Boudreau

[50] Grant Campbell suffered a workplace injury while employed by MacMillan Bloedel prior to the ownership change in 1998. He was on short and then long-term disability and returned to work at the mill in April 2001. He retired last year and receives retirement benefits under this collective agreement. In November 2010, the Workers' Compensation Appeal Tribunal invited the employer at the time of the injury, now Weyerhaeuser, to make submissions on a matter under appeal.

[51] At the time of the sale in June 1998, Ray Boudreau was an employee of MacMillan Bloedel on workers' compensation benefits for a year and then long term disability benefits under the plan provided by MacMillan Bloedel. He did not return to work, but continued as an employee on leave with the successor employers. He retired in May 2009 and receives retirement benefits under this collective agreement.

7. Union and Employer Submissions

[52] The union submits it was a continuous and existing practice that all retirees of the Powell River mill, regardless of the owner and operator at the time of retirement, received a lifetime benefit of full premium payment by the employer for MSP and an extended health benefit plan. Responsibility and liability to maintain this benefit passed to MB Paper. The shares of MB Paper were sold to Pacifica which stood in its place and became the declared successor employer. That responsibility and liability remains with its successors to Catalyst Paper.

[53] The union submits its concern and focus has been maintenance of the benefits for retired union members and it has not concerned itself with the business arrangements by which the current or predecessor employers deal with

payment for the benefits. When they were unilaterally changed, the union grieved.

[54] The union submits that, while the 1998 letter concerning MSA point of sale prescription identification cards was specifically limited to current and future employees, the 2002 letter written by the employer was not. It expressly applies to all “employees who have retired from active service with the Local” and was rewritten to include spouses and dependents before being signed and becoming binding on September 5, 2002. No wall was created between MacMillan Bloedel and NorskeCanada retirees in either the local bull session letter or the main table extended health benefit agreement, which does not limit the use of the top-up to the benefit of post-1998 retirees. The employer’s position to limit access to the fund did not find its way into the collective agreement in 2002 and the 2008 agreement did not limit access to the top up fund to post-1998 retirees.

[55] The union submits this successor employer is responsible for all the obligations under the current and predecessor collective agreements. (*Uncle Ben’s Industries Ltd. (In Receivership)* [1979] 2 Can LRBR 126 (BC); *Delta Food Processors Ltd. and Puritan Cannery Limited*, BCLRB Unreported Letter Decision, May 18, 1978) In a collective agreement at the Kamloops mill, Weyerhaeuser agreed “The Company will provide medical/extended health coverage at no cost to the retiree.” A successor employer said this did not oblige it to maintain benefits for pre-sale retirees, which were being provided by Weyerhaeuser. Arbitrator Kinzie found this was an obligation enforceable against Weyerhaeuser when it was party to the collective agreement and it became an enforceable obligation against the successor employer. The employer must provide the benefits to the extent Weyerhaeuser failed, regardless of the terms of the purchase and sale agreement between the employer and Weyerhaeuser. Had the obligation not been in the collective agreement and not fulfilled, it would not have been enforceable by the union on behalf of any adversely affected retirees through grievance arbitration. (*Domtar Inc.* (2009), 182 L.A.C. (4th) 152 (Kinzie); [2009] B.C.C.A.A.A. No. 13 (QL)) The Labour Relations Board found there were no reviewable errors and dismissed the employer’s application for review of the decision (*Domtar Inc.* [2009] B.C.L.R.B.D. No. 87 (QL); 182 L.A.C. (4th) 319).

[56] The union submits the language of the 2002 letter in the collective agreement must be given its natural meaning – “For employees who have retired from active service with the Local” The admissible extrinsic evidence of negotiating history and past practice are unhelpful interpretative aids to the collective agreement wording, whose meaning is obvious and to be preferred to a less obvious interpretation based on bargaining history (*Cominco Ltd.* [1988] B.C.L.R.B.D. No. 229 (QL); *Columbia Hydro Constructors Ltd.* [1981] B.C.L.R.B.D. No. 1 (QL)). There is no limitation expressed or implied in the language that it applies only to post-1998 retirees. Therefore, the grievance should be allowed and the employer ordered to pay any shortfall not paid by Weyerhaeuser on behalf of any retiree, spouse or dependent.

[57] The employer submits no collective agreement obligation with respect to pre-1998 retirees from MacMillan Bloedel was inherited by Pacifica or any successor employer. There is no written obligation in the 1997 to 2003 collective agreement for which a grievance arbitrator has jurisdiction under the *Labour Relations Code* or the collective agreement. An arbitrator may not supplement the terms of the collective agreement and past practice cannot be used to create a new term of the written collective agreement (Article XXXI, Section 4(d); *Brampton Public Library Board* (1976), 13 L.A.C. (2d) 57 (Johnston)).

[58] The employer submits all the evidence of events prior to 1998 is unhelpful in establishing any obligation enforceable through grievance arbitration. The union adduced no evidence there was an agreement between the union and MacMillan Bloedel about retirement benefits prior to 1998. The MacMillan Bloedel documents it adduced are policies for, and communications to, management employees outside the bargaining unit and beyond coverage of the collective agreement. The clear adverse inference is that there was no such agreement (*Wigmar Construction (B.C.) Ltd.* [1984] B.C.L.R.D. No. 279 (QL)).

[59] The employer submits there was no employer obligation to pay retirement premium benefits until the 2002 collective agreement. The fact some benefit was provided before 2002 does not make it a collective agreement obligation (*Long*

Manufacturing Ltd. (1995), 48 L.A.C. (4th) 208 (Brown); *Brampton Public Library Board* (1976), 13 L.A.C. (2d) 57 (Johnston)).

[60] The employer submits the existence since 1968 or earlier of a MacMillan Bloedel retirement policy for hourly employees covered by collective agreements does not create enforceable entitlements when they have not been incorporated into the collective agreement. An employer may grant an indulgence or a benefit, such as free parking, as a matter of grace without intending to forego rights to change or withdraw it and a long practice of an indulgence or gratuitous benefit does not confer a right or entitlement. Gratuitous benefits can be changed or withdrawn without notice. (*Eurocan Pulp & Paper Co.* (1990), 14 L.A.C. (4th) 103 (Hickling); [1990] B.C.C.A.A.A. No. 23 (QL))

[61] The employer submits the union was not and is not a party to those arrangements between MacMillan Bloedel, now Weyerhaeuser, and the retirees. At best, the union's awareness of those arrangements is an aspect of past relationships. Those policies, for which the union had no input, are not contractual provisions under the collective agreement and are not grievable. (*Kitimat (District) v. Alcan Inc.* 2006 BCCA 75; *Eurocan Pulp and Paper Ltd.* (2005), 143 L.A.C. (4th) 353 (Germaine); [2005] B.C.C.A.A.A. No. 208 (QL))

[62] Similarly, the purchase and sale agreements to which the union was not a party are not grievable under the collective agreement. The terms of the two purchase and sale agreements conflict in their assignment of liability for benefits for pre-1998 retirees and neither agreement can be relied upon to assign an obligation to the successor employer under the collective agreement. Therefore, the employer submits there is nothing prior to 1998 that created a collective agreement obligation for a successor employer.

[63] The employer submits a literal reading of the agreement in 2002 would limit entitlement to persons who were employees of the local union – “service with the Local.” The phrase “For employees” must be interpreted in the context of the entire collective agreement. Employees are defined as “all persons on the payroll of the Company at Powell River” (Article II(a)) and “Company” means the

employer since 2002. This does not include MacMillan Bloedel retirees. There was no unequivocal representation the employer was extending this benefit and employer liability to over 800 retirees who were never employed by the employer when it employs approximately 300 employees under the collective agreement. This question was not raised and discussed as it was when the prescription identification card was negotiated in 1998 and it was expressly agreed the benefit would apply on a go forward basis. (*Manitoba* (2010), 192 L.A.C. (4th) 407 (Werier); *Noranda Mines Limited* (Babine Division) [1982] 1 W.L.A.C. 246 (Hope); *British Bank Note Inc.* (1991), 21 L.A.C. (4th) 285 (Kelleher); [1991] B.C.C.A.A.A. No. 202 (QL)) Therefore, the grievance should be dismissed.

8. Discussion, Analysis and Decision

[64] The union recognized in 2002 there was no existing collective agreement obligation on the employer to pay MSP and extended health care benefit plan premiums for retirees when it sought to have included in the collective agreement a provision similar to the Elk Falls collective agreement.

[65] It might have been arguable that, by inference, the 1998 prescription identification card obligation meant the employer would provide benefits for which the card could be used to those persons to whom a card was paid for by the employer and issued by the benefit insurance carrier. However, that benefit is expressly limited to Pacifica employees and, presumably, although not amended in the current collective agreement, to Catalyst employees.

[66] Obligations in the 1997 and 1998 sale and purchase agreements, to which the union is not a party, did not and do not create obligations under the collective agreement. The past practice, policies and communications by MacMillan Bloedel and its management did not become collective agreement obligations binding on Pacifica or its successors. I find there was no retirement benefit obligation under the 1997-2003 collective agreement enforceable against MacMillan Bloedel pursuant to grievance arbitration that was binding on Pacifica as a successor to MacMillan Bloedel.

[67] By August 2002, the shadow of the sale of the business that hung over

collective bargaining in 1998 had receded into the past. In the interest of achieving a quick agreement, the employer agreed to codify or give contractual effect to a benefit it was providing to its current retirees and those who retired in the future. Many of its employees, like Messrs Campbell and Boudreau, had been employed at the mill by predecessor employers. If they retired from employment with NorskeCanada, they would be entitled to the retirement benefit under the practice at the time because they had become employees of NorskeCanada. It was not discussed and there was no practice of NorskeCanada paying for retirement benefits for MacMillan Bloedel retirees.

[68] In drafting a letter to reflect the agreement to incorporate the existing practice into the collective agreement, the employer draftsman used an ambiguous colloquial phrase susceptible to different interpretations – “For employees who have retired from active service with the Local.”

[69] The union says it encompasses all past or current union members. The employer offers a literal interpretation that there must be active service with the union, whatever form that might take. It was not intended by either party that this language be narrowly interpreted to apply only to those employees who had also been employed by the union or who had served the union in some manner. That was not the practice or the subject of the discussion. That narrow, literal interpretation would produce an absurdity and must be avoided.

[70] Similarly, the language was not intended to be limited to 2002 and future employees of NorskeCanada. The context was codification of an existing practice that encompassed retired employees from NorskeCanada since it became a successor to Pacifica with its 2001 purchase of the business. The shared understanding was that the purchase and practice included obligations to retirees from Pacifica subsequent to Pacifica’s purchase of the business in June 1998.

[71] The scope of “employees” and the colloquial phrase “from service with the Local” are ambiguous. How large a population of bargaining unit retirees does it encompass? In this situation, the best interpretive aid to discern the scope of the agreement captured by this ambiguous language is the proven shared intention or

purpose in making the agreement as testified to by Messrs. Verdiel and Johnston. The shared intention was to include in the collective agreement an existing practice that would impose no additional cost or liability on the employer beyond what it had committed and was paying, namely premiums for MSP and an extended health care benefit plan for current retirees of Pacifica and NorskeCanada and future retirees.

[72] I find “For employees who have retired from active service with the Local” means employees who retired after the business was sold to Pacifica and who in 2002 were covered by an extended health care benefit plan and other retirement benefits provided by NorskeCanada. It does not include former employees of MacMillan Bloedel or MacMillan Bloedel Paper who retired before the 1998 sale and who, in 2002, were covered by an extended health care benefit plan and other retirement benefits provided by MacMillan Bloedel or Weyerhaeuser.

[73] Therefore, the grievance is dismissed.

DECEMBER 17, 2010, NORTH VANCOUVER, BRITISH COLUMBIA.

James E. Dorsey

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