

IN THE MATTER OF THE ONTARIO *LABOUR RELATIONS ACT, 1995*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

EXCEL FOREST PRODUCTS

- The Employer

-and-

I. W. A. CANADA, LOCAL 2995

- The Union

AND IN THE MATTER OF a Union policy grievance regarding millwrights

Arbitrator:

Howard Snow

Appearances:

On behalf of the Employer:

Alan Freedman - Counsel

Marc Tremblay

Gord Wilson

Ronald Nadeau

Pierrette Morin

On behalf of the Union:

Paul O'Ryan - Counsel

Jacques Jean - Union Representative

Eric Carroll - Union Representative

Ronald Vachon - Shop Steward

Hearing held June 1, 2004, in Timmins, Ontario.

AWARD

I. INTRODUCTION

This collective agreement contains a lengthy Appendix titled “Trades Apprentice Program” which regulates the employment and training of apprentices. A millwright who has completed the training under the program may write an Ontario government test to secure a Certificate of Qualification, but need not do so.

After a millwright with a Certificate of Qualification quit his job with the Employer, the Employer sought to hire another millwright with this certificate but was unable to do so. The Employer then advertised for, and hired, a fully trained millwright who did not have the certificate. The Union grieved that the collective agreement required that a new millwright either have the Certificate of Qualification or his/her employment would be governed by the Trades Apprentice Program in the collective agreement which required that the millwright begin employment as a millwright helper.

II. THE EVIDENCE

The parties agreed on the following facts:

The Grievance

1. The issue in this grievance is whether the company was entitled to post for a "Millwright I" position. The grievance states:

NATURE OF GRIEVANCE

It came to the Unions [sic] attention that the Company has posted a “millwright I” classification for the employees to bid on. The Union finds this to be unfair and contrary to the Collective Agreement and therefore seek [sic] the following remedies:

1. That the Company cancel the posting immediately.

2. An order from the Arbitrator that the Company cease this practice immediately.
3. Any other remedies warranted.

Background

2. Excel Forest Products (“Excel” or the “company”) and I.W.A. Canada, Local 2995 (“the union”) are parties to a collective agreement with a term of September 1, 2001 to August 31, 2006. Excel operates a sawmill in Opatatika, Ontario. Under the collective agreement the union represents all employees working at and out of Excel’s sawmill, planing mill and yard operations in Opatatika, Ontario, save and except foremen, persons above the rank of foreman and office and sales staff.
3. As part of its operations, Excel employs a number of millwrights. Essentially, a millwright is an industrial mechanic who installs, repairs and maintains highly complex mechanical machinery.
4. The Province of Ontario provides for trade certification for industrial millwrights. To become certified as an industrial millwright, an individual must complete an apprenticeship program that lasts for approximately four years. The program consists of:
 - (a) in-school training; and
 - (b) on-the-job training.After completing the necessary in-school training and on-the-job training, the individual is then eligible to write an examination in order to obtain a Certificate of Qualification. Once an individual obtains the Certificate of Qualification, he or she is a certified industrial millwright.
5. Under the collective agreement, the parties have provided for a Trades Apprentice Program. The collective agreement also provides for the following job classifications and accompanying work hours required for the different classifications:
 - Millwright A + 8,000 hrs. and a journeyman's ticket
 - Millwright I 6,000 hrs. to 8,000 hrs.
 - Millwright II 4,000 hrs. to 6,000 hrs.
 - Millwright III 2,000 hrs. to 4,000 hrs.
 - Millwright IV 1,000 hrs. to 2,000 hrs.
 - Millwright Helper 0 hrs. to 1,000 hrs.

The Job Postings

6. As of the beginning of August 2003, Excel employed approximately 12 Millwright A's (i.e. fully certified millwrights). On or about August 10, 2003, one of these Millwright A's quit his employment with Excel as he found another job. In response the company posted a "Notice of job vacancy" for a Millwright A.

7. There were no satisfactory applicants for the Millwright A posting. Needing to replace a Millwright A, the company posted for a Millwright I position. Two bargaining unit employees applied for the Millwright I posting. Neither of them were qualified for the Millwright I position (the union has not alleged that either of these two internal applicants should have received the position).
8. The company filled the Millwright I posting with an external applicant named Billy Bourgon. The Employer hired Mr. Bourgon on or about October 20, 2003. At the time of his hiring, Mr. Bourgon had completed the industrial millwright course at Collège Boréal d'arts appliqués et de technologie. He had also worked over 8,000 hours as a millwright apprentice at the time of his hiring. By the time Excel hired Mr. Bourgon, therefore, he had completed all the in-school and on-the-job training needed to be eligible to write the Certificate of Qualification examination (referred to in paragraph 4 above).
9. The current version of the Trades Apprentice Program first appeared in the 2001-2006 collective agreement. Under this program, the company has placed two bargaining unit employees in the program as millwright apprentices. They are Ben Martel and Donald Turgeon and they started their millwright apprenticeship under the program on or about January 2003.
10. As part of their participation in the Trades Apprentice Program, Mr. Martel and Mr. Turgeon:
 - (a) had an initial meeting with representatives from the Ministry of Training, Colleges and Universities and the company to discuss the apprentice training program in general;
 - (b) have a training agreement with Excel.
 - (c) have been registered by Excel with the Ministry of Training, Colleges and Universities; and
 - (d) have been evaluated by Excel's maintenance supervisor, in conjunction with the millwright lead hand, concerning movement through the Trades Apprentice Program;

Mr. Bourgon has not gone through nor does he need to go through these steps with Excel.

During the hearing, the parties agreed on two further facts. First, a journeyman's ticket referred to in paragraph 5 above means the same as a certificate of qualification. Secondly, with the agreement of the Union, the Employer had recently filled a position of millwright helper outside the Trades Apprentice Program.

Mr. Bourgon, whose hiring prompted this grievance, was given notice of the hearing but did not appear.

Finally, the parties agreed that I would now simply decide whether there had been a violation of the collective agreement. In the event of a violation, I was asked to retain jurisdiction as to remedy.

III. COLLECTIVE AGREEMENT

The following are the relevant portions of the parties' 2001-2006 Collective Agreement:

TRADES APPRENTICE PROGRAM

PURPOSE

To implement a program that will develop employees into trades people equipped with necessary tools, who have attained a level of proficiency in manual and technical skills satisfactory to the Trades Apprenticeship Committee.

TRADES APPRENTICESHIP COMMITTEE

This committee will consist of a maximum of four Local 2995 Union members, the Maintenance Supervisor and three company members. (Minimum of 2 per group for quorum). Its function is to review, amend and administer the Trades Apprenticeship Program. Equal representation from both sides is required in any decision making process.

It will be the company's responsibility to take necessary action(s) when a trainee is subject to removal from the program but only after discussions with the Trades Apprenticeship Committee has taken place.

Based on the company's needs and assessments, the Committee will recommend to the Company, the number of Trades Apprentices in each trade that will start the program. Apprentices will be registered with the Ministry of Training, Colleges and Universities immediately upon successful completion of the 3-month probationary period. Successful completion of probationary period will be based on performance evaluation of the following items:

- Tool & equipment recognition
- Willingness to work overtime
- Practical skills

CANDIDATES

Applications will be received from employees internally throughout the operation and externally if

no applications are received or if internal candidate(s) do not meet the required criteria.

An Apprenticeship posting will be considered as advancement therefore a promotion.

Apprenticeship openings will also be filled in accordance with the provisions of paragraphs I, II and IX of Article 12.05 only.

CRITERIA

The successful candidate(s) will be required to meet the following criteria. It is to be noted that seniority of candidates will be in effect provided all else is equal.

- Grade 12 or equivalent formal education
- Aptitude Testing (passing grade required only)
- Willing to commit to upgrading
- Expected to work additional hours when necessary (based on department average)
- Must pass physical examination (if requested by the Committee)
- Successful candidate must commit to a minimum of five (5) years in the maintenance department after completion of program.
- Three months probationary period.
- Candidate at last stage of progressive disciplinary policy will not qualify for the Apprenticeship Program.

TRADES COVERED

This training Program will cover training in the following disciplines:

- Electrical
- Industrial Mechanic (Millwright)
- Welder/Fitter
- Sawfiler

If, in the opinion of the company, it becomes necessary, consideration will be given to providing training for other trade groups.

TRAINING DURATION

The normal length of training will be four years for all trades except for Electrical which will be 4.5 years. However, credits for previous experience may be allowed by the Trades Apprenticeship Committee up to a maximum of 2,000 hours. In no case will a candidate begin at a higher classification than Class III. A candidate may attend a meeting with the Trades Apprenticeship Committee to solicit this credit. The burden of proof regarding credits will be solely the responsibility of the candidate.

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The following categories will be acknowledged in all trades except for Electrical, which will be considered at 6,000 hrs to 9,000 hrs for Class I. Manual skill hours for all other trades within the program will be accumulated as follows:

Class A	+ 8,000 hrs. and a journeyman's ticket
Class I	6,000 hrs. to 8,000 hrs.
Class II	4,000 hrs. to 6,000 hrs.
Class III	2,000 hrs. to 4,000 hrs.
Class IV	1,000 hrs. to 2,000 hrs.
Helper	0 hrs. to 1,000 hrs.

Annually, an evaluation committee consisting of the members of the Trades Apprenticeship Committee (2 union/2 management) will evaluate the performance and progress of each apprentice below the category of Class I, with a view of upgrading the apprentices who qualify.

The Apprenticeship Training Program is determined to be completed once the trainee has successfully received a Class I and it's required hours. (In the event of successful completion of the program, the candidate is required to stay in the trade for a minimum of 5 years.)

Upon entering an Apprenticeship Training Program, it is understood that the trainee will continue until completion unless senior employees are laid-off, at which time the trainee will also be laid-off. The trainee is expected to continue his apprenticeship upon being recalled to work.

REGISTRATION

Upon successful completion of the probationary period, the trainee will be registered with the Ministry of Training, Colleges and Universities. . . .

TRAINING OUTLINE

Tool lists and curriculum for learning technical and manual skills will be approved by the Apprenticeship Committee in partnership with the Ministry of Training, Colleges and Universities.

These will be as follows:

- a) Technical skills will be attained through the Ministry curriculum and will be based on the existing formal education process of successfully completing the basic, intermediate and advance program with the specified grade point average.
- b) Manual skills will be attained by on-the-job experience.
- c) Tools are essential for a trades person. . . . Before graduation from the training program, the complete list of tools will be checked against the tools owned. . . .

RATE OF PAY

Before starting the trades trainee program, the Company may, on an individual basis, adjust the rate of pay to reflect the progression identified in the **TRAINING DURATION** clause.

All rates of pay will be as per the wage schedule established in the Collective Agreement.

The company will make up the difference between the Canada Manpower Training Program allowances and the employee's normal earnings based on his regular straight time rate, multiplied by 40 hours per week. For purposes of calculation, the Canada Manpower at home allowance shall be used.

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SCHOOLING

The company will be responsible for all costs associated with tuition and manuals required. . . .

Trainees will not be required to participate in the Ministry Basic course if proof can be shown that a passing grade was obtained on the basic exam.

Trainees will not be exempt from the intermediate and advanced courses. The courses assigned are expected to be completed by the trainee(s) within the following timeframe:

- Basic course by the end of 2nd year in the program
- Intermediate course by the end of the 3rd year in the program
- Advanced course by the end of the 4th year in the program.

OVERTIME

Opportunity of overtime for trainees will be filled in accordance with the provisions of section 11.05 (Hours of work).

UNSATISFACTORY PROGRESS

Unsatisfactory progress in the Training Program shall be defined as:

- a) Being more than one month late in turning in a tool list. . . .
- b) Failing an examination. (See Progress Measurement)
- c) Failure to attend schooling within the specified times.
- d) Continual refusal of overtime work and or upgrading.

PENALTY FOR UNSATISFACTORY PROGRESS

Following a review by the Trades Apprenticeship Committee, any trainee who is considered to be in unsatisfactory standing, as defined above, will be given a final warning. From that time until the completion of the trainee's apprentice program, the trainee must meet all requirements of the program.

If before graduation the trainee should again be making unsatisfactory progress, he will then be subject to removal from the training program and the trade and will be returned to his pre-apprentice position.

PROGRESS MEASUREMENT

- a) The requirement of technical skills will be based on the Ministry's criteria in which, a basic, intermediate and advanced course will be completed with a passing grade identified by the Ministry. . . .
- b) Manual skills and the Apprenticeship Training Standards Guide will normally be judged by the Maintenance Supervisor.
- c) Tools:

After a comparison by the trainee's Supervisor, of tool lists with tools on hand, a clear-cut mark of conformance is possible. No exceptions will be made.

- d) A composite report on each trainee will be written twice yearly by the Maintenance Supervisor combining (a), (b), and (c) above.

If a grade other than satisfactory is obtained, immediate action will be take by the Trades Apprenticeship Committee to establish the reason and take steps to correct the situation. A trainee will be allowed only one failure in any 12-month period.

Job Description For Trades and Helpers

1. Millwright Trade

Millwright Helper:

Works as a trade helper, will be assigned to and take necessary direction from a Millwright "III", "II", "I", "A" or "Supervisor".

A helper must be capable of performing independently wash jobs, greasing and oiling and other duties assigned to him.

Shall be upgraded prior to or at the end of one (1) year period to Millwright "IV".

. . .

Millwright IV

Should be qualified to assist and work under the direction and instructions of Millwright “II”, “I”, and “A” or Supervisor. He will work alone at times, performing assignments in keeping with his training. At this stage, the person will commence to accumulate common tools required to perform his duties.

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Millwright “III”

Must be capable of performing the tasks of fitting, aligning, lubricating and able to operate all shop tools and machines and other duties assigned to him.

Must under direction become proficient in basic welding and pipefitting as well as dismantling and reassembly of plant equipment.

Under direction, will continue to develop skills in trouble shooting all plant equipment and improve his skill at machining parts and be exposed to basic principles of hydraulics and pneumatics.

He may work alone frequently, but occasionally will require direction and instructions from Millwright “II”, “I”, “A” or Supervisor.

Millwright “II”

Must be capable, without direction, of fitting, aligning and lubricating and taking apart and reassembling plant equipment and other duties assigned to him. In addition, is expected to be able to weld, operate shop tools and do pipefitting as required.

Must under direction, become proficient at effective methods of trouble shooting and repairing hydraulic, pneumatic, and mechanical faults in plant machinery.

Must under supervision, become proficient at reading and understanding blueprints, all phases of installing new equipment, laying out hydraulic and mechanical drives and meet speed and power requirements correctly.

Millwright “I”

Must be capable without direction, of performing all practices under Millwright “II”, “III”, “IV” and other duties as assigned to him. Must take full responsibility for work done by himself or his assistant.

Millwright “A”

Must be in possession of a Millwright Certificate and be capable of performing all duties under Millwright "I" and other duties assigned to him.

Millwright "Lead"

A Millwright "Lead" must possess the qualifications set out under Millwright "A". He must ensure responsible and efficient operation of his team and distribute tasks amongst themselves.

2. Electrician Trade

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IV. SUBMISSIONS OF THE UNION

The Union submitted that by hiring Mr. Bourgon as a millwright I the Employer had violated the collective agreement. The Union noted that the Training Duration section of the Trades Apprenticeship Program in the collective agreement allowed a maximum of 2,000 hours credit for an apprentice and specified that "in no case" could an apprentice start at a higher classification than a class III. Yet the Employer had started Mr. Bourgon at class I which requires recognition of at least 6,000 hours of on-the-job experience.

The purpose clause indicated that the apprenticeship program was designed to develop employees into trades people. The parties had established a committee of equal representatives of the Union and the Employer to oversee the program. The committee had real authority and must, for example, be consulted before the Employer removed any trainee from the program.

Since an employee who finished the apprenticeship training program remained an apprentice until he had secured a certificate of qualification, Mr. Bourgon must therefore be a class I apprentice. He was an apprentice under the program, under the collective agreement, and under legislation.

The Union asked that I find this posting was a posting for an apprentice and that the rules in the apprenticeship program therefore applied. The Union submitted that the program allowed for postings for either a millwright A or for a millwright helper, and for nothing in between. The Union acknowledged that if a posting were for a helper, then a person with some experience (such as Mr. Bourgon) could be hired and started as high as a millwright III, but not as a millwright I.

V. SUBMISSIONS OF THE EMPLOYER

The Employer submitted that a millwright A and a millwright I have the same skills. The Employer lost a millwright A and was unable to hire a person who was qualified as a millwright A. The Employer needed a person with the skills of a millwright A or millwright I and, being unable to hire a millwright A, had then hired a millwright I. There is nothing in the trades apprenticeship program of the collective agreement which prevented the Employer from meeting its needs for a skilled employee in this instance.

Mr. Bourgon is a millwright. While he does not have a Certificate of Qualification, he has nevertheless completed an apprenticeship program and has more than 8,000 hours of work experience. He is a millwright I, not an apprentice. A certificate of qualification is voluntary for a millwright and a person can be a fully trained millwright without having a certificate of qualification. The trades apprenticeship program finishes when a person has a class I and +8,000 hours. Mr. Bourgon had a class I and had +8,000 hours. The program simply did not apply to Mr. Bourgon.

A posting for a millwright I is not a posting for a person who will be in the program. It is unreasonable to view the existence of this apprenticeship program as hampering the ability of the Employer to hire a trained millwright I when, as here, there is a specific need.

VI. CONCLUSIONS

The issue to be resolved in this award is whether the Employer violated the collective agreement in hiring Mr. Bourgon as a millwright I.

In addition to their submissions on the interpretation of the Trades Apprentice Program Appendix of the collective agreement, both parties addressed the underlying issue of whether that Appendix applied to the hiring of a millwright I who, as is the case with Mr. Bourgon, had completed the several steps of an apprentice program, had the skills and abilities of a millwright I, and had over 8,000 hours of on-the-job experience.

Although the detailed text of the Appendix must be considered, I look first to the basic question of whether the parties intended that the Trades Apprentice Program apply to the hiring and/or employment of a person such as Mr. Bourgon.

I begin with the purpose provision contained in the Appendix. In the purpose provision the parties have themselves agreed on what they desired as the intent of the Trades Apprentice Program. Unfortunately the purpose section is very general and indicates only that the parties wished to implement a program to develop trades people. I find it of no assistance in resolving the question before me.

If one looks more generally at the details of the Trades Apprentice Program Appendix, it is clear that the parties had in mind a 4 year (or 4.5 year for Electrical) apprentice training program. In addition to the statement that the normal length of training is four years (Training Duration), the program specifies that the Ministry courses are to be completed by the end of the 4th year (Schooling), and, using an average 2,000 hour work year, an apprentice

will acquire +8,000 hours of on-the-job experience in the 4 years. An employee enters the program as a helper and through a combination of on-the-job experience and Ministry courses moves through the various classes to class I. An apprentice below class I is evaluated by the Trades Apprenticeship Committee with a view to upgrading the apprentice. No mention is made of any assessment being made by the Committee after an employee becomes a class I. While the Maintenance Supervisor reports twice yearly on each trainee, the reports appear to have no impact on those who are already class I.

The Appendix specifies that the training program is complete when the trainee has received a class I and has worked the required hours (Training Duration). The Appendix makes it clear that an apprentice who completes the training program derives no further benefits under the Appendix.

Although there is some ambiguity as to the status of a class I employee who has not yet obtained the +8,000 hours, it is clear that the program no longer applies to a person who began as a helper and worked his way through the apprenticeship program and achieved both the class I designation and the +8,000 hours of experience. Such a person is still subject to evaluation for the purpose of obtaining the Certificate of Qualification (administered by the Ministry and outside the control of the parties and the Committee) but is not subject to evaluation for anything under the control of the Committee or for anything mentioned as part of the Trades Apprentice Program.

It follows that, had he gone through the Trades Apprentice Program under this collective agreement and had he become a class I millwright with the same 8,000 + hours of on-the-job experience, Mr. Bourgon would have completed the Apprenticeship Training Program and would no longer be subject to the provisions of the program, nor subject to the control of the Committee. Mr. Bourgon, however, completed his training elsewhere.

Did the parties intend that a person hired from outside would receive different treatment from an employee who received his training while employed by the Employer? No such thing was suggested at the hearing, nor can I think that it was the parties' intent to treat employees trained elsewhere so differently.

I am thus of the view that the program was not intended to apply to a person, like Mr. Bourgon, who had already completed an apprenticeship program, had over 8,000 hours of experience, and who was qualified as and was hired as a class I millwright.

But is there any language in the Appendix which, even if the Trades Apprentice Program in general does not apply, was nevertheless intended to apply to a person such as Mr. Bourgon?

The Union noted that the Training Duration section specified that "In no case will a candidate begin at a higher classification than Class III." While I agree with the Union that this is mandatory language for those to whom this section is applicable, it is not obvious that it applies to Mr. Bourgon. It is directed to those candidates who seek to become trained under the program. Mr. Bourgon does not need to take the Ministry courses as he has already completed the industrial millwright course. He does not need the on-the-job training as he likewise has all the on-the-job training needed. Mr. Bourgon does not need and does not seek anything available to aspiring trades persons under the program. I can see no reason to apply this restriction, mandatory for those who are candidates under the program, to those other persons who are not employed under the program. I conclude that it has no impact on the hiring or employment of Mr. Bourgon.

I find nothing in the Trades Apprentice Program Appendix of the collective agreement or elsewhere in the collective agreement which prevents the Employer from seeking and hiring

a person such as Mr. Bourgon as a millwright I. I conclude that the Employer did not violate the collective agreement in hiring Mr. Bourgon as a millwright I. The grievance is dismissed.

Dated in London, Ontario, this 30th day of June, 2004.

Howard Snow, Arbitrator