IN THE MATTER OF AN ARBITRATION

BETWEEN

LIBBEY CANADA INC.
- the Employer

and

ALUMINUM, BRICK AND GLASS WORKERS INTERNATIONAL UNION (AFL-CIO-CLC) AND ITS LOCAL 235-G
- the Union

AND IN THE MATTER of a grievance of Garth Cantin

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer:

Barry R. Card	- Counsel
David F. Brown	- Plant Manager
David M. Kucharski	- Human Resources Manager
John Salisbury	- Human Resources Supervisor

On behalf of the Union:

Richard A. Blair	- Counsel
Roger T. Beer	- International Representative
Gary Watson	- President, Local 235-G
Rob McGee	- Vice President, Local 235-G
Etienne Tack	- Second Vice President, Local 235-G
Garth Cantin	- Grievor

Hearing held in Wallaceburg, Ontario on April 25, 1995.

AWARD

I. INTRODUCTION

In this grievance Garth Cantin (the grievor) seeks reinstatement in his employment. The Employer terminated the grievor's employment following his absence on October 19, 1994. A grievance was filed and processed through the procedures in the collective agreement. A Step 4 grievance meeting was held in December 1994 and a decision, dated December 22, made by the Employer. The Union received this decision in early January, 1995. On March 16, the Union requested the appointment of an arbitrator by the Minister of Labour, although on March 10 the Union had advised the Employer of its intention to pursue arbitration.

The Employer raised an objection to my jurisdiction to hear and determine this grievance, relying on Article 7.09 of the Agreement. The relevant part of Article 7.09 reads as follows:

> If no written request for arbitration is received within fifteen (15) working days after the final decision under the Grievance Procedure is given, it [the grievance] shall be deemed to have been settled or abandoned.

The argument on jurisdiction proceeded as though my appointment by the Minister had been made under Section 46 of the *Labour Relations Act*. However, it is not clear that my appointment was made under Section 46. My appointment letter from the Minister of Labour was copied to both parties. As the parties both argued the issue on the basis that I was appointed under Section 46, I am deciding the matter as though I was appointed under Section 46, but I do not foreclose further submissions on this issue.

The Employer submitted that the December 22 decision was the final decision, that the grievance was "deemed to have been settled or abandoned" under Article 7.09, and thus that a referral to arbitration under the Agreement on March 16 would have been out of time. The Employer then submitted that the referral to arbitration under Section 46 of the *Act* was out

of time. Section 46 (2) provides, with respect to Section 46 requests, that:

> ... no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

The Employer submitted that, as the time stipulated in the Agreement for referring the grievance to arbitration had expired, the time permitted in Section 46 of the *Act* for referral to arbitration had also passed.

The Union submitted that the decision on December 22 was not a final decision, that there were ongoing discussions in January and February, and that a second Step 4 Meeting was held on February 14, with another decision dated March 1, 1995. Considering the February meeting and the March response, the Union submitted that the time for referral to arbitration under Article 7.09 of the Agreement had not expired as of March 16, and thus that a referral to arbitration would have been timely under the Agreement. If a referral would have been timely under the Agreement, the Union submitted that a referral under Section 46 of the *Act* was thus also timely. In the alternative the Union submitted that under Section 45 (8.3) of the *Act* I had the discretion to extend the time limits. Section 46 (7) provides that Section 45 (8.3) applies, with all necessary modifications, to an arbitrator appointed under Section 46.

I heard evidence on the issue of jurisdiction before I heard any evidence on the merits of the grievance. However, the evidence on the merits was not completed in the one day scheduled. This award is therefore limited to the preliminary issue of my jurisdiction.

I first address the question of whether the time for referral to arbitration had expired under the Agreement, and thus also under Section 46 of the *Act*, and secondly the issue of the extension of time limits under Section 45 (8.3) of the *Act*.

II. TIMELINESS UNDER THE AGREEMENT

As noted, the Agreement provides for referral to arbitration within 15 working days after the final decision of the Company under the Grievance Procedure. The essential question is when was the final decision made? The resolution of that question requires a review of the events of January and February.

There was a Step 4 meeting on December 20, 1994. After that meeting George W. Templin, Vice President Human Resources, who regularly comes to Wallaceburg from Toledo, Ohio, for the Step 4 meetings, wrote to the Union with a decision. That letter was dated December 22 and was received by the Union in January. On January 10, 1995 the Union met with its lawyer in Toronto, to discuss the grievance. After that meeting the Union sought information from the Employer on attendance for both the grievor's department (forming) and the plant as a whole. The information was not readily available and the Union officials made repeated requests for information during January and February. The final information was delivered in early March.

In another development, in late December the Employer announced new "Attendance Guidelines" to take effect in January, 1995. During January and February the Union requested similar information on attendance records as part of its discussions with the Employer about the new Guidelines.

The Employer argued that it was not clear that the requests for information during this period were in relation to the grievor's case. I return to this shortly, but first it is helpful to describe the meeting of February 14 and the subsequent letter. The parties disagreed about the effect of this as well, but it occurred in parallel with the various requests for information and I think it important to view all the events in context.

The parties had a Step 4 Grievance meeting scheduled for February 14 to deal with other grievance(s). The Local Union asked the management staff in Wallaceburg to add the grievor's case to the agenda of this meeting. Apparently the matter was now out of their hands, so Mr. Templin was contacted. The Local Union was advised that Mr. Templin did not wish to have another meeting. The Local Union then contacted Mr. Beer, the Union's International Representative, and asked him to assist. Mr. Beer telephoned Mr. Templin in Ohio and arranged for the grievor's case to be added to the February meeting. It was discussed at that February 14 meeting and Mr. Templin then responded with a letter dated March 1, 1995.

The issue is whether the December 22, 1994 letter from Mr. Templin was the final decision under Article 7.09, or was the final decision communicated in Mr. Templin's March 1, 1995 letter.

Gary Watson, the President of the Union Local, testified that on January 11 he asked John Salisbury, the Human Resources Supervisor, for the information on attendance. Mr. Watson told Mr. Salisbury that the Union lawyer had asked the Union to secure additional information before a decision could be made on whether to take this grievance to arbitration. Mr. Watson also advised the Employer representatives in a meeting held on January 19 that the Union was not accepting the Employer position and that the Union wanted a second Step 4 meeting on this grievance.

Rob McGee, the Union Vice President, testified that he also spoke to Mr. Salisbury on January 11, seeking the same information as Mr. Watson, and that he repeated his request for the information six or seven times throughout January and February. Mr. McGee testified that he made it clear at the time of the first request that the information was sought for the grievor's case, but he did not repeat the point in his later requests.

While Mr. Card, counsel for the Employer, suggested that the Employer may have been confused about the purpose for which the information was sought, there was no evidence to that effect. Mr. Salisbury did not testify in relation to the question of jurisdiction. Mr. Kucharski, the Human Resources Manager, did testify but he was not asked about this issue in direct examination. When questioned in reply, he indicated that the new attendance program was "entwined" in the requests for information. It was not clear what it was entwined with, but the only plausible matter about which I heard evidence is the grievor's case. I conclude that while there were requests for similar information for different purposes, nevertheless the Employer knew the Union sought the information for the grievor's case in order to make a decision on whether to proceed to arbitration.

Mr. Beer, the Union's International Representative, testified about the arrangements he made for the inclusion of the grievor's case in the meeting of February 14. He noted that the grievor had not attended the December Step 4 meeting and that in his response Mr. Templin mentioned the grievor's absence. Mr. Beer was asked by the Local to arrange to have the grievor's case added to the February Step 4 meeting. Mr. Beer testified that it was he who had originally decided that the grievor should not attend the December meeting. When he was asked by the Local to arrange for the grievor's case to be added to the February meeting, Mr. Beer felt that the grievor should get his "day in court". He testified that he contacted Mr. Templin in Toledo by telephone and asked that there be "another Step 4 meeting for Garth". In cross examination he indicated that he was not certain of the exact words but that he asked for the grievor to be included in the Step 4 meeting. Mr. Beer also testified he thought George (Mr. Templin) knew that the grievor was to get his day in court, that he, Mr. Beer, was concerned that he had asked the grievor not to attend the December meeting, and that the grievor's absence was referred to in the Employer reply. Mr. Beer testified he thought the grievor would be able to plead "directly to the company on the basis of a 4th Step meeting" but was not positive if he expressed this to Mr. Templin in these exact words.

The three Union witnesses all said they were familiar with the time limits and none felt they were operating outside the time limits in the Agreement. All witnesses agreed there had been no discussion between the parties about time limits, and that the Union made no request for an extension of the time limits.

Mr. Templin did not testify. His letter of March 1 was, however, in evidence. It reads, in part, as follows:

> Dear Mr. Beer:
> The following represents the results of a 4th Step Grievance meeting held in Wallaceburg with Local 235-G and the Company, Libbey Canada on February 14, 1995.
> Grievance #20 ....
> ...
> Grievance # 19 - The Union stated that it was desirous of opening up Grievance #19 relative to Mr. Garth Cantin.
> ...
> Mr. Cantin attended today's [sic] meeting and made an impassioned plea on his own behalf ...
> The Company considered Mr. Cantin's request...
> The Company must respectfully continue to deny this grievance.
> ...
> Should you have any questions relative to the content of this letter or desire further details, please advise.
> Very truly yours,....

I find that the Union told the Employer on January 11 that it was not simply accepting the Employer's decision of December 22. The Union sought additional information from the Employer and advised the Employer that the information was being sought at the suggestion of the Union's lawyer in order to decide whether to pursue this grievance to arbitration. By January 19, at the latest, the Union asked for another Step 4 meeting to deal with this grievance. The Union pursued their request for another meeting when the initial response was negative. Mr. Beer made arrangements with Mr. Templin for the grievance to be discussed at the Step 4 Grievance meeting held on February 14. Mr. Beer thought it was

another Step 4 meeting for this grievance. It is not clear what Mr. Templin thought. However, his letter of March 1, which is addressed to Mr. Beer, is entirely consistent with his having agreed with Mr. Beer as to the intent of the meeting. Mr. Templin's introductory sentence speaks of "the results of a 4th Step Grievance meeting". Mr. Templin treats the grievor's case in a similar manner to Grievance 20, another grievance. He notes that the Union "was desirous of opening up Grievance # 19 relative to Mr. Garth Cantin". Mr. Templin then addresses this grievance, recording that Mr. Cantin made an impassioned plea. He says "The Company considered Mr. Cantin's request..." I understand this to mean the Employer opened up Grievance # 19, this grievance, and as requested, having opened it up, addressed the substance of the request made by the grievor, Mr. Cantin. Having opened the grievance and considered the grievor's request, Mr. Templin then advises that "The Company must respectfully continue to deny this grievance." There is no suggestion in the letter that Mr. Templin considered this grievance to have been closed, or that Mr. Templin refused to address the substance of the grievance. Mr. Templin's letter is thus consistent with the evidence of Mr. Beer, the Union's International Representative, who arranged with Mr. Templin for this grievance to be included in the meeting of February 14.

In my view, the letter of December 22 was not, in the terms of Article 7.09, the final decision of the Employer in this particular case. If the Union had done nothing after receiving the letter, then no doubt in the ordinary course of events it would have been the final decision. But this grievance did not continue in the ordinary way. In January and February the Union sought further information relevant to the case. Of even greater importance, the Union communicated its desire to continue to pursue the matter, it sought another discussion of the grievance at the Step 4 level and, in my view, the Employer acceded to the request to have another Step 4 meeting. Only after that February 14 Step 4 Grievance meeting did the Employer provide its final decision in Mr. Templin's letter of March 1.

March 16 is within 15 working days of both March 1, the date of the letter, and March 2, the day the Union received the letter. It follows that the time for referral to arbitration under the collective agreement had not passed. Similarly, it follows that the time for a referral under Section 46 of the *Act* had not expired. I thus conclude that I have jurisdiction to hear and determine this grievance.

III. DISCRETION TO EXTEND TIME LIMITS

Given my decision on the above point, it is not necessary to deal with the issue of the statutory authority to extend time limits. If the issue dealt with the interpretation of the parties' Agreement rather than the *Act* or if it seemed that the situation was likely to soon reoccur, I might express my views on the question for the possible future assistance of the parties. However, the issue is one of statutory interpretation and the fact situation is not likely to be repeated soon between these parties. Thus I am not addressing this issue.

IV. CONCLUSION

For the reasons given above, subject to any further submissions as to the nature of my appointment, I conclude that I have jurisdiction to hear and determine this grievance. The hearing will therefore continue in order to address the question of the grievor's termination.

Dated in London, Ontario, this _____ day of May, 1995.

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Howard Snow, Arbitrator