

IN THE MATTER OF ARBITRATION BETWEEN

UNITED STEELWORKERS
and its affiliated LOCAL 11-63
UNION

and

SAPPI FINE PAPER-CLOQUET, LLC
COMPANY/EMPLOYER

OPINION AND AWARD

Contract Interpretation/Application
Roll Handler/Helper Wages

FMCS Case No. 11-50574-3

Award Dated: May 6, 2011

Date and Place of Hearing:

March 4, 2011
Fond du Lac Tribal and Community College
Cloquet, Minnesota

Date of Receipt of Post Hearing Briefs:

April 16, 2011

APPEARANCES

For the Union: Gerard A. Parzino, Staff Representative
District 11
United Steelworkers
2929 University Avenue SE, Suite 150
Minneapolis, MN 55414

For the Company: Denis E. Cole, Esq.
Attorney at Law
1305 Franklin Avenue, Suite 225
Garden City, NY 11530

ISSUE

Did the Company violate the Collective Bargaining Agreement by continuing to pay the negotiated rate for the newly established classification of Roll Handler/Helper after the Union claimed a substantial change to duties performed in that classification? If so what shall the remedy be?

WITNESSES TESTIFYING

Called by the Union

Brady Nelson, President
United Steelworkers Local 63
Super Calendar Operator

Loren Granda,
Winder Operator

Michelle Mihalek
Roll Handler/Helper

Called by the Company

Mike Schultz,
Mill Manager

ALSO PRESENT

On Behalf of the Union

Jay Arntson, Vice President
United Steelworkers Local 63

David Little, Vice President
United Steelworkers

On Behalf of the Company

Neil Johnson,
Coating Superintendent

Cy Porwall,
Human Resources Manager

JURISDICTION

The issue in grievance was submitted to arbitration pursuant to Article VIII and Article XVI of the Collective Bargaining Agreement (Joint Exhibit 1) between the parties and under the rules of the Federal Mediation and Conciliation Service of the United States Government. Article VIII of the Agreement provides that wage disputes such as is involved herein, shall be heard by a tri-partite Board of Arbitration. At the hearing the parties waived that requirement and the matter was referred to James L. Reynolds as sole Arbitrator for a decision. The parties stipulated that the issue was properly before the Arbitrator and that he had been properly called.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was presented by both parties through post hearing briefs which were received by the agreed upon deadline. With the receipt of the post hearing briefs the record in this matter was closed. The issue is now ready for determination.

STATEMENT OF THE ISSUE

The parties presented somewhat different versions of the issue to be decided. The Union framed the issue as follows:

Have the additional tasks and responsibilities added to the parties agreed upon combined Roll Handler/Helper classification Memorandum of Agreement; created a substantial change within the framework of Article VIII sub-section Wages/Classification?

And if so, what is the Arbitrator's proper established wage rate increase per Article VIII Benefits/Wages subsection Wage Classifications?

The Company framed the issue as follows:

Has the Company violated the Collective Bargaining Agreement by insisting on the continued application of the agreed rates for the new classification of Roll Handler/Helper that was created by agreement of the parties during the 2009-2010 negotiations that culminated in Joint Exhibit One?

The parties deferred a final framing of the issue to the Arbitrator. After careful review of the testimony and evidence adduced at the hearing the issue to be decided is determined to be:

Did the Company violate the Collective Bargaining Agreement by continuing to pay the negotiated rate for the newly established classification of Roll Handler/Helper after the Union claimed a substantial change to duties performed in that classification? If so what shall the remedy be?

On June 30, 2010 the Union notified the Company [Joint Exhibit 2] of its concern related to “significant changes to job duties in the Super/Winder teams”. It noted that “pursuant to the Labor Agreement the Company is to promptly notify the Local of the changes and at the request of the Local set a temporary rate for these jobs that have had these changes”. The Company responded to the Union’s concern on August 18, 2010. In its response the Company stated that what was agreed to in the Collective Bargaining Agreement adequately covers the concerns of the involved employees. The Company did, however, offer an increase in the rate of pay for the four (4) employees who were in the Super Calendar Helper position and transitioned into the Roll Handler/Helper position. The Company offer was only for those four (4) employees, and would extinguish should they accept a promotion or transfer to a different position. On August 25, 2010 the Union requested a third step meeting to discuss the matter. On October 14, 2010 the Company affirmed its position stated on August 18, 2010. On October 18, 2010 the Union notified the Company that it was moving the issue to arbitration. It was heard in arbitration on March 4, 2011.

The controlling contract language is found in **ARTICLE I - General Statement of Operations**, **ARTICLE II - Management Rights Clause**, **ARTICLE VIII - Benefits/Wages**, **ARTICLE XVI - Adjustment of Complaints**, and **Article XXVI - Scope of Agreement**. In relevant part these sections of the contract read as follows:

I. General Statement of Operations

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For all operations:

* * * *

- The Company is dedicated to providing everyone at Cloquet with meaningful, challenging work. To do so, Cloquet's work will be designed with the total task in mind as an assignment framework. There will be no “jurisdiction” or other arbitrary restriction of tasks. Rather, we will continually grow employee capability to do complete and wide-ranging tasks in order to do whatever it takes to get the job done safely, swiftly, efficiently, and well. We all are expected to perform assigned tasks which we can safely perform, including familiarity with the safety aspects of the work area, regardless of job title or rank.

* * * *

- Everyone understands the total operation and can perform most if not all the core tasks in the area.
- Everyone has a challenging set of tasks and shares in all the work.
- The Cloquet mill design is based on the principle of mutual support and assistance and absence of arbitrary restrictions of tasks. ...

For all new equipment and department installations (in addition to the above):

- There will be no stand-alone jobs. Individuals and teams will have groupings of tasks to perform, which may change throughout the day, week, or year to satisfy the customer.

* * * *

II. Management Rights Clause

The Company retains the exclusive right to manage the business of the Company and its Cloquet Plant and to direct the working force. The following enumeration of management rights is for example purposes only and implies no limitations upon management’s rights to control the business and direct the workforce except as expressly modified by specific provision of this agreement; this right includes the right to plan, direct and control all plant operations; to establish, modify and eliminate plant facilities, production methods, and production and quality standards; to purchase, sell or relocate any capital equipment or operations; to discontinue the performance of any process or operation by employees; to determine the number of and classification of employees required; the right to select, hire, assign, promote, demote, transfer, discipline, suspend or discharge employees for just cause or to relieve them from duties

because of lack of work or for other legitimate reasons. Failure of management to exercise any of its rights hereunder or the inconsistent exercise of any such right shall not be deemed a waiver or surrender of such right nor shall management be precluded from the future exercise of those rights in its sole discretion. Whenever the Company exercises any of the above-mentioned rights the Union reserves its right to negotiate and/or grieve the effects thereof, as appropriate.

VIII. Benefits/Wages

* * * *

Wages/Classifications

The hourly wage scale for respective job classifications and the effective dates of negotiated wage increases shall be set forth as Appendix "B". Employees requesting a transfer to a job paying a lower rate will receive the lower rate, once transferred.

Whenever a new job classification is created, or the responsibilities of an existing job classification are substantially changed, the Company will promptly inform and discuss with the Union the rate(s) of pay established for a newly created job classification and the job duties involved. After the rate(s) have been in effect for a trial period of sixty (60) work days, the wage rate(s) may be brought up again for discussion between the Company and the Union. If no agreement is reached as a result of such discussion, the rates established by the Company may, within a period of not more than thirty (30) work days beyond the trial period described above, be submitted to arbitration in accordance with the procedures described in this agreement. The jurisdiction and authority of the Board of Arbitration, to review the propriety of the challenged rates, shall be to establish the proper relationship of the rate(s) to the schedule of rates then in effect in the Cloquet Plant for job classifications within the Bargaining Unit covered by this Agreement. If the Board's decision results in a change in the rate(s) in question, the amount of the change will be made retroactive to the date of the establishment of or change in responsibilities which are the basis for the rate(s) change.

The following wage structure shall be in place for production positions:

- ◆ Each position (with the exception of the top position) will have two wage levels. The top position in each process area shall have one wage.

- ◆ An employee shall be paid “C-Level,” or base, wage upon permanent assignment to a position.
- ◆ An employee shall be promoted to “B-Level” and shall be paid “B-level” wage upon satisfactorily qualifying for move-up into a job above his/her permanent position (able to perform the job). This wage increase is designed to reasonably compensate the employee for any and all move-ups required to assist in vacancy filling, and is paid at all times, and without regard to actual work performed during the shift. The employee, not including Reserves, and not covering for vacation and/or training, shall be paid the rate of the classification to which he/she has been moved up after the fourth consecutive shift rotation of the move-up.

Wages:

All wages for the term of this agreement are set forth in Appendix B, as follows:

- ◆ The “C-level” wage is the base wage for each operating position.
- ◆ The “B-level” wage is equal to 50% of the difference between the employee’s base wage, and the base wage of the next-higher position, up to a maximum of \$0.50/hour.

Article XVI. Adjustment of Complaints

The purpose of this section is to provide an orderly method for the settlement of a dispute between the parties, such as, but not limited to, the interpretation, application, or claimed violation of any of the provisions of this Agreement. Such a dispute shall be defined as a grievance under this Agreement. The dispute must be presented within seven (7) working days after its occurrence unless union and management agree that the union could not reasonably have identified the disputed item within seven (7) days. With regard to any issues pertaining to the Company’s benefit plan, the Union will have seven (7) days from the time the Union becomes aware of the issue to file a grievance. The term “working days” used in this section shall exclude Saturdays, Sundays, and holidays.

When an employee is being disciplined or has the potential of being disciplined, it is understood that the employee has the right to union representation, if requested by the employee.

The parties agree to follow each of the following steps in the processing of the grievance; and if at any step the Company’s representatives fail to give

their written answer with the time limit herein set forth, the Union may appeal the grievance to the next step at the expiration of such time limit. Either party may request and receive up to a fourteen (14) day extension of the time limits set forth below at any step of the adjustment of complaint procedure. It is also understood that instances may arise when potential complaints may be placed in abeyance with the agreement of both parties. Both parties are equally responsible to adhere to this procedure. If there is no timely answer from the Company, the grievance will move to the next step of the process. If there is no timely answer from the Union, the grievance is dropped.

Employees shall attempt to resolve disputes and misunderstandings by informally referring those disputes to their immediate supervisor prior to pursuing grievance steps. Any resolutions resulting from this portion of the procedure shall be non-precedent setting. In the event such informal resolution is not successful, grievances shall be dealt with in the following manner.

If prior knowledge of the error was known by the employee and was not reported to management, no grievance will be processed.

When it has been determined that the Company is in violation of the labor agreement resulting in a loss of wages to an individual, the sole remedy will be to provide work opportunities to be scheduled by either the Process Teams or management within 30 working days. The plant manager or his or her designate may, however, determine that specific circumstances may warrant a direct payment be made. If such payment is made, it is on a non-precedent setting basis. Nothing herein precludes the Union from exercising its right to grievance and arbitration processes for intentional or excessive situations. In case of suspension or discharge, it will be within the authority of the Manager hearing the issue at the appropriate step of the grievance procedure, or the arbitrator, to determine the remedy.

Step 1. The Union steward and/or committee person shall take up their grievance in writing with their Department Supervisor. The Supervisor shall give his/her answer in writing within ten (10) working days of the discussion.

Step 2. If the grievance is not settled in Step 1, the Union may appeal and give it to the Department Manager within five (5) working days of the receipt of the Supervisor's answer. The Department Manager, upon receipt of the written grievance, shall arrange with the Union's Committee a second step meeting which shall be conducted within seven (7) working days. The Department Manager shall give their written answer to the grievance within five (5) working days after the close of the discussion.

If an employee is discharged or suspended, management will notify the local Union Committee involved within twenty-four (24) hours of the action. At the local union's request, a Step 2 meeting will be scheduled the same day if possible but not later than five (5) working days from the date the suspension or discharge occurred. If no mutually satisfactory resolution of the issue is reached within the required time, the complaint shall follow the remainder of the Adjustment of Complaints procedure.

Step 3. If the grievance is not settled in Step 2, the Union may appeal it by giving a written notice of such appeal, within ten (10) working days after receipt of the answer of the Department Manager, to the Mill Manager or their designated representative, who shall discuss it with the Union's Committee and the International Representative of the Union at a time mutually agreed upon. The Mill Manager or their designated representative shall give their written answer to the grievance within ten (10) working days after the close of the discussion. If no mutually satisfactory resolution of the grievance is reached at this step, within ten (10) days following the next monthly Union meeting, the grievance may be referred to arbitration upon written notice from the International Representative of the Union or a designated representative.

Prior to arbitration, both parties may mutually agree to alternative methods to resolve the issue (i.e. interest based bargaining, mediation, etc.). Both parties shall pay half the cost of the alternative method used.

Arbitration

If a grievance is appealed to arbitration, the following procedure shall be followed:

A written request shall be made for the Federal Mediation and Conciliation Service to submit the names of seven (7) qualified arbitrators. Upon receipt of such list of arbitrators, the parties shall meet and alternately strike names from the list. The person whose name remains on the list shall be the arbitrator. If the arbitrator requests to be excused, another panel will be requested. Each party may exercise its option to reject one (1) panel submitted by the FMCS and upon rejection of said panel, a second panel will be furnished. The arbitrator shall not have authority to add to, subtract from, modify, change, or alter any of the provisions of this Agreement. The decision of the arbitrator shall be final and binding on both parties.

Each party shall bear the expenses of its representatives, witnesses, with the arbitrator's expenses and meeting room being borne equally by the parties.

A court reporter may be used at either party's option. In such instance, the party requesting the court reporter will pay for the recorder and furnish a copy of the transcript to the other party at no cost.

No arbitration case will be postponed unless the parties agree to the postponement for good and sufficient reason.

Article XXVI – Scope of Agreement

This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof. There will be no obligations by any of the parties to enter into any discussion on any topic not enumerated in this Agreement. To that extent, no changes, which are mandatory subjects of bargaining, can be instituted unless by mutual agreement of the parties and signed by signatories of this Agreement. Any agreements, past practices, and/or understandings written or unwritten, or other terms not specifically included in this Agreement, regardless of whether they relate to any subject matter referenced herein shall not be applicable.

Neither the Company nor any supervisor shall have any private understandings or agreements with any individual employee or groups of employees in conflict with this Agreement.

FACTUAL BACKGROUND

Involved herein is a grievance that arose in June, 2010 related to the rate of pay for the newly implemented Roll Handler/Helper position on the Calendar/Winder Team at the Cloquet Mill. The Company produces fine paper products at the Cloquet Mill. The Union is the exclusive bargaining representative of the hourly paid production employees engaged there. The parties have had a collective bargaining relationship for several years.

Sappi Fine Paper purchased the Cloquet Mill from Potlatch Corporation, and in 2002-2003 negotiated a new labor agreement with the Unions representing employees at the Mill. At that time two Unions, the United Steelworkers Local 11-63 and International

Brotherhood of Firemen and Oilers, Local 939 jointly represented the employees. These two Unions and the Company entered into a single labor agreement for the period of 2002-2006 and 2006-2009. At the most recent negotiations for a successor agreement the two Unions negotiated separate labor agreements.

The current Collective Bargaining Agreement (Joint Exhibit 1) became effective on June 3, 2010 and continues in full force and effect through May 14, 2012. For all relevant times the employees involved in this grievance were covered by its terms.

In the course of the negotiations that led to Joint Exhibit 1, the Company proposed that the Roll Handler position be moved up in the pay progression to reflect the greater responsibilities of that position. Under the Company proposal the job title of Roll Handler was to be maintained, but placed in pay grade CW3, and removed from its then current pay grade of CW5. The Super Calendar Helper position that was in pay grade CW3 would, under the Company's proposal, be discontinued and the employees in that classification would be incorporated into the Roll Handler position while remaining in pay grade CW3. The Company also proposed the addition of a fourth Winder Helper/Core Cutting position in pay grade CW4 to the three such positions that were already in place.

The Union countered the Company's proposal by proposing that the fourth Winder Helper/Core Cutter position the Company proposed in pay grade CW4 be placed instead in a new position of Roll Handler/Helper in the higher pay grade of CW 3. The Roll

Handler/Helper position would incorporate those employees who were then classified as Super Calendar Helpers and those employees who would become Roll Handler/Helpers by reason of the move of the fourth Winder Helper/Core Cutting employees to pay grade CW3 from pay grade CW 4. The Union reasoned that by doing so there would be two Roll Handler/Helpers available on each shift who could relieve one another in the performance of roll handling duties and perform other duties when not handling rolls. The Company insisted during negotiations that the total number of employees working on the Calendar/Winder Teams not increase. It was not disputed that the total number of employees would stay the same, neither increasing nor decreasing. The Union's counter proposal was mutually accepted in the course of negotiations on March 23, 2010. It was incorporated into the Collective Bargaining Agreement that was ratified in June 2010.

The Union expressed concerns during negotiations and again when the new Roll Handler/Helper [CW3] classification was about to be implemented that those employees who had progressed from Roll Handler to Super Calendar Helper in the past would not be enthusiastic about having to do roll handling again in the new classification. Notwithstanding those concerns, however, the new Roll Handler/Helper classification was agreed to.

The new Roll Handler/Helper [CW3] position was implemented on July 7, 2010. In making that implementation four employees [Chartier, Reynolds, Southerton and Wuorinen] who had been in the Winder Helper/Core Cutter classification [a CW4 position] were moved to Roll Handler/Helper positions and began to receive the higher

rate of pay for the CW3 classification. Four other employees [Dauplaise, Hartung, Granda and Mihalek] who had been working in the CW3 Super Calendar Helper positions were also moved into the new Roll Handler/Helper classification, and continued to be paid at the CW3 rate.

Some employees who had been Super Calendar Helpers prior to implementation of the Roll Handler/Helper classification expressed concerns about the duties they were being asked to perform. On their behalf the Union brought their concerns to the attention of management. It asserted that substantial additional duties had been added since the Collective Bargaining Agreement became effective. On August 18, 2010 the Company responded to those concerns by stating that it believed the matter was fully addressed in contract negotiations. It did recognize, however, that employees who had been in the Super Calendar Helper position did have a wider range of duties as a result of implementing the Roll Handler/Helper position. In an attempt to resolve the concerns of the former Super Calendar Helper employees the Company offered them \$0.50 per hour additional compensation until such time as they may be promoted or transferred to another position. That offer failed to resolve their concerns, and the matter was moved to arbitration where it was heard on March 4, 2011.

POSITION OF THE PARTIES

Position of the Union

It is the position of the Union that the grievance be sustained and that the Arbitrator establish an increase to the current Roll Handler/Helper wage rate that will fairly and

justly compensate the employees in the Roll Handler/Helper classification for the substantially changed job duties and responsibilities. In support of that position the

Union offers the following arguments:

1. The Roll Handler duties that were incorporated into the Roll Handler/Helper classification are demanding and involve operating multiple overhead cranes, transfer carts and a number of additional tasks and responsibilities. It is a key position. Any disruption to the production flow for which the Roll Handler/Helper is responsible would be extremely costly to the entire operation and has the potential to shut down a paper machine.
2. The Union agreed with the Company in negotiations that the Roll Handler classification has a wide range of very serious safety responsibilities, has a major impact and responsibilities for production flow that make the job very mentally and physically demanding. The Union further agreed that additional experience and retention could be achieved by moving the Roll Handler up the progression.
3. Negotiations resulted in the moving the Roll Handler classification up two classifications within the progression and combining the Roll Handler classification with the Super Calendar Helper classification to create the new Roll Handler/Helper classification.
4. It was further agreed in negotiations that the Calendar/Winder Team staffing of eleven team members would not be reduced. The staffing was to be changed from one Roll Handler and one Super Calendar Helper to two Roll Handler/Helper team members. The two Roll Handler/Helper team members would rotate between the duties of the former Roll Handler and Super Calendar Helper classifications.
5. Shortly after the Collective Bargaining Agreement was ratified management advised that the duties of the Roll Handler/Helper classification were going to be substantially different from the former duties and responsibilities of the Roll Handler and Super Calendar Helper classifications that were replaced. The Union requested that these additional job duties and responsibilities be reduced to writing, but were denied.
6. The Union requested that the Company establish a temporary rate based on the substantial changes in job duties, and meet with the Union to discuss the rate of rate of pay and the duties for the classification. The Union did not agree with the Company's response, and filed a grievance on August 25, 2010.

7. The Union agrees that the Company retains the right to assign work and work duties as agreed in Article I and Article II of the Collective Bargaining Agreement. The Union further agrees that even after combining the duties of the Roll Handler and the Super Calendar Helper classifications, the Company has the right to substantially change the duties of the newly created position. The Union asserts, however, that these substantial changes warrant a wage adjustment.
8. The Company also added duties to the Super Calendar Operator and Winder Operator, but the Union did not request for a wage adjustment for those additional duties because they were not substantial.
9. The fact that the changes to the Roll Handler/Helper classification are substantial is demonstrated by the tonnage increase and reduced overtime call-ins experienced after they were implemented. That increase tonnage was not a result of new equipment or capital upgrades, but is due entirely to the substantially expanded job duties in the new classification.
10. Union Exhibit 3 at page 3 shows that the Roll Handler/Helper classification is required to perform Roll Handler, Stack Utility and Salvage Winder duties. Comparison of page 3 to page 2 of the exhibit demonstrates that the duties of the Roll Handler/Helper were expanded after ratification. In order to be regarded as qualified for Roll Handler/Helper an employee must demonstrate qualifications in Roll Handling, Stack Utility and Salvage Winder.
11. The Company recognized that a wage adjustment was warranted for the substantial changes in duties by offering to red circle four employees in the new classification with an increase of \$0.50 per hour. The Union rejected this offer because it would end when the current employees involved left the Roll Handler/Helper position. The additional responsibilities, however, would continue.
12. In this case the Union and the Company had agreed in bargaining to combine the Roll Handler and Super Calendar Helper classifications; share the duties and responsibilities of these two classifications and pay the new classification the hourly rate of the former Super Calendar Helper. A full month after ratification the Company totally redesigned the duties and responsibilities of the new classification thereby substantially increasing those duties and responsibilities of the two former classifications.
13. The Company's proposal at negotiations was to move the Roll Handler up to the wage of the Super Calendar Helper; eliminate the Super

Calendar Helper, and add one additional Winder Helper/Core cutting position per team for a total of four additional Winder Helpers/Core Cutters. The Union countered that proposal to the effect that the Roll Handler and Super Calendar Helper classifications would be combined. The tentative agreement reached clearly shows that the Winder Helper/Core Cutting [CW4] classification remained. If it had been proposed that additional duties and responsibilities were to be included in the Roll Handler/Helper classification the Union would have bargained over them.

Position of the Company

It is the position of the Company that the grievance should be denied. In support of that position the Company presents the following arguments:

1. The proper rates of pay for the Roll Handler/Helper classification are set forth on page 38 of Joint Exhibit 1. Company Exhibit 6, Company Exhibit 4 and Joint Exhibit 4 show that the parties agreed to the higher [CW3] rate for the work to be performed by the new classification, even though much of the work involved roll handling which had been paid at the lower CW 4 rate in previous labor agreements.
2. Delineation of the CW3 rate for the Roll Handler/Helper for the term of the current Collective Bargaining Agreement is proof positive that the Company and the Union had a meeting of the minds on the rate for the newly created job.
3. The parties did not agree to any limitation of tasks or on a “job description” for the Roll Handler/Helper. That is consistent with the team-based structure of the entire facility, which requires employees to work on tasks within their teams, as needed.
4. There are no job descriptions in the Cloquet Mill. The fact that the newly created job is called “Roll Handler/Helper”, however, rather than “Roll Handler/*Super Calendar Helper*” strongly supports the conclusion that more than just roll handling and super calendar operator assistance were envisioned by both parties to be involved in the new job. That is borne out by the fact that the Union’s counter proposal was that the Company’s proposed addition of the fourth Winder Helper/Core Cutting positions be moved to the CW3 level as Roll Handler/Helpers.
5. Were the wages to have been any different than those which were ultimately agreed to for the eight employees who would be assigned

the new CW3 Roll Handler/Helper job following the effective date of Joint Exhibit 1, it was incumbent upon the Union to have proposed such other rates prior to June 3, 2010. It did not.

6. If the Company is receiving additional work or efficiency as a result of the bargained changes, it is paying substantial additional compensation to the Super Calendar Team for such. The parties agreed to the wage structure in Joint Exhibit 4 and that agreement should not be disrupted in this proceeding.
7. The Union raised the “substantial change” issue only a matter of days after the contract and wages had been agreed to. It appears to be attempting to utilize the “substantial change to an existing classification” portion of Article VIII as a back door attempt to gain additional wages for the newly created job of Roll Handler/Helper. The wages for that position had been agreed to in the general negotiation which had just been completed.
8. It is readily apparent from the entire record, that the Union’s tactic was resorted to because individual incumbents, from what had formerly been the Super Calendar Helper classification, were unhappy with both their changed duties and the fact that the agreed to compensation did not increase their individual wages from what they would have been had the changes not been agreed to.
9. Individual employees reap the rewards negotiated by their exclusive representative, but are also bound by negotiated terms that they personally find less attractive.
10. The intended application of Article VIII relates to changes arising during the term of a current labor agreement. It anticipates that changes could arise for which there would have been no opportunity to negotiate a rate during the preceding general negotiation. Those conditions were not present in this case. Here, the new job was created as part and parcel of the general negotiation and the wage rate for it was agreed to in that same negotiation. The element of post-negotiation, unforeseen creation of a new job or post-negotiation substantial changes to a job which already existed at the time the negotiation took place, is totally lacking in the instant case.
11. The parties do not define with any precision the duties of the Roll Handler/Helper position. That is consistent with the work system that has been in place since Sappi acquired the Mill, as shown in the terms of Article I of the Labor Agreement.

12. The Union's evidence was substantially directed at the operation of the Salvage Winder by a Roll Handler/Helper during periods when one of the two Roll Handler/Helpers on the shift is relieved from handling rolls and is generally helping out in the area. Operation of the Salvage Winder is something that employees below the level of CW3 have had to certify on long before the Roll Handler/Helper position was created. Ms. Mihalek and Mr. Granda testified that they had to learn and get certified on the Salvage Winder after they were placed in the Roll Handler/Helper position. Employees on the Team who were junior to Ms. Mihalek and Mr. Granda had previously certified on that equipment. That suggests that Ms. Mihalek and Mr. Granda missed the Salvage Winder training by exercising their seniority rights to transfer to the Super Calendar team. In any event, the Salvage Winder is a piece of equipment and not a separate job or classification.
13. The list of tasks that Mr. Granda testified that he had to get certified in after the Roll Handler/Helper classification was established reflects that he had to individually, retroactively, qualify on tasks that were essentially entry level to the rest of the Team. Those tasks did not change the responsibilities of any job classification, but merely brought Mr. Granda's personal training up to the level required to perform the Team responsibilities that already existed.
14. At the bottom line, the Roll Handler/Helper job did not become operational until July 7, 2010, yet the Union claims that there had been substantial changes to it as of June 30, 2010. As a matter of both contract and logic, that position is without merit. The only thing that appears to have occurred, between June 3, 2010 and June 30, 2010, was that several individual bargaining unit members had become increasingly vocal about their dissatisfaction with their perception of the impact that the newly agreed to position would have upon them personally when implemented. The Company offered a "creative" solution that was rejected. That solution no longer has a role in the disposition of the issue before the Arbitrator and no longer exists for any purpose.
15. The parties are bound by their Collective Bargaining Agreements. Here a new job was agreed to by the duly authorized representatives of the parties. It is no less binding on employees because some may deem it unpopular or burdensome.
16. For all the foregoing reasons the grievance be denied in all respects.

ANALYSIS OF THE EVIDENCE

This grievance complains that the Company has not abided by the terms of Article VIII of the Collective Bargaining Agreement. The Union alleges that the Company made significant changes to the Roll Handler/Helper job classification after it was bargained by the parties in the negotiation of the June 3, 2010 to May 14, 2012 Collective Bargaining Agreement. It is not disputed that the parties did negotiate on the establishment of the Roll Handler/Helper job classification in the most recent round of contract negotiations. The negotiations ultimately resulted in the creation of the Roll Handler/Helper position and its placement in pay grade CW3. Further bargaining by the parties established the rate of pay for pay grade CW3 as shown on page 38 of the Collective Bargaining Agreement.

The record of this hearing shows that the Roll Handler/Helper position was agreed to by the parties following some give and take during negotiations. The evidence shows that the Company initially proposed that the Roll Handler position then in pay grade CW5 be moved to pay grade CW3 and combined with the Super Calendar Helper position then in pay grade CW3 to create a CW3 Roll Handler position. The Company also proposed adding a fourth Winder Helper/Core Cutting position in pay grade CW4. The Union countered with a proposal that would instead place the fourth Winder Helper/Core Cutting position in pay grade CW3 as a new classification of Roll Handler/Helper. Under the proposal being considered the old Roll Handler and the old Super Calendar classifications would be eliminated. The Union's proposal was ultimately agreed to.

In implementing the agreed to changes three employees [Tobias, Pernu and Mjolsness] who had been in the old Roll Handler classification were moved to the Winder Helper/Core Cutter classification. A fourth employee [Schiller] who had been in the old Roll Handler classification, was moved to the Reserve classification. Additionally, four employees [Chartier, Reynolds, Southerton and Wuorinen] who had been in the Winder Helper/Core Cutter classification were moved to the newly established Roll Handler/Helper classification. They joined four employees [Dauplaise, Granda, Hartung and Mihalek] who were moved to the Roll Handler/Helper classification from their previous classification of Super Calendar Helper.

It is apparent from the establishment of the Roll Handler/Helper classification; the disestablishment of the Roll Handler and Super Calendar classifications; and the movement of four employees from the Winder Helper/Core Cutter classification that it was the intent of the parties at negotiations to restructure the jobs in the Calendar Winder Team. It is clear that the parties discussed this restructuring in the back and forth of negotiations. Ultimately the restructuring and the related pay grade was agreed to. The restructuring of these jobs achieved the aims of the Union and the Company by providing additional compensation to the Roll Handlers in recognition of their responsibilities. The Union also proposed that the fourth Winder Helper/Core Cutter proposed by the Company be, instead, added to the Roll Handler/Helper classification. It is apparent that the Company's objective of adding additional working capacity to the Winder Helper/Core Cutter classification would be accomplished only if some of the duties of that classification were brought into the Roll Handler/Helper classification. It seems

obvious that experienced negotiators, as were involved here, would recognize that and that such was integral to the agreement to restructure the jobs on the Calendar/Winder Team. In any event, the fact that employees from the Winder Helper/Core Cutter classification were the ones transferred into the new Roll Handler/Helper classification gives strong support to that conclusion.

In this grievance the Union claims, on behalf of its members, that additional duties were placed into the Roll Handler/Helper classification after it was implemented. That is peculiar in that that claim was first made on June 30, 2010, whereas the actual implementation of the Roll Handler/Helper position did not become effective until July 7, 2010. Such peculiarity may be due to the likelihood that the employees involved were aware of the realignment of duties caused by the negotiated restructuring of the jobs, and were expressing their dismay even before the Roll Handler/Helper classification was implemented. It would be understandable for them to act in advance of actual implementation.

It is important to note here that the alignment of duties to jobs in the Mill, as prescribed by Article I of the Collective Bargaining Agreement, is not precisely defined in relation to job classifications. To the contrary duties are aligned such that “everyone has a challenging set of tasks and shares in all the work”. The record shows that tasks are decided by the Team members and may be performed by any employee who is trained and certified in the element of the process involved.

In the instant case, the employees in the Roll Handler/Helper classification were asked to perform duties involving Roll Handling, Stack Utility, and the Salvage Winder. With the restructuring some employees had to obtain the necessary certification to operate some process equipment on which they had not previously been certified. The need for them to obtain such certification is not a showing, however, that the job of Roll Handler/Helper had been changed after it was agreed to in negotiations. It is understandable that employees, even relatively senior employees, who had to learn new skills and obtain certifications that they had not previously held, would perceive that duties had been added to their jobs. That is not, however, a correct perception. The job content, as loosely as it is defined in the contract, was agreed to in negotiations.

The core issue in this case is what was agreed to in negotiations between the Company and the employee's exclusive bargaining representative. The record compels a finding that what was agreed to in negotiations was what was implemented on or about July 7, 2010 for the Roll Handler/Helper classification. There is no showing that the implemented job represented any significant change from what was negotiated. The applicable language of Article VIII clearly relates to changes that were involved in the responsibilities of a job classification after the contract had been agreed to and for which there was no opportunity to negotiate prior to signing the Agreement. That is not what occurred here. The Union asserts that significant changes in the responsibilities of the Roll Handler/Helper classification were made after the position was negotiated. The record does not support that claim.

The Union asserts that the tonnage produced from the Mill directly increased as a result of the changes involved. That may or may not be, but in any event does not control here. To credit that argument relative to this grievance the record would have to show a clear nexus between the increased tonnage and the purported significant changes made to the Roll Handler/Helper classification after the contract was negotiated and agreed to. No such showing is found in the record.

Accordingly, and for all the above cited reasons, the Union has not been able to shoulder its burden of persuasion in this case. The Arbitrator is without power to sustain the grievance and it must be denied.

IN THE MATTER OF ARBITRATION BETWEEN

UNITED STEELWORKERS
and its affiliated LOCAL 11-63
UNION

and

SAPPI FINE PAPER-CLOQUET, LLC
COMPANY/EMPLOYER

OPINION AND AWARD

Contract Interpretation/Application
Roll Handler/Helper Wages

FMCS Case No. 11-50574-3

AWARD

Based on the evidence and testimony entered at the hearing, the Company is found to not have violated the Collective Bargaining Agreement by continuing to pay the negotiated rate for the newly established classification of Roll Handler/Helper after the Union claimed a substantial change to duties performed in that classification. The grievance and all remedies requested are denied.

May 6, 2011

Dated: _____

James L. Reynolds

James L Reynolds,
Arbitrator

Awd13.11