

IN THE MATTER OF ARBITRATION BETWEEN

United Steelworkers, Local 11-63

And

Sappi-Cloquet LLC, Cloquet, Minnesota

**Opinion and Award
FMCS Case No. 13-52728-3**

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of United Steelworkers, Local 11-63
Gerard Parzino, USW Staff Representative, District 11
Minneapolis, Minnesota

On behalf of Sappi-Cloquet LLC
Denis E. Cole, Attorney at Law
Manhasset, New York

JURISDICTION

In accordance with the Collective Bargaining Agreement between the Sappi-Cloquet LLC, Cloquet, Minnesota, and United Steelworkers, Local 11-63, May 15, 2012-November 14, 2014; and, under the jurisdiction of the United States Federal Mediation and Conciliation Service, Washington, DC, the above grievance arbitration was submitted to Joseph L. Daly, Arbitrator, on July 11, 2013, at the Fond Du Lac Tribal and Community College in Cloquet, Minnesota. Post hearing briefs were filed by Sappi on August 2, 2013, and by USW on August 9, 2013. The decision was rendered by the arbitrator on August 22, 2013.

ISSUES AT IMPASSE

The union states the issues as:

1. Has Sappi-Cloquet LLC violated multiple sections of the labor agreement by significantly understaffing the mill leading to the continued and escalating unreasonable denial of the employees' contractual right to an unpaid .5/hr lunch break, including modifying their work schedule as agreed in the contract between the parties?
2. If so, what is the proper remedy? [Post-hearing brief of union at 2]

Sappi states the issue as: whether the labor agreement is violated when employees who are unable to take half-hour unpaid lunch breaks during their shifts are paid for the additional half-hour worked. [Post-hearing brief of Sappi at 1].

Relevant Contract Language

I. General Statement of Operations

The philosophy of Cloquet is to increase Sappi Fine Paper's profitability and market share by providing a differentiated product that meets our customers' needs better than any of our competitors at a competitive price with excellent service. This requires that we optimize our technical skills utilizing the "brain power" of everyone in the organization. To do so, requires a dedication to continually improve the skills, knowledge, and capabilities of all employees. In support of this foundation philosophy, the following objectives will apply.

Cooperation

A. The general purpose of the Agreement is to promote the mutual interests of the Company and its employees and to provide for the operation of the Company's plant under methods which will further to the fullest extent possible

1. The safety and welfare of employees
2. Economic and efficiency of operation
3. Elimination of waste
4. Realization of maximum quantity and quality of output
5. Cleanliness of plant
6. Protection of Property

B. The parties agree that any bargaining unit member assigned to any committee or project for which it is expected that the employee will be reassigned from his/her team or schedule for more than 120 cumulative work hours in a calendar year and members assigned to interview teams, will be mutually selected by the Company and the Union. Neither party will unreasonably withhold this agreement for a selectee.

For all operations:

- Knowledge and skills gained are maintained, used, and supported through application.
- 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.
- Every Cloquet employee is treated as a full member of the Company and business we are in.
- Fully informed employees who understand business strategies and how we are progressing against those strategies
- An open communication system
- Management by principles and minimal rules
- The site is maintained in a safe, pristine, pleasant, professional environment.
- A design which continues to build and maintain the integrity of the team.
- Product quality and equipment maintenance is built-in, monitored, and controlled at all points of the process by those operating the equipment.
- Formal daily operational team meetings are held for inter- and intra- team communications, planning, problem solving and decision making.
- 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. With this design it would be prohibitive to not let salaried employees supplement the workforce during outage preparation or upset condition, or help when needed. However, the company will not schedule salaried employees to avoid using, or to replace, bargaining unit employees.

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.
- Discretionary time is built into the work design.
- The qualifications for pay are competency based. Expected competencies would include components for process effectiveness, equipment

effectiveness, flow efficiency, team and people effectiveness, and customer responsiveness.

Appendix C (attached) defines the Pay for Skills system.

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 enumerations of management rights is for example purposes only and implies no limitations upon management's 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 rights to negotiate and/or grieve the effects thereof, as appropriate.

XIII. Schedules and Hours of Work

Schedules

As a Cloquet employee, you may be scheduled to work, one of four schedules. The operating schedules will be as follows:

The standard workweek for all employees shall be from 6:00 A.M. Monday to 6:00 A.M. on the following Monday.

Schedule One

Four employees will work the following schedule:

1. The standard shifts shall be 12 ½ hours per day with a 4 day on, 4 day off rotation to include a ½ hour unpaid lunch.

12 Hour Day Shift = 5:30 A.M. to 6:00 P.M.

12 Hour Night Shift= 5:30 P.M. to 6:00 A.M.

2. The four (4) days on will consist of either

- o Two (2) twelve (12) hour day shifts, followed by two (2) Twelve (12) hour midnight shifts, or

- Four (4) twelve (12) hour day shifts

Schedule Two

The second operating schedule will be a day shift schedule, the hours of work will normally be as follows:

Monday through Friday, 6:30 am to 3:00 pm with a half hour unpaid lunch period usually to be taken at noon, but which can be moved by the Company, dependent upon the needs of the operation.

Schedule Three

The third operating schedule will be a day shift schedule, the hours of work will be as follows: Monday through Thursday from 6:30 a.m. to 5:00 p.m. (10 hour shifts) with a half hour unpaid lunch period.

Schedule Four

In weeks in which two holidays are observed, neither of which is observed on Friday, Schedule Three will be modified by including an 8 hour Friday shift and this schedule shall be known as Schedule Four.

Hours of Work

The shifts are designed with a one-half hour overlap, which will allow for paid communication and planning time at the beginning of every shift. This time will be used for the team to discuss Safety, Company department and work area communications, provide training, and to provide good communication between the off-going and on-coming shift crews. Since your shift typically will begin with this communication and planning time every day, it is critical that you arrive at work on time.

The hours of work for all hourly employees shall not exceed sixteen (16) hours per day and after working 16 consecutive hours, an employee will have at least 7 ½ hours off, unless the needs of the business warrant otherwise and all reasonable efforts to find relief have been exhausted.

You will be provided a one-half hour lunch break (unpaid) each shift. Each crew will manage lunch breaks such that the operation is unaffected while you are absent from your work area.

The Company will not implement a new schedule prior to negotiating such schedule with the union.

The 12-hour Night Shift will receive the shift premium pay for the entire 12 hours worked. The 12-hour Day shift will not receive the shift premium pay for their 12-hour shift. The shift premium will be paid for any other hours worked by any

other employees between 6:00 p.m. and 6:00 a.m. the shift premium will be \$0.45/hour.

The Company agrees if any employee's paycheck is sort \$1000.00 or more, due to an error on the part of the Company, the employee can report to the Cloquet Payroll Department and a payment will be made within 24 hours, if possible.

Erroneous recorded time will not be submitted for payment until corrected by the employee. The Company will notify the employee of the error so that immediate action can be taken. If the employee is not available and cannot be contacted by the Company, the recorded time will be corrected by the Company and the employee advised of the change when he/she is back at work.

Relevant Sappi-Cloquet Employee Guidelines

IX. Hours of Work

As a Cloquet employee, you may be scheduled to work, at the discretion of the Company, one of two schedules. The operating schedules will be as follows:

Schedule One

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Week 1	12 days	12 days	12 days	8 days	Off	Off	Off
Week 2	Off	Off	Off	8 2nds	8 2nds	12 nights	12 nights
Week 3	12 nights	Off	Off	Off	8 days	12 days	12 days
Week 4	Off	12 nights	12 nights	8 nights	8 nights	Off	off

This is an example of one month's schedule for 1 of 4 rotating shift teams. Each of the four shift teams will rotate through the above schedule. The hours for each shift are as follows:

12 day = 6:30 am – 7:00 pm

12 night = 6:30 pm – 7:00 am

8 day = 6:30 am – 3:00 pm

8 2nds = 2:30 pm – 11:00 pm

8 night = 10:30 pm – 7:00 am

Schedule Two

The second operating schedule will be a day shift schedule, the hours of work will normally be as follows.

Monday through Friday

6:30 am to 3 pm with a half hour unpaid lunch period usually to be taken at noon but which can be moved by the company dependent upon the needs of the operation.

The shifts are designed with a one-half hour overlap, which will allow for a paid communication and planning meeting at the beginning of every shift. This meeting will be used to discuss Company, department, and work area communications, provide training, and to provide good communication between the off-going and on-coming shift crews. Since your shift typically will begin with this meeting every day, it is critical that you arrive at work on time.

You will be provided a one-half hour lunch break (unpaid) each shift. Each crew will manage lunch breaks such that operation is unaffected while you are absent from your work area [emphasis added].

Should the needs of the business necessitate a change to any of the above schedules, the company will promptly notify all the affected employees.

Should the needs of the business necessitate a change in any of the above schedules the company will promptly notify all the affected employees.

You will be paid at one and one half times your base rate for hours worked in excess of forty (40) hours per week.

If you work on a designated holiday, you will be paid straight time for all hours worked on the holiday, in addition to any holiday pay to which you may be entitled. If holiday work results in time over 40 hours in a week, there will be no pyramiding of overtime pay. Holiday pay will be paid at 8 hours times your current card rate.

You will receive a shift premium of \$0.45/hour for all time worked between 7:00 pm and 6:30 am.

FINDINGS OF FACT

1. On August 19, 2012, Rodney Nelson, president of USW Local 11-63, filed a grievance stating in applicable part “It has come to the attention of USW Local 11-63 that some employees did not get their half hour uninterrupted break this week. 8/13-8/19. This is a clear violation of the CBA.” [Joint exhibit #2]

On January 1, 2013, Mr. Nelson again filed a grievance in applicable part “USW Local 11-63 believes that some of our members did not receive their ½ hour unpaid lunch break during the week of 12/24-12/30. We believe this was due to the crews being understaffed. This is a clear and deliberate violation of the CBA.” [Joint exhibit #3].

On January 14, 2013, Mr. Nelson filed a third grievance stating in applicable part “USW Local 11-63 believes that some of our members did not receive their ½ hour unpaid lunch break during the week of 12/24-12/30. We believe this was due to the crews being understaffed. This is a clear and deliberate violation of the CBA. Please contact our staff representative Gerry Parzino to set up a meeting to discuss this issue.” [Joint exhibit #3].

The parties agreed to combine these three grievances for purposes of this arbitration. [Joint exhibit #3]

2. Sappi Fine Paper North America acquired the Cloquet, Minnesota paper mill from Potlatch Corporation in 2002. From the inception, the new ownership structured the facility as a “team-based, high performance, participative work system.” [Post-hearing brief of Sappi at 1]. To help achieve that, the initial Employee Guidelines provided, that “formal daily operational team meetings are held for inter- and intra-team communications, planning, problem solving, and decision making.” The team meetings, also referenced in “Hours of Work” in the Employee Guidelines, provided that shifts are designed with a half hour overlap to allow such meetings. Those half hour meetings are with pay. The designated shifts of 12 and/or 8 hours including unpaid one-half hour lunch break, are to be managed by the crew “Such that the operation is unaffected while you are absent from your work area.” A structured one-half hour unpaid lunch is scheduled for all employees who work the eight hour day schedule. Employees working a twelve hour schedule engage primarily in production work. With respect to these employees, there is no set time for a lunch break. The Collective Bargaining Agreement provides that the

crews will manage the breaks to assure that “operation is unaffected” by absences from the area for lunch breaks. [Post-hearing brief of Sappi at 2-3].

3. Prior to this arbitration hearing, the union requested from the company comparative data from February 14 through October 17, 2010. The company provided this data. The union also requested data from August 19, 2012 through September 16, 2012. The union’s analysis of the company provided data shows that there was a 32% increase per payroll week of workers who worked through their lunchtime. They were paid for the lunch. “Although the 2010 data is for 9 months and the 2012 data was for 5 weeks. We can take a snap shot of those same 5 weeks of payroll data from the third week of August through the third week of September 2010 (an average of 306 paid lunches) and compare it to the August through September 2012 data (an average of 425 paid lunches) for an increase of 28%. This amount of paid lunches is a distinct and clear violation of the employees’ rights under the contract. It not only violates their right to a .5/hr unpaid lunch it unilaterally modifies their shift work schedule.” [Post-hearing brief of union at 9-10].

“To take another look at the significance of this violation, the results are 34% of all shifts on average lose their unpaid lunch.” [Id. at 10]

4. The union contends that “in [these] grievance[s] the union is not requesting to eliminate the additional .5/hr. per shift overlap, or modify the schedule to be paid 12.0 or 12.5/ hr shift. The union is simply asking for the language ...to be followed and upheld. The company’s exhibits not only indicate the violation of the employee’s right to not get their .5/hr. unpaid lunch, but also indicate a second violation of the language in Article XIII: ‘The company will not implement a new schedule prior to negotiating such schedule with the union.’” [Id. at 11]

The union understands that unexpected conditions may cause the union members to miss an unpaid .5/hr. lunch break on occasion. The union further understands that when this occurs the member is paid. Further, the union contends that the members understand and work closely with their teams and will not abandon their work assignment or task as it could lead to a very serious safety issue or disrupt production. [Id. at 12]. “The company however has insisted on the current language since Sappi purchased the mill in 2002. The company has sent several memos and notices to the managers regarding the expectation that each employee is to receive his or her .5/hour lunch break, yet we have 30% of the employees not receiving their break.” [Id. at 12-13].

Essentially, the union contends that Article XIII states clearly “*you will be provided a one-half hour lunch break (unpaid) each shift.*” [emphasis added]. Further the union understands that “*each crew will manage lunch breaks such that the operation is unaffected while you are absent from your work area.*” [Id.] The union contends it fully understands that the company has insisted on a crew/team based, self-directed workforce. “This is... why the .5/hr. shift overlap and .5/hr. unpaid lunch exists. The members honor the .5/hr. shift overlap and expect the company to honor the .5/hr. unpaid lunch break.” [Id. at 13].

5. The company sees this dispute differently. The company contends there is “a history of some employees, contrary to the best efforts of the company, deliberately skipping lunch breaks, which could have been taken, in order to obtain additional pay.” [Post-hearing brief of Sappi at 1]. The company agrees that every employee “be allowed a half hour lunch break, but the realities of continuous run manufacturing process sometimes dictate that some employees cannot leave the process unattended to do so. In such case, they ‘eat on the fly’ and add an additional one-half hour to their time card. As was noted, there are, however, employees who abuse the provision by putting in for pay when they could have taken their unpaid breaks.” [Id.]

With respect to the 12 hour employees, there is no set time for a lunch break. The Collective Bargaining Agreement provides that the crews will manage the breaks to assure that the “operation is unaffected” by absence from the area for lunch breaks. “Most important, lunch breaks are not to affect the running of the operation and the crews are charged with assuring that they do not.” [Id. at 3].

The company contends “there will always be some circumstances that could interfere with the unpaid lunch break, but the expectation is for each employee to be able to receive this break. If the employee is unable to take their lunch break they will be paid for that time.” [Id. at 5].

The company further contends that the sentence “ ‘You will be provided with a one-half hour lunch break (unpaid) each shift’ cannot be isolated from the second sentence in Article XIII ‘each crew will manage lunch breaks such that the operation is unaffected while you are absent from your work area’.” [Post-hearing brief of company at 6].

The company contends that the Collective Bargaining Agreement is not violated when employees who are unable to take their half-hour unpaid lunch breaks during shifts are paid for the additional half-hour’s work. [Post-hearing brief of Sapi at 9]. The company contends it has

the right to set hours under the management clause. Supervisors have observed that employees who could have been relieved to take a half-hour unpaid lunch, nevertheless, continued working instead and put in an additional half hour of pay. [Id. at 10]. “It is an unfortunate fact of industrial life that, when opportunities for extra pay are available those opportunities will sometimes be abused by some within the workforce.” [Id. at 11]. The company contends “it is a fundamental management right to take action to curb perceived abuses around intentionally forgoing an unpaid lunch break and putting in for extra pay instead.” [Id. at 15]. The company contends that the union’s estimated totals for unpaid lunch periods during 2010 and 2012 are speculative. “That conclusion is pure conjecture, unsupported by any evidence in record, and is actually undermined by evidence on record.” “There were major capital projects in progress during that period of 2012, which could have affected the opportunities for employees to get in their breaks, in addition to the previously noted regular temporary absences from areas, qualification issues and operating issues. [Id. at 16-17]. “The requirement that employees ‘manage,’ or schedule such breaks in a manner that assures uninterrupted operations also carries with it the possibility that the normally ‘provided,’ or allowed one-half hour or formal unpaid lunch break may not always, in fact, be available.” [Id. at 19]. In a 24-7, high efficiency, manufacturing operation, the latter is often more in the realm of probability than possibility for some segment of the workforce depending upon operating conditions in their areas. The parties’ mutual recognition of that has manifested itself in the continuing practice, accepted by both, of payment in lieu of a lunch break to those employees who, for reasons beyond their control, are unable to take a structured half-hour lunch break. The company argues that no basis has been provided upon which to disrupt that consistent, open, and mutually recognized procedure, which implements Article XIII as the parties have mutually intended. Any such change must be the result of negotiation, not arbitration. [Id. at 19]. The company requests that the grievances be denied.

DECISION AND RATIONALE

The union contends it is not attempting something through the grievance process and arbitration that it could not achieve at the bargaining table. [Post-hearing brief of union at 12]. The union is not requesting to eliminate the additional .5/hr. per shift overlap or modify the schedule [Id. at 13]. Rather “the union is simply asking for the language the company has

demanding to be followed and upheld.” [Id.]. The language of Article XIII is clear, contends the union. “You *will be* provided a one-half hour lunch break (unpaid) each shift.” [Article XIII, emphasis added]. The union contends it understands that sometimes “conditions may cause our members to miss an unpaid .5/hr. lunch break”. [Id. at 14] However, the union argues that using the company’s own statistics “34% of all shifts on average lose their unpaid lunch.” [Id. at 11]. This high rate of working through lunch, even though the worker is paid, is a violation of the Collective Bargaining Agreement says the union. Article XIII is not intended to permit the employer to work its twelve hour work shift employees for 12.5 hours 34% of the time. The union understands that it may be occasionally necessary for employees to work 12.5 hours and “catch lunch on the fly.” But 34% of the time is simply too much and a violation of the Collective Bargaining Agreement. The union argues that this is caused by too few workers in the plant. The company contends that this is purely speculative; and further, the number of employees employed is solely a management function.

Sappi argues that the “most important” language of Article XIII is that “lunch breaks are not to affect the running of the operation and the crews are charged with assuring that they do not.” [Post-hearing brief of Sappi at 3]. The company contends that a number of employees have put in for pay when they could have taken their unpaid lunch breaks. [Id. at 1].

The company’s allegations of employee abuse have not been proven by evidence proffered at the arbitration hearing. This allegation by the company is simply an allegation and not shown by any evidence produced at the Arbitration Hearing. On the other hand, the union’s allegation that the employer does not have enough employees has also not been proven by a preponderance of the evidence and is also speculative. What is clear is the language of the Collective Bargaining Agreement. In Article XIII the language reads “You *will be* provided a one-half hour lunch break (unpaid) each shift.” [emphasis added]. That sentence is primary and the basis of the second sentence. The second sentence simply modifies the first sentence. The second sentence recognizes that the crew “*will manage the lunch breaks* so that the operation is unaffected” [emphasis added] while the union member is at lunch and absent from his/her work area.

In its post-hearing brief Sappi says the most important sentence is the second sentence. The company argues the correct meaning of the two sentences is that “lunch breaks are not to affect the running of the operation and the crews are charged with assuring that they do not.”

[Post-hearing brief of Sappi at 3]. But that is not the meaning of the two sentences combined. Both sentences are under Article XIII “Hours of Work”. The first sentence makes clear that a member *will* be provided a one-half hour unpaid lunch break for each shift. The second sentence modifies the first sentence to allow each crew to *manage the lunch breaks*, and informs the crew that in managing the lunch break the operation should remain unaffected while the member is at lunch. Does the second sentence mean that 34% of the time a members should miss lunch in order to make sure the operation is unaffected? Certainly the second sentence implies that only occasionally will the member not be provided a one-half hour lunch break. Of course, when that occurs, the member is paid when his/her lunch break is missed. But the second sentence does not dominate the first sentence. The second sentence presumes and implies that this will occur only occasionally and not 34% of the time on average.

It is not for the union to speculate why this occurring. Whether the company does not have enough workers, or whether the company has “major capital projects in progress” [Post-hearing brief of Sappi at 17], are management rights of the company. But the Collective Bargaining Agreement is clear that each union member *will* be provided one-half hour lunch break (unpaid) each shift. With rare exceptions will the member have to “eat on the fly” and, if so, then the member will be paid. Consequently, the presumption is that each worker on each shift will be provided a one-half hour unpaid lunch break; and only occasionally, as each crew manages lunch breaks, should it be necessary that the worker miss his/her lunch break and “eat on the fly”. Based on a fair and logical reading of Article XIII, this should only be occasional and not 34% of the time.

Based on the above reasoning, the union’s grievances are upheld. The company is directed to provide all employees with a .5/hr. unpaid lunch break as agreed and ratified per the Collective Bargaining Agreement, Article XIII Schedules and Hours of Work. Precisely how the company and the union will do that is left to continuing discussions between the union and Sappi. This Arbitrator will retain jurisdiction until the parties have resolved differences concerning this remedy. If this is not resolved by December 31, 2013 the Arbitrator will resolve the matter.

August 22, 2013
Date

Joseph L. Daly, Arbitrator

ADDENDUM

CLARIFICATION OF AWARD

United Steelworkers, Local 11-63 and Sappi-Cloquet LLC, Cloquet, Minnesota FMCS Case No 13-52728-3

An Award was rendered in the above case on August 22, 2013. On September 3, 2013 the advocate for Sappi Paper submitted a request for clarification of “an apparent ambiguity in the final paragraph of your award.”

The ambiguity involved two sentences in the decision. The company was ordered to “...provide all employees with a .5 unpaid lunch break...” per article XIII of the Labor Agreement. The Company “is prepared to comply with your direction.” [September 3, 2013 and September 4, 2013 E-mails from Denis Cole, Esquire, attorney for Sappi]. But the Company is somewhat perplexed by your sentence following your direction to it.” The sentence is: “Precisely how the company and the union do that is left to continuing discussions between the union and Sappi.” “If the Company’s responsibility, per your award, to assure that employees actually take the available half hour break, what would the union have to do with that and what is meant by ‘...differences concerning this remedy...’?”

The Union responded [September 3, 2013 and September 6, 2013 E-mails from Gerard Parzino, Staff Representative of USW] contending that the Company has agreed to meet and discuss “scheduling a date for the union and the company to address how to manage the breaks, per your ruling.” [September 6, 2013 E-mail from Mr. Parzino]. The union “is willing and wants to resolve this issue with local management and if not we are prepared to accept you [sic] remedy to the issue.”

Essentially the Company “disagrees that any ‘additional agreement’ is needed and [the company] has advised me that the ...meeting...had been scheduled in advance for other purposes.” The Company contends it does not have to meet and “negotiate over how the award would be implemented.” [September 4, 2013 E-mail from Mr. Cole]. The ambiguity which Sappi says exists in the Award is that the implementation of the Award is up to management and does not have to be negotiated with the union. Thus the language of the Award “Precisely how the company and the union do that is left to continuing discussions between the union and Sappi” presents an ambiguity since as long as Sappi implements the Award it is fulfilling its obligations

and the Company does not have to meet and negotiate with the union over how it makes sure that it “provide all employees with the .5/hour lunch break” per Article XIII of the Labor Agreement. This arbitrator stated in the Award he would “retain jurisdiction until the parties have resolved differences concerning this remedy.” The remedy suggested was “[p]recisely how the company and the union will do that is left to continuing discussions between the union and Sappi.” The request for clarification by the company is proper. The remedy language at least implies that the Company and the union are required to meet and negotiate over how the company will implement the remedy. But that is not what the arbitrator intended in his Award. The award was meant to interpret the Labor Agreement only. Precisely how the company chooses to implement the Award is a management prerogative under the Management Rights Clause of the Labor Agreement-Article II. If the company chooses not to meet with the union to implement the Award it should not be required to do so. Of course, just because the company and the union meet and confer does not mean they are, in fact, negotiating. This allows for the language “[p]recisely how the company and the union will do that is left to continuing discussions between the union and Sappi” in the Award. “Continuing discussions” may incorporate simple meet and confer discussions which are not negotiations over the implementation of the Award. The arbitrator chose to continue jurisdiction of the case until December 31, 2013 to be sure that the company has, in fact, implemented his award. The arbitrator did not and does not intend to require the company to negotiate over the implementation of the Award.

The above rationale is intended to clarify the ambiguity in the Award of August 22, 2013.

September 10, 2013

Joseph L. Daly, Arbitrator