PROVINCE OF NEW BRUNSWICK

IN THE MATTER OF AN ARBITRATION
BETWEEN:

CEP, LOCALS 117, 146, 164, 263 and
ILA, LOCAL 1433,

the Unions

-and-

BOWATER MARITIMES INC.,
BOWATER CANADIAN FOREST
PRODUCTS INC., and ABITIBI
BOWATER,

the Employer

APPEARANCES:	For the Unions Joël Michaud
	For the Employer Peter McLellan, Q.C. and Richard G. Petrie
ARBITRATOR:	Brian D. Bruce, Q.C.
DATES OF HEARING:	September 4 and 5, 2008 Dalhousie, NB
DATE OF RECEIPT OF LAST WRITTEN SUBMISSION:	October 9, 2008
DATE OF AWARD:	December 15, 2008

AWARD

This is Exhibit "B" referred to
in the affidavit of Linda Maher
Sworn before me, this 1st day
Of May 2009

TABLE OF CONTENTS

BACKGROUND

1. With the consent of the Unions and the Employer, fourteen grievances have been referred to me as Arbitrator for resolution. These grievances have been submitted by five separate Unions all of which have Collective Agreements with the Employer covering the terms and conditions of employment of their members who worked at the Employer's paper mill in Dalhousie, New Brunswick. The Collective Agreements for three of the Unions, CEP, Locals 146, 164 and 263 are contained in a common document. The other two Unions, CEP, Local 117 and ILA, Local 1433, have separate Collective Agreements with the Employer.

2. It was agreed that these grievances should be consolidated and heard together because of the similarity of the facts giving rise to the grievances, the similarity of the issues and the similarity of the relevant language in the various Collective Agreements which is applicable to the grievances. As many of the grievances are related to identical issues, there are, in effect, three common grievances. CEP, Locals 117, 146, 164 and 263 have each filed all three of the common grievances. ILA, Local 1433 has filed only two of the common grievances. Following the arbitration hearing, CEP, Locals 117, 146, 164 and 263 withdrew the one common grievance which had not been filed by ILA, Local 1433. This means that there are now two common grievances, which have been filed by each of the five Unions, which are before me for resolution.

3. Following the hearing on September 4 and 5, 2008, the parties filed written submissions outlining their arguments with respect to the various issues. These briefs have been extremely helpful in my review of the issues and the applicable arbitral jurisprudence. It was in these submissions that the Employer noted that the grievances had improperly referred to the Employer as being "Abitibi-Bowater", notwithstanding the fact that four of the Collective Agreements refer to

Bowater Maritimes Inc. as the Employer and the other Collective Agreement (Local 117) refers to both Bowater Maritimes Inc. and Bowater Canadian Forest Products Inc. ("BCFPI") as the Employer. The Employer in its brief acknowledges that Bowater Maritimes Inc. and BCFPI, which are separate corporations, are ultimately owned by Abitibi-Bowater Inc. as a result of a corporate merger in 2007. The Employer in its brief raises the appropriate name of the Employer not to challenge the reference of the grievances to arbitration but to question the appropriateness of an argument made by counsel for the Union with respect to the past practice of the parties. This is an issue that will be addressed at a later point in this Award when the submissions regarding past practice are considered.

ISSUES

4. The issues that are raised in the grievances relate to the impact of the permanent closure of the Employer's Mill operations in Dalhousie on the right of employees to pension benefits under the applicable Retirement Plans. Both the Unions and the Employer are in agreement that these applicable Retirement Plans have been incorporated into the relevant Collective Agreements under which the grievances have been filed.

5. As noted earlier, there were originally three common grievances placed before me for resolution. These have been referred to as Grievance(s) No. 2, No. 3 and No. 4. One of the grievances, No. 3, has been withdrawn by the Unions. For purposes of completeness, however, the issues raised in each of the grievances, as set out in the memorandum submitted by Employer counsel at the commencement of the arbitration hearing on September 4, 2008, are as follows:

> "1. **GRIEVANCE(S) No. 2** (so-called)
>
> Whether employees represented by the CEP Union and the ILA are entitled to gain the benefit of age and Continuous Service for pension plan purposes during the

period following the permanent closure of the Dalhousie Mill for which they have recall rights under their Collective Agreements with Bowater Maritimes?

2. **GRIEVANCE No. 3** (so-called)

Whether employees represented by the CEP Union are entitled to certain pension benefit improvements negotiated between Bowater Maritimes and the CEP Union prior to the permanent closure of the Dalhousie Mill in January 31, 2008 but not scheduled to come into effect until after January 31, 2009 and not scheduled to be incorporated into the pension plan text until 2009? and

3. **GRIEVANCE(S) No. 4** (so-called)

Whether employees represented by the CEP Union and the ILA are entitled to additional Creditable Service on account of periods corresponding to amounts paid out in cash for earned vacation and non-scheduled holidays at the time of the permanent closure of the Dalhousie Mill on January 31, 2008 (March 31, 2008 for the wharf operations)?"

6. Counsel for the Unions during the arbitration hearing did not dispute that the above summation of the issues, as stated in the Employer's memorandum at that time, correctly summarized the nature of the grievances. Counsel for the Unions in his written argument following the hearing worded the issues differently. It is not seen that the restatement of the issues by counsel for the Unions changed the basic nature of the issues to be determined as originally established in the Employer's memorandum. Given that the Employer's wording of the issues was utilized at the arbitration hearing, it is accepted as an appropriate summary of issues for purposes of this Award.

EVIDENCE

7. There were a number of documents submitted in evidence including Collective Agreements, Retirement Plans and correspondence related to the closure of the Dalhousie Mill. These exhibits are listed in Appendix "A" to this Award. The relevant articles of the Collective Agreement, including the applicable sections of the Retirement Plans are attached as Appendix "B" to this Award.

8. There were three witnesses called to give evidence at the arbitration hearing. Counsel for the Employer called Mike Donovan who was the HR Manager at the Dalhousie Mill prior to its closure, and Louise Coderre, an Actuary and Consultant on various pension plans including those to which the Employer is a party. The only witness called by counsel for the Union was Walter Kenny, the President of Local 146.

9. Mike Donovan in his evidence provided a history of the Dalhousie Mill and a summary of the manner in which the work at the Mill was organized. He identified the five Unions who are certified to represent employees at the Mill as being CEP, Locals 146, 164, 263 and 117 and ILA, Local 1433. Mike Donovan identified the grievances (Exhibit 1, Tab C) filed by these Unions which are the subject of this arbitration Award. Collective Agreements between these Unions and the Employer are found in Exhibit 1, Tab A. Mike Donovan also made reference to two Memorandums of Agreement (Exhibit 1, Tab B) which contain amendments to be incorporated into the current Collective Agreements, including provisions relating to the Retirement Plans. It appears that these amendments to the Retirement Plans relate, in large measure, to Grievance(s) No. 3, which has been withdrawn.

10. Other documents identified by Mike Donovan include the Retirement Plans (Exhibit 1, Tab D), including supplements, applicable to the various Unions at the Mill; question and answer sheets (Exhibit 1, Tab E) provided by the Employer regarding pension issues related to the closure of the Mill; correspondence (Exhibit 1, Tab F) from Luc Lachapelle, the Vice-President of Operations for Abitibi-Bowater advising employees of the closure of the Mill; the 2007 Annual Report of Abitibi-Bowater (Exhibit 1, Tab H-1); a press release (Exhibit 1, Tab H-2) from Abitibi-Bowater announcing the permanent closure of the Dalhousie Mill; and, a press release (Exhibit 1, Tab H-3) from the Office of the Premier related to attempts to sell the Dalhousie Mill.

11. Mike Donovan testified that it was and is the Employer's intention to close the facility. Although a few organizations have visited the Mill, as far as he is aware there have been no offers to purchase it.

12. The letter (Exhibit 1, Tab F) from Luc Lachapelle dated November 29, 2007 to each employee summarized the Employer's intentions with respect to the closure of the Mill as follows:

> "As you have learned over the past couple of days, we are forced to proceed with permanent and definitive closure of the Dalhousie paper mill and all other operations related to that mill, which will terminate your employment on or towards January 31, 2008."

Mike Donovan in his evidence noted that the last day of work for most CEP members was January 31, 2008. Many members of ILA, Local 1433 worked until March 27, 2008. A few members of CEP, Local 177 are, in fact, still employed. Mike Donovan testified that employees as they finished work received all the money owing to them including accumulated vacation credits and severance pay as required by the various Collective Agreements.

13. Louise Coderre identified the documents which constitute the various Retirement Plans applicable to members of the Unions at the Dalhousie Mill. The "Basic Plan" (Exhibit 1, Tab D-1) dates back to 1946 when Avenor owned the Dalhousie Mill and is applicable to all the CEP Locals. This Basic Plan has been amended through Supplemental Plans (Exhibit 1, Tab D-2 and 3) which apply to different Locals of CEP at the Dalhousie Mill. The ILA Retirement Plan is a separate document (Exhibit 1, Tab D-4).

14. Louise Coderre testified that in her experience it was not unusual to have a few employees still in a pension plan after the closure of a plant. As part of her assignment she provided the Manager of Pension Plans Canada with Abitibi-

Bowater an assessment (see Exhibit 1, Tab G) of the costs of the claims currently made by the Unions in the grievances that are the subject of this arbitration. With respect to the vacation/floating holiday grievance (Grievance No. 4) she stated that her experience was that when vacation is paid in a lump sum there are no pension credits given.

15. Walter Kenny testified that the Employer, following the closure of the Dalhousie operations, provided answers to questions which the Unions had asked related to the Retirement Plan. The question and answer which is most relevant for purposes of this arbitration is question 2:

> "Q-2: How will the closure of the operations on January 31, 2008 affect my membership in the pension plan?
>
> A-2: As of January 31, 2008, your permanent termination of employment will trigger the end of your active membership in the pension plan. Thus your continuous service and credited service will stop accumulating as of January 31, 2008."

It should be noted that the Employer, in its Memorandum (at page 7) submitted at the hearing, clarified that the active membership would stop as of the date an individual employee's employment was permanently terminated. As noted earlier, some employees did work beyond January 31, 2008.

16. Walter Kenny also referred in his testimony to the situation regarding pensions at the Employer's Belgo Mill in Shawinigan, Quebec, which was closed at the same time as the Dalhousie Mill. Walter Kenny stated that he was told by the Employer that the reason the pension entitlements are different at the Belgo Mill is because the provisions of the collective agreement at the Belgo Mill are different.

17. With respect to past practice regarding creditable service for accumulated vacation credits, Walter Kenny confirmed that any employee in the past who quit their employment and took paid out vacation did not receive pension

credits for the unused vacation time. He further confirmed that any employee who had worked fifty-two weeks in 2007 and did not take their vacation received fifty-two weeks creditable service for pension purposes. This was the same length of creditable service that an employee would have received if he or she had taken vacation in 2007.

DECISION

18. As noted earlier, there are two grievances (No. 2 and No. 4) to be resolved by this arbitration Award. The decision respecting each grievance will be dealt with separately.

Grievance No. 2

> "1. **GRIEVANCE(S) No. 2** (so-called)
>
> Whether employees represented by the CEP Union and the ILA are entitled to gain the benefit of age and Continuous Service for pension plan purposes during the period following the permanent closure of the Dalhousie Mill for which they have recall rights under their Collective Agreements with Bowater Maritimes?"

19. For ease of reference, the decision with respect to Grievance No. 2 will address the Collective Agreement and pension provisions applicable to CEP, Locals 146, 164 and 263. The parties have acknowledged that the Collective Agreement and pension provisions applicable to CEP, Local 117 and ILA, Local 1433 are similar and are not seen as subject to any additional arguments. There is, in fact, one Employer argument which counsel for the Employer indicated would not be applicable to ILA, Local 1433. This argument will be identified at a later point in this Award.

20. The parties have provided very extensive and well reasoned written briefs setting forth their positions with respect to the various grievances. To set forth

their arguments separate from the analysis of the issues, would no doubt be redundant given the need to refer specifically to these arguments in the discussion of the reasons for the decision reached in this Award.

Continuing status as an "employee"

21. Counsel for the Unions explained that this particular grievance (No. 2) has been brought in large part on behalf of employees who at the time of the permanent closure of the Mill were not eligible to receive a pension under the terms of the Retirement Plan as they did not have the required age and/or continuous service. It is argued that following the closure of the Mill these employees should be considered to be on layoff and during the time on layoff should be able to gain the benefit of age and continuous service that would qualify them to receive a pension. Louise Coderre estimated (Exhibit 1, Tab G) that over a three year period this could mean seventy-three employees could become entitled to pensions.

22. Pursuant to Article 5.08(b) of the Collective Agreement, an employee with more than one year of service is entitled to remain on layoff and maintain recall rights for a period up to a maximum of thirty-six consecutive months. Following a period of thirty-six months, the layoff becomes a termination of employment and recall rights lapse. The Employer in its written submissions does not dispute the fact that employees, following the closure of the plant, are entitled under the terms of the Collective Agreement to remain on layoff for a maximum period of thirty-six months. An example of this acknowledgement can be found at page 3 of its Reply Memorandum dated October 6, 2008:

> "Clearly employees would have status for certain purposes under the Collective Agreement – recall rights being one. Clearly employees retain status under the Pension Plans – eg: the right to receive benefits (retirement or termination) being one example."

23. The Employer's position, as stated in their letter to employees advising of the closure of the Mill, is that the permanent and definitive closure results in the termination of their employment as of the last day of their work. Given the Employer's acknowledgement that employees, following their last day of work, were placed on layoff under the provisions of the applicable Collective Agreement, it follows that the Employer's letter to employees, advising that their employment was terminated, was incorrect unless it was intended to refer to the termination of their scheduled work as opposed to the termination of employee status. A somewhat similar situation regarding a termination notice was addressed in the arbitration case of *Re Motorways (1980) Ltd. and Teamsters Union, Locals 979, 990, 395 and 362* (1998), 70 L.A.C. (4th) 165 (Soronow) where there was a closure of the whole of the operations of the employer. The arbitrator in that case concluded that what the employer had done, as a matter of law, could be characterized as a layoff. At page 188 of the decision, the arbitrator concluded that "to imply into the collective agreement a right of the employer to terminate, without just cause, upon reasonable notice, undermines the scheme of protection that employees would have anticipated achieving through collective bargaining."

24. Further, it is clear that an employee's Mill service continues while the employee is on layoff. Subarticle 5.02(a)(i) of the Collective Agreement talks about Mill service beginning on the first day an employee is hired at the Mill. Subarticle 5.02(c) goes on to say that service can be lost under four possible situations. They are:

1) if the employee voluntarily leaves the service of the Company or is retired;
2) if the employee is discharged and is not reinstated;

3) if the employee is laid off in excess of a set number of consecutive months. (For employees with more than one year of service it is thirty-six consecutive months.)

4) if the employee refuses an offer of recall.

It is clear from the evidence that none of the employees who received the letter from the Employer advising that their employment would terminate on or towards January 31, 2008 fit any of these four possible situations that would cause them to lose their service and, by extension, their employee status. The reference to an employee being discharged and not reinstated must be seen as referring to situations where an employee is dismissed for cause and not reinstated pursuant to Article 14.11 of the Collective Agreement. As stated in the *Motorways* case (*supra*, at page 178), employees under a collective agreement are protected from dismissal unless the dismissal meets the requirements of proper cause. Proper cause must be seen as referable only to cause arising from wrongful or inappropriate conduct of the employee. If there is a lack of work, employees are placed on layoff for a period of time. On the expiry of that time period on layoff, mill service (and, therefore, employee status) is lost. The reference in paragraph (iii) of Subarticle 5.02(c) confirms that Mill service continues while an employee remains on layoff.

25. There is a provision in the Collective Agreement, Article 6, providing for severance pay. A careful reading of Article 6 clarifies that termination of employee status is not a requirement in order to qualify for severance pay. Subarticle 6.1 clearly states that persons employed on a year round basis who have one year or more of continuous service are eligible for severance pay when laid off for a minimum of six weeks. If the layoff exceeds twelve consecutive months or there is a "permanent layoff" the amount of the severance pay increases. A permanent layoff occurs in the event of a "permanent paper machine, department or mill closure." Subarticle 6.03 makes it clear that an employee's recall rights are not affected in any

manner because of the payment of severance pay. Subarticle 6.04 makes it clear that if an employee is recalled after receiving severance pay that the employee begins to accumulate a new period of time which will be credited toward any future severance payments when the employee is laid off. There is no indication in Article 6 that a Mill closure would affect an employee's recall rights and, as noted earlier, the Employer has not argued that it does.

26. The Employer provided limited evidence that it did not expect the Mill to be reopened or sold. In spite of the Employer's expectation, there appeared to be an implicit acknowledgement that one could not rule out the remote possibility that the Mill could be reopened or sold. In the event of a sale of the Mill, a new purchaser may be required, under the successor rights provisions of the *Industrial Relations Act*, to assume the existing Collective Agreement prior to the expiry of the recall period. There has been no suggestion that the Collective Agreement has been frustrated as a result of the closure of the Mill as one might encounter in the situation of an individual contract of employment.

Applicability of Retirement Plan

27. Article 13.02 of the Collective Agreement incorporates the Retirement Plan into the Collective Agreement. Counsel for the Union has referred extensively to jurisprudence outlining rules of interpretation applicable to collective agreements, including incorporated documents. One of the most helpful references was to the decision of Robertson J.A. in the case *Irving Pulp & Paper Ltd. v. Communications, Energy and Paperworkers Union of Canada, Local 30* (2002), 249 N.B.R. (2d) 28 (C.A.) at paragraph 10:

> "It is accepted that the tasks of interpreting a collective agreement is no different than that faced by other adjudicators in construing statutes or private contracts: see D.J.M. Brown & D.M. Beatty, *Canadian Labour Arbitration* (3rd Ed.), looseleaf (Aurora, Ont.: Canada Law Book, Inc., 2001) at 4-35. In the contractual context,

> you begin with the proposition that the fundamental object of the interpretative exercise is to ascertain the intention of the parties. In turn the presumption is that the parties are assumed to have intended what they have said and that the meaning of a provision of a collective agreement is to be first sought in the express provisions. In search for the parties' intention, text writers indicate that arbitrators have generally assumed that the provision in question should be construed in its normal or ordinary sense unless the interpretation would lead to an absurdity or inconsistency with other provisions of the collective agreement: see *Canadian Labour Arbitration* at 4-38. In short, the words of a collective agreement are to be given their ordinary and plain meaning unless there is a valid reason for adopting another. At the same time, words must be read in their immediate context and in the context of the agreement as a whole. Otherwise, the plain meaning interpretation may conflict with another provision."

28. In the present case, it is necessary to determine whether, on the permanent closure of the Mill, employees immediately lose their membership in the Retirement Plan and thus are unable to gain the benefit of age and continuous service during their period of layoff under Article 5 of the Collective Agreement. The Employer's argument is that the closure of the Mill must be seen to have ended the affected employees' membership in the Retirement Plan but not their employee status while on layoff. As noted earlier, the Employer acknowledges that employees retain some status under the Retirement Plan, such as the right to receive retirement or termination benefits, but that, when the Retirement Plan is read within its own context, it must be seen as terminating employment for purposes of continuing employee status and membership within the Plan.

29. In the case of CEP the Retirement Plan includes the Basic Plan (1946) and Supplemental Plan "B". Subsection 13.2 of Supplemental Plan "B" states that any eligible employee who completes the specified service requirements shall become a member of the Retirement Plan. This membership is what provides entitlement to the benefits of the Retirement Plan. Section 13.3 of Supplemental Plan "B" provides in part:

> "In the event that any Member shall cease to be an Employee for any reason, including retirement on a Retirement Allowance, his membership in the Plan shall thereupon terminate."

30. It is next necessary to determine whether any Members ceased to be employees so as to cause them to lose their membership in the Retirement Plan, as a result of the Mill closure and layoff of employees. It is helpful to consider the definition of "Employee" found in Subsection 12.3 of Supplemental Plan "B". It states that an employee ". . . shall mean any person employed by the Corporation . . . who receives a regular remuneration from the Corporation, other than a pension, severance pay, retainer or fee under contract." Obviously, employees on layoff do not receive regular remuneration. The definition goes on to state, however, that an employee ". . . includes any person so employed . . . whose Service has not terminated or become forfeit, even though from time to time such person shall temporarily not have been receiving regular remuneration from the Corporation . . . ." The definition of employee in Subsection 12.3 requires that a person maintain their "Service" in order to have employee status.

31. Service is defined in Subsection 12.9 of Supplemental Plan "B" as follows:

> "'Service' shall mean the period of time during which an Employee is bound by a contract of lease and hire of services or holds an office, without regard to periods of temporary suspension of employment with or without remuneration . . . ."

It is clear that employees at the Mill were subject to a "contract of lease and hire of services". See *Bill Sayer Sales Agency Inc. v. Schmidt Printing Inks Ltd.*, [2002] Q.J.N. 2201 (Q.L.), at para. 1, where this phrase is identified as meaning a "contract of employment". The reference to "temporary suspension of employment with or without remuneration" is obviously referring back to a similar reference in the definition of "Employee" (Subsection 12.3) as including an employee temporarily not receiving regular remuneration. The Employer has argued that employees were not "temporarily" not receiving regular remuneration, as referred to in the definition of "Employee", following their notification of closure of the Mill but were "permanently" laid off.

32. The Retirement Plan, however, does not in any way clarify that this reference to "temporarily" not receiving regular remuneration specifically excludes the situation which the Employer chooses to refer to as a "permanent layoff". There does not appear to be any reference in the Retirement Plan itself to a permanent layoff situation, other than in Subsection 15.1.8 which addresses a Special Early Retirement situation that was only applicable to a partial cessation of operations prior to 1997. Even if it were applicable to the present day situation, it does not indicate that the membership in the Retirement Plan of an employee who was permanently laid off is terminated. It merely allows employees displaced to elect to retire with Special Early Retirement benefits. This reference to a permanent layoff of employees is not repeated in any of the other Special Early Retirement provisions in the Retirement Plan.

Integration of the Retirement Plan into the Collective Agreement

33. The only reference in the Collective Agreement to a "permanent layoff" is found in Article 6 which deals with severance pay. It is clear in Article 6 that even in the case of a permanent paper machine, department or mill closure, that the employees' recall rights are not affected in any manner because of the payment of severance pay due to a permanent layoff. The Collective Agreement does not rule out the possibility that following a permanent layoff an employee may be recalled to work. The layoff and recall article, Article 5, makes no reference to permanent layoff but does state that a layoff becomes a termination of employment once the recall rights have lapsed. It is possible to interpret the definition of an "employee" in Section 12.3 of Supplemental Plan B so that it is not in conflict with the meaning of employee in the main body of the Collective Agreement which, as discussed earlier, is based on maintenance of service which continues during a period of layoff to a maximum of thirty-six months. [See Article 5.02(c).]

34. It is clear from reading various provisions of the Retirement Plan that the parties in negotiating the wording of the Retirement Plan were cognizant of the provisions of the Collective Agreement. This recognition can be found in Section 11 and Section 12 of Supplemental Plan "B". In Section 11, reference is made to the terms and conditions of employment found in the collective agreements and the fact that the Plan only applies to "Employees" as long as they are covered by the collective agreement. There is also a reference to the Collective Agreement in the definition of "Continuous Service" in Subsection 12.2 of the Plan. It does not in any way change the definition of "Service" which follows in Subsection 12.9 but clarifies the impact of a layoff on the requirement that service be maintain in order to qualify as an "Employee". Under Subsection 12.2 it states that a layoff in excess of the twelve consecutive months, but not exceeding the recall right period at the Dalhousie Mill of thirty-six months, is "deemed" to be a temporary suspension of employment without remuneration and is not to be considered as an interruption of service as defined by Subsection 12.9. These references to the provisions of the Collective Agreement strongly imply, in the absence of an explicit exception, that the meaning of "employee" is similar in the Retirement Plan and in the Collective Agreement.

35. The reference in the definition of "Employee" in the Retirement Plan to such person "temporarily" not receiving regular remuneration includes those employees who are on layoff. A temporary suspension of employment cannot be seen as terminating employee status for the period of the layoff. It is only the work or employment which has been suspended not the continuation of service or status of employee.

36. The fact that the parties make reference in Subsection 12.2 to the thirty-six month recall period at the Dalhousie Mill illustrates that they were very much aware of the layoff provisions of the Collective Agreement and were clearly

intending that the definition of continuous service in the Plan not conflict with the layoff provisions of the Collective Agreement. As noted earlier, Article 6 of the Collective Agreement makes it clear that being placed on permanent layoff and receiving severance pay does not affect recall rights under the Collective Agreement. The employee remains on layoff, which by its definition is temporary, and is entitled to the same recall rights. Under Subsection 12.2 of the Retirement Plan, a layoff is "deemed" to be a temporary suspension of employment. The definition of "Employee" in Subsection 12.3 of the Retirement Plan includes persons who are temporarily not receiving regular remuneration. The main body of the Collective Agreement and the Retirement Plan are consistent.

37. Given the acknowledgement that the parties in drafting the Retirement Plan were aware of the provisions in the Collective Agreement and specifically the role which layoff and recall plays, it must be assumed that the parties intended the two documents to be complementary. If the parties intended the meaning of "employee" to be different in the two documents one would assume that the parties would have carefully identified the distinction given the importance and financial implication of the Retirement Plan to employees at a point in time when they are being laid off.

38. It is sometimes of assistance in interpreting specialized documents to consider any industry standards or practices that may exist. In the present case there was very limited evidence of this nature provided. In the present case one can understand that the Employer, having made a decision to permanently close the Dalhousie Mill, would like to finalize its financial commitments under the Retirement Plan. There is obviously significant additional cost to the Employer, if the Retirement Plan continues beyond the date of closure of the mill, as an additional number of employees will most likely qualify for retirement benefits that

are more costly than what those same employees would have been entitled to receive at the date of closure.

39. Although the Employer has made a decision to permanently close the Mill and sees no prospect or possibility that the Mill could be reopened or sold as a going concern, such that a purchaser might be required to assume the Collective Agreement and, therefore, the pension obligations towards employees, it is not something which can be entirely ruled out. Should the mill reopen, it obviously would be beneficial to employees if their membership in the Retirement Plan continued during their thirty-six month layoff period.

40. The Employer in its reply (at page 5) to the Union's memorandum stated as follows:

> "Here, no issue arises as to what rights, if any, employees have to the benefits provided for in the Collective Agreement. There is no argument that most employees have the right of recall for a period of three (3) years from their date of lay-off. Because the Dalhousie Mill is permanently and definitively closed it is highly unlikely that any employee will in fact be recalled. However, if such event did arise, then the rights of recall would be respected. Unless and until that happens, their lay-off must be considered as 'permanent and definite' as it relates to the Pension Plan."

41. More definitively, the Employer in its initial Memorandum dated September 4, 2008 stated as follows at page 12-13:

> "Accordingly, no individual continues the status of 'Employee' under the Plan beyond the date of permanent Mill closure (or more precisely the date on which the individual is permanently laid-off if it is after the date of the closure of the Mill or related operations).
>
> Consistent with the above, in the event that something unexpected happens such as the reopening of the Dalhousie Mill either by Bowater Maritimes Inc. or a successor employer or the recall of an individual to active employment to the still closed Dalhousie Mill (i.e. for clean up, etc.) then the individual could potentially become entitled to the early retirement provisions under the Retirement Plan; specifically in such event the individual's status as a 'Member' in the Plan would

> be retroactively restored as it could no longer be said that it was a 'permanent' period of not receiving regular remuneration from the Corporation."

42. The Retirement Plan, however, does not make any specific provision for an individual's status as a "member" in the Plan to be retroactively restored in the event of the Employer's *bona fide* but mistaken classification of the closure as permanent. In Subsection 13.3 of the Plan it states:

> "In the event that any Member shall cease to be an Employee for any reason . . . his membership in the Plan shall thereupon terminate. Any former Member . . . who returns to the Corporation's employ shall be treated as a new employee for the purposes of the Plan."

The Employer's position is also clearly in conflict with the statement in Subsection 12.2 of the Retirement Plan that states that the period of layoff of an employee at the Dalhousie Mill is "deemed" to be a temporary suspension of employment.

43. When an employee is laid off there are no guarantees the employee will be recalled. The loss of membership in the Retirement Plan while on layoff would have serious implications for employees who are recalled and have to commence their membership anew. The parties have clearly determined that membership is not lost while on layoff and the Retirement Plan allows "service" to continue to accumulate during a period of layoff. If the parties had not wanted service to accumulate during a period of layoff they could have so provided and still maintained the employee's membership.

44. The parties in the vacation pay provisions of the Collective Agreement have addressed the issue of whether an employee on layoff continues to receive vacation pay by basing entitlement on "continuous employment" but tying the level of compensation to a percentage of the employee's gross earnings in the preceding twelve months. It is noted that the parties have clarified in Subsection 14.1 of the Retirement Plan that "Creditable Service" will not include hours for which an

employee is not paid and for which, presumably, no contributions have been made to the Retirement Plan by or on behalf of that employee. In a similar fashion, the parties could have agreed that, on a permanent closure of the Mill, employees could be terminated or, alternatively, that membership in the Retirement Plan would terminate.

45. The parties have opted to place employees on layoff if there is a lack of work and provide them with recall rights. The Retirement Plan makes reference to the fact that employees on layoff continue to maintain their membership in the Plan. The Employer, in the absence of clear language, cannot change this arrangement by claiming there has been a permanent and definitive closure of the Mill. A reading of the Retirement Plan, by itself, would lead to this conclusion. The parties' intention, however, is further reinforced by reading the Retirement Plan within the context of the Collective Agreement into which the Retirement Plan has been incorporated. It must be seen that the parties were attempting to establish a compatibility between the Retirement Plan and the Collective Agreement. Only if there was a very clear and obvious intent in the Retirement Plan to distinguish when termination of employment can occur would one be in a position to ignore the provisions in the Collective Agreement.

Relevance of Boucher decision

46. In support of its argument that the parties must have intended that an employee's membership in the Retirement Plan terminates on the permanent closure of the Mill, the Employer made reference to the decision of Blondin, J. of the Quebec Superior Court in *Boucher v. Bowater Pâtes et Papier Canada Inc.* [2002] J.Q. No. 4417 (QL) which reviewed a decision of the Quebec Administrative Tribunal, itself the appellate tribunal to the Quebec Pension Board. This case arose out of the permanent closure of a mill at Trois Rivières on June 30, 1992. At that

time, the plaintiff, Claude Boucher, did not have a sufficient combination of age and service to access his pension. He claimed that his membership in the pension plan should continue beyond the closing date of June 30, 1992 to include his period of layoff.

47. Although there was some reference in the Court's decision to the applicable pension plan which had provisions somewhat similar to the definition of service and continuous service in the Retirement Plan applicable in the present case, the central issue in the *Boucher* case was the interpretation of Section 54 of the *Supplemental Pension Plans Act*, R.S.Q., c. R-15.1 which stated as follows (translation version):

> "Continuous employment
>
> 54. The period of continuous employment of an employee is the period during which the employee is employed by an employer, regardless of periods of temporary interruption and periods of disability during which the member continues to accumulate benefits. A period of layoff with the right of recall shall not, for the purposes of this paragraph and notwithstanding the second paragraph of section 5, be considered to be a period of temporary interruption beyond twenty-four consecutive months, unless the plan so permits and the employee consents thereto.
> . . ."

48. As can be seen, the statute defined continuous employment to include periods of temporary interruption of employment. A layoff of less than twenty-four months was defined in the statute to be a period of temporary interruption of employment. In the Employer's memorandum, at page 16, it quotes the decision of the Tribunal with respect to whether Mr. Boucher remained in service and was able to claim continuous service after the date of permanent closure due to his being on layoff. In paragraph 73 of its decision, the Quebec Administrative Tribunal stated:

> "[73] The Tribunal disagrees with this proposition. On June 30, 1992, the third party was not laid off nor was he laid off temporarily. His was a case of definitive termination."

49. Only translated excerpts from the *Boucher* decision have been provided to me which makes it difficult to provide a complete analysis of the applicability of this case. It is clear, however, that the decision was primarily a question of the application of the statutory provision to one individual employee. The portion of the decision quoted above makes it clear that the decision reached was based on a finding that the individual employee was not laid off, temporarily or permanently. The finding was that there was a definitive termination of employment on June 30, 1992. In paragraph 71, the Quebec Administrative Tribunal's decision stated:

> "71. To interpret s. 54 in any other way would transform a permanent closure into a temporary one, which would fundamentally alter the statutory provision."

50. Although the *Boucher* decision obviously raises questions as to the extent the determining bodies may have reviewed the applicable collective agreement and pension plan, it cannot be seen to be particularly relevant to the decision that they reached. Unlike the provisions of a pension plan which have been incorporated into a collective agreement, the provisions of a statute will always override the terms of a collective agreement unless specific reference is made in the statute to accommodate the terms of the collective agreement.

51. The Superior Court of Quebec, which reviewed the Quebec Administrative Tribunal's decision, stated as follows (see Union's brief, pages 13-14) at paragraph 77 of its decision:

> "Having decided that the applicant's situation was to be determined under the first part (of s. 54), the Quebec Administrative Tribunal sought to determine whether Claude Boucher's period of continuous employment was temporarily or permanently interrupted on June 30, 1992. For this purpose the tribunal referred to the test used by the Board, namely that of a 'real possibility of a return to work'. The Quebec Administrative Tribunal concluded in essence that the situation had to be evaluated as of the date of closure of the mill on June 30, 1992 and not on a date subsequent to the closure and wind-up of the plant, relative to facts occurring over a year and a half after the closure."

52. The Superior Court of Quebec, at paragraph 85 of its decision, found that pension rights cannot continue to accumulate after the plan has terminated. The Court noted that the Quebec Pension Authority, which first heard Mr. Boucher's claim, had determined that the pension plan had terminated. The Court went on to state that ". . . when a participant is partially terminated, it can no longer be a case of 'continuous work' because the plan is terminated". The Court does not appear to clarify what it meant by a partial termination but may be indicating, that although some right of layoff and recall continues to exist under a collective agreement, it is of no relevance to Mr. Boucher's pension entitlement because the plan had terminated. In particular, the Court appears to put weight on the reference in Section 54 of the statute to "continuous employment", as opposed to "continuous service", and concludes on the facts that "continuous employment" ceases on the permanent closure of the plant because it is not a situation of a temporary interruption of employment within the context of Section 54 of the statute, which is definitive with respect to determination of the continuation of the pension plan.

Alternative Employer argument

53. The Employer has made reference to an alternative argument in support of its position. It argued that employees laid off as of the permanent closure of the Dalhousie Mill can no longer be considered in "active Service" and, therefore, are not eligible for any of the early retirement benefits referred to in the Retirement Plan. These early retirement benefits are set out in Section 15 of Supplemental Plan "B" and "B-2". As an example, Subsection 15.2.2.1 provides that "each Member who retires from 'active Service' on an Early Retirement date may at the time of early retirement receive an early retirement allowance." It was argued that employees who are on layoff cannot be seen to be in "active Service". At page 19 of its Memorandum the Employer stated this alternative argument as follows:

> "Put another way, even if it is determined that employees, during a recall period, continue as 'Members' and continue to meet the definition of 'Service' and 'Continuous Service', such individuals would **not** be eligible for any of the early retirement benefits as **each** require that a Member be in 'active Service'. ... In no way could an individual on lay-off be considered to be 'active'."

54. The Employer in its brief does note that the ILA Retirement Plan does not utilize the word "active" in conjunction with "Service" in providing for the early retirement benefits that are at issue in Grievance No. 2. This alternative argument, therefore, would not be applicable to the ILA Union.

55. The Unions in their brief argued that the references to retirement from active service in Subsection 15.2.2 of the Supplemental Plan are intended to distinguish retirement following a period of disability (non-active service). Counsel for the Unions argued that the Employer's interpretation regarding active service would lead to the illogical result that an employee who is temporarily laid off could not, as of the very first day of the lay-off, retire on pension. The evidence of Mike Donovan was that individuals have in the past retired on pension even though at the time they were on leaves of absence or otherwise not actively employed.

56. The Employer in its reply argument acknowledged that employees on temporary layoff are entitled to early retirement benefits but refined its argument to be that an individual on layoff, as the result of the definitive and permanent closure of the Mill, could not be considered "active". In effect, the Employer's argument appears to require a finding that the definitive and permanent closure of the Mill resulted in the immediate termination of employees. This argument has been addressed earlier. It has been determined that the employment status of employees under the Collective Agreement and the Retirement Plan was not terminated as a result of the Employer's statement that the Mill was definitively and permanently closed. The employees remain on layoff and have recall rights. In that sense, they are no different than employees who in the past, while on layoff, have retired and received their early retirement benefits. Those employees remain in "continuous

service" for purposes of the Retirement Plan and it can be said that their service is, therefore, active. The Employer's argument appears to be equating "active Service" with "active employment". The two terms are not synonymous.

57. A review of the Collective Agreement indicates that the parties have not defined what is meant by "active Service". It is also clear that they have made reference to "active Service" when referring to normal retirement allowances as well as early retirement allowances. For instance, Subsection 15.2.1.1.2 states that ". . . effective May 1, 1998 for any Member in active Service at Dalhousie Mill . . . normal retirement allowances will be calculated in a particular manner. Earlier formulas (prior to 1998), for the calculation of normal Retirement Allowances in Subsection 15.2, merely refer to a Member retiring on his normal retirement date without any reference to active service. It appears that what the parties intended, with the introduction of the reference to active service in Subsection 15.2.1.1.2, was to clarify that the improved benefits could only be claimed by those members who were actually receiving service credits on or after the effective date of the most recent improved formula.

58. Counsel for the Unions argued that the reference to "active Service" can be seen as intending to exclude Members who are not able to accumulate service due to the fact that they are receiving long term disability or workers' compensation benefits and are beyond the qualifying periods set out in Subsection 15.2.3.3 of Plan "B". Subsection 15.2.3.3 provides that such members shall continue to accumulate service and continuous service in certain situations but in other situations are not entitled to continue to accumulate service. In the absence of employees meeting the special requirements set out in Subsection 15.2.3.3 they cannot be considered to be in "active Service" because their service is not continuing to accumulate. This argument would support the earlier conclusion reached in this Award that a

requirement that one be on "active Service" is the same as requiring that an employee be continuing to accumulate service.

Alternative Union argument

59. The Unions have argued that the Employer has discriminated against employees at the Dalhousie Mill because it permitted its employees at the Belgo Mill in Quebec to use their layoff and recall rights to qualify for early retirement. It is argued that the wording of the collective agreements at the two mills is similar in maintaining the continuity of service although not for identical periods of time.

60. It is, however, a different collective agreement, a different union local and arguably a different employer. It is not seen that the Employer in the present case is bound, under the doctrine of past practice, to interpret its Collective Agreement with the Union employees at the Dalhousie Mill in the same manner as at the Belgo Mill, even accepting that there is a relationship that would allow one to find it to be the same employer. The doctrine of past practice applies in a situation where the previous practice relates to the same collective agreement. At best, it can serve as an example of how a similar collective agreement has been applied in the same industry. The evidence falls short of being able to conclude that it is the practice in the industry generally. See *Re Commonwealth Construction Co. Ltd. and British Columbia Provincial Council of Carpenters* (1979), 24 L.A.C. (2d) 367 (Lindholm). It must be appreciated that it is always open to the parties, in a particular situation, to reach a mutual agreement to resolve disputes in a manner that does not necessarily reflect the provisions in the Collective Agreement or for an employer to gratuitously provide a benefit in excess of its obligation under the collective agreement.

61. There is no principle of discrimination which would be applicable in these circumstances as argued by counsel for the Unions. Reference was made by the Unions to the arbitration decision *Re Metropolitan Separate School Board and O.P.S.E.U. (Cobban)* (1995), 50 L.A..C. (4th) 378 (P. Picher) which references the principle that an employer in exercising its management rights under a retirement policy should not act in an arbitrary or discriminatory manner or in bad faith. In that case, the union argument regarding the principle of discrimination related to the treatment of employees subject to the same collective agreement and same retirement policy.

62. For these reasons, it is determined that, although some useful comparison may be made in the language of the applicable collective agreements, the manner in which the parties applied the layoff and recall rights at the Belgo Mill is not of particular assistance in determining the rights of the parties in the present case without additional evidence.

<u>Grievance No. 4</u>

> 3. **GRIEVANCE(S) No. 4** (so-called)
>
> Whether employees represented by the CEP Union and the ILA are entitled to additional Creditable Service on account of periods corresponding to amounts paid out in cash for earned vacation and non-scheduled holidays at the time of the permanent closure of the Dalhousie Mill on January 31, 2008 (March 31, 2008 for the wharf operations)?"

63. For the same reason as given in relation to Grievance No. 2, the decision with respect to Grievance No. 4 will address the Collective Agreement and incorporated Retirement Plan applicable to CEP, Locals 146, 164 and 263. There is, of course, a relationship between Grievance No. 4 and Grievance No. 2 which has been addressed earlier. Having determined that Grievance No. 2 should be allowed and that employees were not terminated at the time of the Employer's decision to permanently close the Dalhousie Mill on January 31, 2008, there would not appear

to be any obligation on the Employer to compensate employees for all earned vacation and nonscheduled holidays at that time unless they are retiring or otherwise terminating their employment. Subarticle B4.01(c) provides as follows:

> "B4.01 Vacation Pay
>
> . . .
>
> (c) Vacation pay except as provided in paragraph B3.01(b) above will not be allowed for vacations not taken. In such cases any unused vacation privileges shall be allowed to accumulate until conditions permit them to be exercised."

64. The Unions, however, have not grieved the fact that all laid off employees have been compensated for vacation and holiday pay. This Award will address the issue of whether employees, who have opted to retire under the provisions of the Retirement Plan following the closure of the Mill or have been placed on layoff, should receive additional Creditable Service under the Retirement Plan for the periods of time represented by any unused vacation and nonscheduled holidays.

65. Creditable service is addressed in Section 14 of Supplemental Plan "B". Subsection 14.1(b) sets out the basis for the granting of creditable service as follows:

> "One year of creditable service will be granted for each calendar year during which a member of the Plan receives pay for hours (total hours paid) equivalent to the number of hours in the annualized normal straight time schedule as specified in the Labour Agreement applicable to the occupation in which he is classified."

Subsection 14(1) goes on to clarify that if an employee did not receive compensation for hours, that is equivalent to the number of hours in the annualized normal straight time schedule applicable to the occupation of the employee, then that employee will receive a proportionate credit equal to the time he is paid divided by the total number of straight time hours in the year. Subsection 14.1 ends by stating as follows:

> "In no case will an employee receive more than one year of creditable service per calendar year."

66. It is important to note that creditable service for a calendar year consists of the total hours paid which is not necessarily the total hours worked. If an employee, for instance, were to take three weeks of paid vacation in place of three weeks that the employee would otherwise have worked in the annualized normal straight time schedule, that employee would receive creditable service for the vacation time because it represents pay for hours that he otherwise would have been scheduled to work. Similarly, if an employee worked his entire annualized normal straight time schedule without taking vacation, that employee would receive fifty-two weeks or one year of creditable service. If the employee retired on the last day of the calendar year and took pay in lieu of the vacation credits, the employee could not receive creditable service for the paid out vacation because, under Subsection 14.1, an employee cannot receive more than one year of creditable service per calendar year.

67. This begs the question, of course, as to whether an employee receiving the pay out at a point in time when the employee has not received more than one year of creditable service per calendar year, would be entitled to be given creditable service for the time that the paid out vacation or holiday credit represents. The answer to the question appears to flow from the fact that creditable service reflects the hours an employee is scheduled to work. The purpose of vacation and holiday credits is to provide an opportunity for an employee to be away from work with pay at a time when the employee would otherwise have been scheduled to work. Only when it is used in this manner can it be seen as creating creditable service. A payout for unused vacation and holiday credits means that the credits have not been used to compensate the employee for time that he was scheduled to work and did not have to because of the holiday and vacation credits.

68. The conclusion, that employees cannot receive creditable service for any unused vacation and holiday credits, is supported by the fact that employees in the past have not received creditable service when they retired with unused vacation and holiday pay credits.

69. It is concluded that Grievance No. 4 must be dismissed. Vacation and holiday credits are to be used as substitutes for days an employee would otherwise be required to be at work, days for which the employee would receive creditable service for pension purposes. If the vacation and holiday credits are not used for these purposes, then they cannot generate any creditable service for pension purposes. In such cases, an employee is simply entitled to receive monetary compensation for the unused credits.

CONCLUSIONS

70. For all of the above reasons, it is concluded:

(1) Grievance No. 2 is allowed. It has been found that the employees were laid off when their employment stopped due to the closure of the Mill. On layoff they retain their employment status and, therefore, continue to remain Members of the Retirement Plan until their recall rights expire pursuant to the applicable Collective Agreement. As Members they are entitled to gain the benefit of age and Continuous Service for pension plan purposes while on layoff.

(2) Grievance No. 3 has been withdrawn by the Union.

(3) Grievance No. 4 is denied. Employees are not entitled to receive Creditable Service under the Retirement Plan for unused

vacation or holiday credits as those credits were not used to allow an employee a day off with pay on a day that the employee would otherwise have been scheduled to work.

71. I reserve jurisdiction to address any issues which were submitted to me that have not been resolved in this Award. I also reserve jurisdiction to clarify any ambiguities in this Award.

DATED this 15th day of December 2008.

Brian D. Bruce, Q.C.
Arbitrator

APPENDIX "A"

List of Exhibits Submitted at Arbitration Hearing
on September 4 and 5, 2008

1 Joint Book of Documents
- A. Collective Agreements
  1. Collective Agreement, Local 146, 164 and 263
  2. Collective Agreement, Local 117
  3. Collective Agreement, ILA, Local 1433
- B. Memorandum of Agreements
  1. Between Bowater Canadian Forest Products Inc., Bowater Maritimes Inc., Bowater Mersey Paper Company Limited and Communications, Energy and Paper Workers Union of Canada and its Locals, dated June 24, 2005
  2. Between Bowater Maritimes Inc., Dalhousie (N.B.) and International Longshoremen's Association Local 1433, dated April 26, 2006
- C. Grievances
  1. Grievance #2008-2, CEP Local 117
  2. Reply to Grievance #2008-2 (CEP Local 117)
  3. Grievance #08-02, CEP Local 146
  4. Reply to Grievance #08-02 (CEP Local 146)
  5. Grievance #08-02, CEP Local 164
  6. Reply to Grievance #08-02 (CEP Local 164)
  7. Grievance #2008-2, CEP Local 263
  8. Reply to Grievance #2008-2 (CEP Local 263)
  9. Grievance #2008-3, CEP Local 117
  10. Reply to Grievance #2008-3 (CEP Local 117)
  11. Grievance #08/03, CEP Local 146
  12. Reply to Grievance #08/03 (CEP Local 146)
  13. Grievance #08/03, CEP Local 164
  14. Reply to Grievance #08/03 (CEP Local 164)
  15. Grievance #2008-3, CEP Local 263
  16. Reply to Grievance #2008-3 (CEP Local 263)
  17. Grievance #2008-4, CEP Local 117
  18. Reply to Grievance #2008-4 (CEP Local 117)
  19. Grievance #08/04, CEP Local 146
  20. Reply to Grievance #08/04 (CEP Local 146)
  21. Grievance #08/04, CEP Local 164
  22. Reply to Grievance #08/04 (CEP Local 164)
  23. Grievance #2008-4, CEP Local 263

24. Reply to Grievance #2008-4 (CEP Local 263)
25. Grievance #2008-1, ILA Local 1433
26. Reply to Grievance #2008-1
27. Grievance #2008-3, ILA Local 1433
28. Reply to Grievance #2008-3

D. Pension Plans
1. Employees' Retirement Plan (1946) – Basic Plan
2. Supplemental Plan "B"
3. Supplemental Plan "B-2"
3a. Supplemental Plan "V"
4. Employees' Retirement Plan (ILA)

E. Questions and Answers from AbitibiBowater – Dalhousie
1. 1946 Plan
2. ILA Plan

F. Letter re: Permanent Closure of Dalhousie Mill – November 29, 2007

G. Reports of Mercer (Canada) Limited
A. Re: 1946 Retirement Plan (plus attachments tabs 1-4)
B. Re: ILA Retirement Plan (plus attachments tabs 1-4)

H. Other Documents
1. AbitibiBowater Annual Report 2007 (portion)
2. AbitibiBowater Press Release – November 29, 2007
3. Province of New Brunswick Press Release – December 18, 2007

2 CBC News Report dated November 29, 2007

3 Fax to CEP, Local 146 from CEP, Local 1256

4 CEP Web Site for Locals 220, 1256 and 1455 – Retirement Options Respecting Pension

APPENDIX "B"

Relevant Provisions of the Collective Agreement
Between Bowater Maritimes Inc. and
CEP, Locals 146, 164 and 263

5.02 a) Service is defined as follows:

i) Mill service begins on the first day an employee is hired at the mill.

ii) Department service begins on the first day an employee is classified in a given department at the mill.

iii) Job service begins on the first day that an employee is classified on a job at the mill.

b) In cases where services are equal, the order of seniority shall be determined by drawing lots.

c) An employee will lose all service he has to his credit:

i) if he voluntarily leaves the service of the Company or is retired;

ii) if he is discharged and is not reinstated;

iii) - for the employee who has less than one (1) year of service; if he is laid off in excess of twelve (12) consecutive months.

- For the employee who has more than one (1) year of service; if he is laid-off for a period which equals or is longer than his mill service accumulated to the date of his lay-off up to a maximum of thirty-six (36) consecutive months.

iv) if he refuses an offer of recall as stipulated in Section 5.08.

5.05 a) In the case of a reduction in the work force, employees will be demoted step by step down their lines of progression in the reverse order of the steps in their promotions.

5.08 Employees who have been laid off shall be entitled to be re-employed as opportunity exists by mill service provided:-

a) The employee entitled to re-employment returns to the service of the Company within fifteen (15) days of notice of recall. Failure to report within the fifteen (15) days of recall will result in loss of recall rights, except in the case of an employee recalled for casual work or for employment of short duration at a time when he is employed elsewhere, in which case refusal of recall itself will not result in loss of recall rights. The Union will be supplied with a list of employees being recalled.

b) A lay-off becomes a termination of employment and recall rights lapse when an employee has been laid-off in excess of twelve (12) consecutive months without re-employment if he has less than one (1) year of service; laid off for a period equal to or longer than his mill service accumulated to the date of his lay-off up to a maximum of thirty-six (36) consecutive months without re-employment if he has more than one (1) year of service.

6.01 All persons who are employed on a year round basis on jobs within the Union's jurisdiction, including regular spares and permanent vacation replacements, who have one (1) year or more of continuous service will be eligible for severance pay when laid off by Company action because there is no work available to which their seniority entitles them.

6.02 A laid off employee entitled to severance pay will be paid two percent (2%) of his total earnings for the last full period of continuous service. The full amount of the severance pay due will be paid after the employee has been laid off six (6) weeks.

Permanent Layoff

In the event of a permanent paper machine, department or mill closure, the maximum amount of severance pay will be one and one-half (1.5) weeks of pay per year of continuous service.

Layoff – 12 Consecutive Months

If the duration of a lay-off exceeds twelve (12) consecutive months, one-half (0.5) week of pay will be paid per year of continuous service in addition to the current provision.

The total amount of severance pay that an employee may receive will not exceed one and one-half (1.5) weeks of pay per year of continuous service, for any reason, for any time.

The number of continuous years of service shall be calculated from the last lay-off period for which the employee received severance pay.

This is effective for lay-offs commencing after the first day of the month following ratification of the collective agreement.

6.03 An employee's recall rights will not be affected in any manner because of the payment of severance pay. However, if recall occurs before the time when the severance payment is due no such payment will be made. Or, if an employee is offered recall, according to the applicable recall provision in his case, and it is refused, all recall and severance pay rights are automatically cancelled except as governed by Article 5, paragraph 5.08 a).

6.04 If an employee is recalled after having received the severance pay due him, he will begin again, as of the date of return, accumulating a new period of time which will be credited toward any future lay-off.

13.02 The Employees' Retirement Plan (1946) of the Bowater Canadian Forest Products Inc. forms part of this Agreement. No part of the Retirement Plan, with respect to the parties signatory to this Agreement will be changed, amended, suspended or discontinued except by mutual agreement or as may be required by law during the life of this Agreement.

14.11 In determining a claim of unjust suspension or discharge the Arbitration Board may dispose of the claim by affirming the Company's action and dismissing the grievance or by setting it aside and restoring the griever to his former position with or without compensation or in such other manner as may in the opinion of the Board be justified.

B4.01 Vacation Pay

. . .

(c) Vacation pay except as provided in paragraph B3.01(b) above will not be allowed for vacations not taken. In such cases any unused vacation privileges shall be allowed to accumulate until conditions permit them to be exercised.

<u>Relevant Sections of Supplemental Plan "B"</u>
<u>(incorporated into the Collective Agreement)</u>

SECTION 11. APPLICATION AND INTERPRETATION

Supplemental Plan "B" of the Employees' Retirement Plan of Bowater Canadian Forest Products Inc. applies exclusively to Members of the Plan who are Employees in the respective mills of the Companies hereinafter listed (but, in each case, only so long as they are employed therein) and whose terms and conditions of employment are governed by a collective labour agreement between such Companies and the respective labour unions as hereinafter indicated (but, in each case, only so long as they are covered by such collective labour agreement).

. . .

Mill	Unions
Dalhousie News Mill Dalhousie, N.B.	Communications, Energy and Paper Union Locals 146, 164 & 263

ARTICLE 12. DEFINITIONS

. . .

12.2

"<u>Continuous Service</u>" means Service without a break in excess of 12 consecutive months. A lay-off, in excess of 12 consecutive months, but not exceeding the recall right period (maximum 36 months, or more for employees at Dalhousie Mill based on an agreement reached with the union) of any Member shall be deemed to be a temporary suspension of employment without remuneration and shall therefore not be considered as an interruption of Service as defined by Subsection 12.9.

Effective January 1, 1974 the calculation of Continuous Service for any Member in Service on or after that date, shall include periods of time on lay-off, including seasonal lay-off, provided however, that the Member's Service has not terminated or become forfeit.

12.3

"<u>Employee</u>" shall mean any person employed by the Corporation on a full time basis on the Effective Date of the Plan or thereafter, who receives a regular remuneration from the Corporation, other than a pension, severance pay, retainer or fee under contract. The term "Employee" includes such persons on approved leave who immediately prior to the commencement of such leave were receiving regular remuneration from the Corporation.

The term "Employee" also includes any person so employed on or after January 1, 1974 whose Service has not terminated or become forfeit, even though from time to time such person shall temporarily not have been receiving regular remuneration from the Corporation, provided however, that nothing in this sentence contained shall affect the manner in which Service prior to January 1, 1974 has been computed by the Corporation or the Pension Committee or its delegate for purposes of eligibility for membership in the Plan.

. . .

12.9

"Service" shall mean the period of time during which an Employee is bound by a contract of lease and hire of services or holds an office, without regard to periods of temporary suspension of employment with or without remuneration and, in the case of Employees of the Corporation at the Effective Date of the Plan, shall include:

(a) prior Service except that where a date is place opposite the name of any company listed in Schedule A hereto, the service with such company to be included shall be only service after such date and

(b) service prior to October 1, 1981 with:

   (i) International Paper Company (a New York Corporation incorporated in 1941) or its corporate predecessor, or by

   (ii) companies which were subsidiaries of either of them at the Effective Date of the Plan or at any time prior thereto, limited however to service within the respective periods that such companies were in fact subsidiaries of either of them.

SECTION 13. **MEMBERSHIP**

. . .

13.2

Effective May 1, 1990 (January 1, 1992 in New Brunswick), any eligible Employee in the province of Québec or in New Brunswick shall become a Member on the date he completes the service requirement set forth in Subsection 12.3.

13.3

In the event that any Member shall cease to be an Employee for any reason, including retirement on a Retirement Allowance, his membership in the Plan shall thereupon terminate. Any former Member other than a Member previously retired under the Plan who returns to the Corporation's employ shall be treated as a new employee for the purposes of the Plan. The Pension Committee may however continue the membership of an Employee during absence on approved leave, without loss of Creditable Service accrued to the date of separation. No benefit shall accrue under the Plan to or on account of any Member in respect of any period while absent from the Service of the Corporation except on such approved leave.

SECTION 14. CREDITABLE SERVICE

14.1
For each Member who is an active employee on or after May 1, 1987 and is subsequently retired, Creditable Service at retirement on which Retirement Allowance shall be based, shall, in respect of

a) Service prior to May 2, 1982 be designated as the period of membership service in the Plan reduced by periods of time on strike or lay-offs and
b) Service after May 1, 1982: One year of creditable service will be granted for each calendar year during which a member of the Plan receives pay for hours (total hours paid) equivalent to the number of hours in the annualized normal straight time schedule as specified in the Labour Agreement applicable to the occupation in which he is classified.

Any employee who does not receive Compensation for hours (total hours paid) equivalent to the number of hours in the annualized normal straight time schedule applicable to the occupation on which he is classified or who is classified in other than a year round occupation will receive a proportionate credit equal to the time he is paid for divided by the total number of normal straight time hours in the year (i.e. 52 weeks x the normal weekly schedule equals 1 year) and then converted into months.

In no case will an employee receive more than one year of creditable service per calendar year.

14.2
Notwithstanding the provisions of Subsection 14.1, Creditable Service shall include any period during which the Member has no Compensation and any legislation applicable to the Member requires that the Member be permitted to make contributions to the Plan that would have been required had the Member been active at work during such period and the Member elects to make such required contributions in accordance with Article 16.

For each period included in Creditable Service as a result of this Subsection, the monthly number of hours worked by the Member during such period is deemed to equal the monthly average of the hours worked by the Member during the twelve months preceding such period.

In no event, however, shall the total periods of Creditable Service included under this Subsection in respect of a Member, exceed the sum of:

a) five years; and
b) the periods of parenting, as defined in Revenue Rules, subject to a maximum of 36 months of such periods of parenting and a maximum of 12 months for any one period of parenting.

14.3
Effective January 1, 1996, Creditable Service shall include any period from January 1, 1996 but before the Normal Retirement date during which a Member at Gatineau Mill or at Dalhousie Mill is receiving benefits under a Long Term Disability Plan, is receiving the maximum worker's compensation benefits after receipt of 52 consecutive weeks of such benefits or, if he is receiving less than the maximum of such worker's compensation benefits, the period during which he elects to continue to pay the required Employee contributions to the Plan. Effective August 1, 2005, Creditable Service shall include any period from August 1, 2005 but before the Normal Retirement date during which a Member at Dalhousie Mill is receiving benefits under a short term disability plan sponsored by the Corporation, if such Member elects to continue to pay the required Employee contributions to the Plan. However, Creditable Service shall cease to accrue on:

a) the date of retirement of the Member;
b) the date of death of the Member; or
c) the date of termination of employment of the Member,

whichever first occurs.

SECTION 15. BENEFITS

15.1 – RETIREMENT DATES

15.1.1
Normal Retirement. For all Members in Service, normal retirement date shall be the first day of the calendar month coinciding with or next following attainment of age 65.

15.1.2
Early Retirement. Except as otherwise provided in Subsections 15.1.3, 15.1.4, or 15.1.5, any Member in Service who, shall have attained age 55 may retire on an early retirement date, viz.: the first day of a calendar month not less than 30 nor more than 90 days following receipt by the Pension Committee of written application therefore by the Corporation, or by the Member, with the written approval of the Corporation.

15.1.3
Voluntary Early Retirement. Any Member in Service who shall have attained age 58 and shall have completed 20 years of Continuous Service may retire on an early retirement date, viz., the first day of the calendar month not less than 30 nor more than 90 days following receipt by the Pension Committee of written application therefore by the Member.

. . .

15.1.8
Special Early Retirement (Partial cessation of operations). In the event of a partial cessation of operations before 1997 resulting in the permanent lay-off of employees, as determined by the Corporation, the Members in Service who are displaced or an equivalent number of active Members in the applicable bargaining unit who have attained age 55 and whose age and service total 80 or more years may elect to retire with Special Early Retirement benefits on the first of the month immediately following cessation of the operations. Members who will attain age 55 during the calendar year in which the partial cessation of operations occurs, may qualify for Special Early Retirement benefits if their Continuous Service up to the date of partial cessation of operations plus their respective age total 80 or more years on the first of the month following attainment of age 55 provided they submit their written application.

. . .

15.2 – RETIREMENT ALLOWANCES

15.2.1
Normal Retirement. Except as otherwise provided in Subsections 15.2.2, 15.2.3, 15.2.4, and 15.2.5, each Member shall be retired on his Normal Retirement date and shall receive a Normal Retirement Allowance consisting of:

15.2.1.1.1
Effective on or after May 2, 1980, a Retirement Allowance equal to . . . .

15.2.1.1.2
Effective January 1, 1996 and notwithstanding the provisions of Subsection 15.2.1.1.1, for any Member in active Service at Gatineau Mill (effective May 1,

1998 for any Member in active Service at Dalhousie Mill), the Retirement Allowance is equal to: . . . .

15.2.2
Early Retirement (Age 55-58 or age 58-65 with less than 20 years Service)

15.2.2.1
Except as otherwise provided in Subsections 15.2.3 or 15.2.4, each Member who retires from active Service on an Early Retirement date, may elect at the time of such Early Retirement to receive an early Retirement Allowance commencing on his early retirement date. . . .

15.2.3.3
Service shall not accumulate during any period in which a Member is receiving benefits under a Long Term Disability Plan or worker's compensation benefits after having received no less than 52 consecutive weeks of such benefits.
An Employee in Québec or in New Brunswick absent from work and in receipt of worker's compensation benefits under the provisions of the applicable Act as a result of a disability commencing or recurring on or after August 19, 1985 in Québec, on or after December 23, 1990 in New Brunswick, may continue to accumulate Service during such absence provided he elects to continue to pay the required Employee contributions to the Plan in respect of that period of absence up to a maximum of two years and, for an Employee at Dalhousie Mill, for an additional 12 months after the first two years provided he submits a medical certificate stating that he will return to active employment during that additional period. Effective January 1, 1996 and notwithstanding the foregoing, Service and Continuous Service shall accumulate during any period on or after January 1, 1996 but before the Normal Retirement date in which a Member at Gatineau Mill or at Dalhousie Mill is receiving benefits under a Long Term Disability Plan, is receiving the maximum worker's compensation benefits after receipt of 52 consecutive weeks of such benefits or, if he is receiving less than the maximum of such worker's compensation benefits, the period during which he elects to continue to pay the required contributions to the Plan. However, Service and Continuous Service shall cease to accrue on:

a) the date of retirement of the Member;
b) the date of death of the Member; or
c) the date of termination of employment of the Member,

whichever first occurs.

. . .