IN THE MATTER OF THE *FOREST ACT*, R.S.B.C. 1996,
CHAPTER 157, TIMBER HARVESTING CONTRACT AND
SUB-CONTRACT REGULATION, B.C. REGULATION 259-91
(REVISED 22-96) AND COMMERCIAL ARBITRATION ACT,
R.S.B.C. 1996, CHAPTER 55

AND

IN THE MATTER OF A DISPUTE CONCERNING THE
RATE TO BE PAID BY
CARRIER LUMBER LTD. TO
JOE MARTIN & SONS LTD.
IN RESPECT OF 1999 SUMMER LOGGING ON CP 611 BLOCKS 1-4
IN TAKO CREEK, BLACKWATER REGION OF THE
PRINCE GEORGE TIMBER SUPPLY AREA

AWARD – ADDITIVES

COUNSEL FOR CARRIER LUMBER LTD.	LORNE A.J. DUNN
COUNSEL FOR JOE MARTIN & SONS LTD.	ROY J. STEWART, Q.C.
ARBITRATOR	PAUL D.K. FRASER, Q.C.
DATE OF AWARD:	APRIL 8, 2002

1. In the award dated July 18, 2000, I decided that "the appropriate base rate for the 1999 summer logging by JM&S of CP 611 is $19.50 per tonne. In addition to this base rate, JM&S will receive payment for any so called "additives" which Carrier has previously paid in addition to the base rate negotiated between the parties. JM&S is entitled to payment of any additives which it may have earned during the logging work." (emphasis added)

2. The parties have been unable to agree on any such additional payment for additives and have asked me to render a further award on this subject.

3. By the term "additives", I mean the adjustments both positive and negative made by the parties in the past to rates they had negotiated with each other. While counsel for Carrier Lumber Ltd. ("CL") contends that the parties had agreed on downward adjustments with respect to two separate contracts (ISUS Creek and Blocks 6, 7 and 119 in East Line Logging) the conclusion I take from the whole of the evidence was that the base rate negotiated between the parties was never adjusted downwards for any work done by JM&S for CL. In my view there was no convincing evidence that "additives or adjustments" ever resulted in a rate less than the base rate struck, from time to time by the parties. I accept Mr. Vernon Martin's evidence in this respect and I note that Mr. Fowler, an official with Canfor indicated that his experience was that the rate to paid to a contractor by Canfor would not fall beneath the base rate established by the parties.

4. In any event, in arriving at what I have decided was the appropriate base rate for the 1999 summer logging of CP 611 of $19.50 per tonne, I did not have in mind that the base rate would be adjusted below that figure for any "additives". Indeed, I indicated in the emphasized portion of my award set out above that any adjustment would be "in addition to" this base rate.

5. In a consideration of "additives" and their determination, I must be guided by what a licenseholder and a contractor acting reasonably in similar circumstances would agree is a rate that is competitive by industry standards and would permit a contractor operating in a manner that is reasonably efficient in the circumstances, in terms of costs and productivity, to earn a profit. It is, of course, of assistance in this determination to have regard to the evidence of what additives the parties have negotiated with each other in the past. I consider that this evidence is an indication of what the parties acting reasonably and in all of the circumstances have considered to be a competitive in the past.

6. JM&S claims for additives in two areas. They are, mobilization and travel or the equivalent as camp costs. The claim for mobilization is $0.41 per tonne. The claim for camp costs or travel is $1.49 per tonne.

7. Mobilization refers to the length of haul required to bring equipment to a specific location and to demobilize its return to base. Mr. Vernon Martin testified that he did not regard mobilization as being in the base rate offered by CL. In calculating its prospective costs JM&S has apparently always segregated mobilization costs as a variable that was not included in its general machine costs. The reason given for segregating the cost was that mobilization and demobilization expense was unpredictable and would vary considerably from contract to contract based on the location of the logging and the length of haul required to get the necessary equipment to and from the site. JM&S followed this practice of segregating mobilization costs in its proposal for logging rates for CP 611 (Exhibit 11, page 741). On the other hand, CL included mobilization/demobilization costs in its base rate for conventional roadside logging. Reference to this practice is made in the evidence to Mr. Kuzma's memorandum dated November 17, 1997 from CL to JM&S in which the following appears: (Exhibit 10, tab 1, page 002429)

> All rates described above include mobilization/demobilization from the commencement of a given cutting authority.

8. On a careful review of all of the evidence, I have concluded that mobilization/demobilization costs have never been treated as an additive by the parties in any contract they have negotiated with each other. Certainly, JM&S attempted to negotiated these costs as an additive. However, I can find no evidence in their past dealings of CL accepting that approach. Accordingly, the claim for mobilization as an additive is denied.

9. By contrast, the parties do have a history of dealing with travel or the equivalent of camp costs as an additive. A travel allowance has been paid or camp costs provided if travel time from Prince George to the logging site is greater than one and a half hours each way.

10. The parties arranged for a reporter to be present at the lengthy hearing of these proceedings in March, 2000. A transcript of evidence given by Mr. Vernon Martin on behalf of JM&S and Mr. Terry Kuzma on behalf of CL has been made available to counsel and to me. A careful review of all of the evidence has satisfied me that evidence at the hearing was the travel time from Prince George to the logging site at CP 611 was not greater than one and a half hours each way. The sense I have from the evidence is that the travel time was about an hour and a half, but not more.

11. The extent of this travel time may have had a considerable impact on JM&S' crew and perhaps on productivity. JM&S attempted to negotiate a base rate that attributed a cost of $1.49 for camp/travel (Exhibit 11, page 000741). CL would not agree. Mr. Vernon Martin gave the following evidence in the direct examination at the hearing on March 10, 2000:

> Q Travel time is referred to in these minutes. How did that come up and what was the importance of that?
>
> A Carrier - -or Mr. Kuzma says anything up to an hour and a half travel, there's no allowance. There's no camp because you can travel an hour and a half each day. And we don't agree with that. First off, you can't ask men to travel three hours a day for free. the hour and a half for the sake of a camp, that's three hours to every man's day to drive back and forth. They get tired. They're productivity goes down. And as a matter of fact in past it wasn't an hour and a half. It was longer than an hour and a half.
>
> Q What is the hour and a half as a point of Mr. Kuzma in the meeting? What was his point of an hour and a half?
>
> A The point of that meeting was that I would like some allowance for the travel times. And his point was that he wasn't giving any because it was only an hour and a half. It was a negotiating point, I'll call it. I thought we should be paid for some travel time and he didn't think we should.
>
> Q Was there therefore any camp allowance?
>
> A No.
>
> Q When is a camp allowance paid by Carrier?
>
> A When it's over an hour and a half they'll look at putting a camp in.

12. Given the past practice of the parties in dealing with each other and in view of above evidence, I conclude that JM&S' claim for travel/camp costs must fail.

13. In the result, and up to this stage in the proceedings JM&S is entitled to the following award, in respect of 1999 summer logging on CP 611, Blocks 1-4:

Total tonnes harvested [Exhibit 13, page 1880]	37,435.58 tonnes
Total harvesting revenue at $19.50/tonne	$729,993.81
GST	$51,099.57
Total:	**$781,093.38**
less amount paid on interim rate of $18/tonne	(673,840.44)
less GST paid on interim amount paid	(47,168.83)
Amount to be paid by virtue of this Award	**$60,084.11**

14. In addition, JM&S is entitled to interest calculated from the time of payment based on the interim rate at Supreme Court of British Columbia Registrar pre-judgment rate until the date of the award, July 18, 2000, and interest thereafter on the amount to paid by virtue of this award, noted above, at Supreme Court of British Columbia Registrar post-judgment rate until payment. I will retain jurisdiction with respect to these calculations, in case the parties are unable to agree.

Signed at Vancouver, British Columbia this 8th day of April 2002.

Paul D.K. Fraser, Q.C.
Arbitrator