

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY
(J.A. Plan)

DECISION OF THE UMPIRE - File #0202

Review of Contractor's Intended Work Assignment
Stroking of Valves and Jurisdiction of Hand-Held Signal Generator/Communicator

PROJECT

ATHABASCA OIL SANDS DOWNSTREAM PROJECT (AOSD)
SHELL SCOTFORD PLANT
EAST OF FORT SASKATCHEWAN, ALBERTA

CONTRACTOR

Athabasca Construction Joint Venture (ACJV)
with
Fluor Constructors Canada Ltd. (FLUOR)
making this Assignment for ACJV

PROTESTING PARTY

United Association of Plumbers & Pipefitters, Local #488
(UA)

RESPONDENT

International Brotherhood of Electrical Workers, Local #424
(IBEW)

Decision Published
June 11, 2002

**Review of Contractor's Intended Work Assignment
Stroking of Valves and Jurisdiction of Hand-Held Signal Generator/Communicator**

1. NATURE OF PROTEST

UA, the protesting party, in their April 10, 2002 letter have commented on Issues leading to this disputed work as:

- The “unorthodox” manner by which Fluor assigned this work in not conducting a proper mark up “without the ability of the affected trades to present their evidence in a proper fashion”.
- Fluor not communicating its mark up decision to the UA.
- The Assignment of a composite crew of UA and IBEW is incorrect and they state: “All such valves remain an essential and integral part of the piping system and therefore, the “stroking” of same have remained unquestionably within the jurisdictional scope of the United Association for many years.”

2. CONTRACTOR'S DESCRIPTION OF THE DISPUTED WORK

The description of the work in dispute was provided by Fluor (from Hugh H. Tackaberry, Director, Safety and Labour Relations).

“In response to the request from Umpire Weir regarding a description of the subject work, Fluor Constructors Canada Ltd. submits the following:

1. The dispute involves work on valves operated by pneumatic/electric mechanisms.
2. The work in question is the testing of the operation of the flow controlling mechanisms within the valve body.
3. The work involves the use of both pneumatic and electric connections and impulses.
4. A work assignment using a composite crew would see the UA controlling the pneumatic impulse for the test and the IBEW performing work associated with connecting/disconnecting the signal generator associated with the I to P controller.

We trust that this will suffice as a description of the work and welcome the opportunity to present more expert description of the work and the need for the work at a hearing.”

3. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application submission by the Protesting Party (UA) and the responses submitted by the Respondent (IBEW) and the Contractor (Fluor).

4. SUBMISSIONS

Disposition of Submissions

With this Decision all documentation will be returned to the J.A. Plan Administrator located at the Alberta Arbitration and Mediation Society Office, 405, 10707 – 100 Avenue, Edmonton, AB.

5. HEARING

A Hearing was held in Edmonton on May 07, 2002 commencing at 0930, adjourning at 1735.

6. EVIDENCE

All Submissions both written and oral have been accepted as Evidence.

Reference Attachment A for summary and Umpire's comments on the Written Evidence and Attachment B for the Umpire's notes, hand recorded, at the Oral Evidence. As the Hearing was not tape recorded there is no transcript.

7. SUMMARY

Before stating my Findings, which lead to my Decision on this matter I wish to summarize:

- This Assignment was made in a very inappropriate manner. Referred to in the UA's submission as "unorthodox". On J.A. Plan Form 1 (Application for Review of Contractors Intended Work Assignment) dated April 9, 2002 the name of the contractor making assignment was recorded as Fluor Constructors Canada Ltd. (for ACJV)

After much discussion between the UA and Fluor the Assignment was confirmed on Athabasca Construction Joint Venture letterhead to the UA and the IBEW. The undated letter was issued (fax transmission date records February 28, 2002) and was signed by Hugh H. Tackaberry, Director, Safety and labour Relations, Fluor Constructors Canada Ltd. The letter stated:

"Work on stroking of valves by ACJV forces at the Shell AOSD Project at Scotford, Alberta has been assigned to the UA and the IBEW on a composite basis."

Fluor implied they would continue to make future assignments on this matter in the same manner.

- Both the UA and the IBEW have presented strong arguments in support of their respective positions including the usage of the hand held communicators.
- The matter of composite crews fostering featherbedding was raised.
- For approximately 40 years resolutions of disputes between the United Association and the International Brotherhood of Electrical Workers in many areas, including valves and instrumentation have been recorded as Memorandum of Understanding between these two unions.
- In the evidence presented it was clearly stated and agreed that the UA install the valves and the IBEW perform the electrical work.
- The UA have stated the hand held communicator to be a tool-of-the-trade.
- Both the UA and the IBEW are claiming the instrumentation required in stroking the valves as their work.
- The Construction Term 'tool-of-the-trade' refers to equipment, which workers of more than one trade union have the right to use.
- Both the Electrician and the Instrument Technician Trade Regulations of Alberta's Apprenticeship and Industry Training Act cover the matter of sensing devices being part of each trades' curriculum.

8. FINDINGS

Following consideration of all the written and oral evidence I find:

- There are no applicable Memorandums of Understanding or Agreements or Decisions of Record or Local Trade Agreements between the UA and the IBEW that are specific to this dispute.
- Fluor did not conduct a proper mark up and implied they will not in the future. They did not properly communicate their assignment until pressed to do so.
- Hand held communicators are a tool-of-the-trade.
- Some members of both the IBEW and the UA are journeymen instrument technicians.
- Prevailing practice as defined in Article II of the Procedural Rules of the J.A. Plan (PR J.A. Plan) favours of the UA.

- Fluor was not correct in assigning this work to a UA and IBEW composite crew.
- The stroking of valves on this project should have been assigned to the UA.

9. RULING

- Fluor's assignment is not upheld.

However:

Considering the following events:

February 14, 2002 – Site memo on this matter.

February 28, 2002 – Fluor confirmed the Assignment.

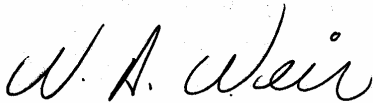
April 07, 2002 – the UA filed application for review.

May 07, 2002 – Hearing held.

June 11, 2002 – Umpire issues Decision.

Four months have elapsed since this Assignment was made. On the assumption work is ongoing, for continuity, Fluor's original Assignment of a composite UA/IBEW crews is to continued for the duration of this Project.

- Decision is for this Project only.
- Costs are to be paid
 - 80% by the IBEW
 - 20% by Fluor



W.A. Weir, Umpire
J.A. Plan/Alberta Construction Industry
June 11, 2002