

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

DECISION OF THE UMPIRE

REVIEW OF CONTRACTOR'S INTENDED WORK ASSIGNMENT

SCAFFOLD TENDING

PETROCANADA SULPHUR-IN-GASOLINE PROJECT
Strathcona County, Alberta

CONTRACTOR. KELLOGG, BROWN & ROOT (CANADA) COMPANY

J.A. Plan #0204. December 2, 2002

Disputing Trades

Construction & General Workers Union #92, Edmonton, Alberta

United Brotherhood of Carpenters & Joiners #1325, Edmonton, Alberta

1.

**Review of Contractor's Intended Work Assignment -
Scaffold Tending
PetroCanada Sulphur-In-Gasoline Project
Strathcona County, Alberta
Contractor, KBR (Canada)**

HEARING

A hearing of the dispute was held in Edmonton on November 25, 2002 commencing at 9:30 AM.

Appearing for the Construction & General Workers Union, Local #92

Greg Harris, International Rep.
Ken Reid, Business Manager - Local #92
Carey Hamelin, Alberta Labourers Training
Larry LeBold, President - Local #92
Rob Bayrack, Field Rep. - Local #92

Appearing for the United Brotherhood of Carpenters & Joiners, Local #1325

Martyn Piper, Local #1325- Alberta Regional Council
Ted Ash, Local #1325- Alberta Regional Council
Barrie Regan, Local #1325
Chester Fergusson, Local #1325
Rob Switzer, Brand Scaffold Services
Gary Carew, Aluma Systems Canada Inc.

Appearing for KBR Canada Company

Walter Semkowich, Gen. Superintendent & Labour Relations
Sam Kemble, Construction Labour Relations, Alberta

Description of the Work

The work is currently being completed by the Carpenters on the project.

The description of the work was provided by KBR

"On scaffolding crews the following tasks (relevant to the focus of this difference) need to be performed.

- 1) Material must be transported from the scaffold yard and stockpiled in a location at or near where the erection takes place. (This work is commonly referred to as "Stockpiling")
- 2) Material is then taken from the stockpile, attached to a rope and hoisted up to other workers in elevated positions on the scaffold. (This work is commonly

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referred to as the work of a "Groundman" or "Groundperson")

- 3) The erection and construction of the scaffolds. (This work is referred to as the work of the "Scaffolder")

The work in dispute is that of the Groundperson (item 2)."

Proposed Assignment/Final Assignment

"All tube and clamp and all round style scaffolding shall be the work of the Carpenter. Labourers stockpile scaffold material at or near the point of installation and remove the piled dismantled scaffolding. All tending of scaffold at point of installation shall be the work of the Carpenter."

Authority

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the application for review of intended work assignment submitted by the Labourers and the response submitted by the Carpenters.

Challenges

The Labourers objected to the presence at the hearing of Gary Carew of Aluma Systems Canada Inc. and Rob Switzer of Brand Scaffold Services. After hearing from both parties, the Umpire ruled that the gentlemen may remain but may not give evidence at the hearing.

PRESENTATION OF EVIDENCE

Labourers Evidence

The Labourers stressed that by bringing this dispute to the J .A. Plan, they did not want to open the whole industry to review but wanted to confine the decision to this project. In their written presentation they described in some detail the four major areas of work in the erection and dismantling of scaffold.

?? Stockpiling

?? Distribution

?? Supply

?? Building

Only the work of Supply is the subject of this dispute. Supply involves the conveying of scaffold components to the point of erection. This is referred to as scaffold tending (emphasis added), and is carried out by a groundsman, helper or third man.

Scaffold tending is historically and traditionally the work of the Labourer in North America. Over fifty Jurisdictional Disputes assigning scaffold tending to the Labourers were included in evidence. These were U.S. decisions rendered over a period beginning in 1962. A further eleven assignments of scaffold tending to the Labourers by Alberta Contractors were included in evidence. Two Alberta Labour Relations Board decisions regarding employee classification were included in evidence.

3.

In the Labourers current Alberta Collective Agreement, Article 4.01 covers the rate of pay, working conditions for all labourers, etc. "including the tending of all crafts." Other Labourer Collective Agreements have referred to scaffolder and scaffold helper.

The Labourers have enjoyed a long standing relationship with KBR. Eight previous assignments of scaffold tending by KBR to the Labourers were submitted in evidence along with numerous dispatch requests. A further fifteen recent assignments to the Labourers by other contractors and support letters were also included.

There is no scaffold apprentice program in Alberta. The training of labourers in scaffold tending, erection and connecting involves forty hours of instruction as part of their two thousand hours of training. This is described in the "Construction Craft Labourer Course Outline" which was submitted in evidence. This compares to the ten to fifteen hours of training given to the carpenters. In the "Carpenter Apprenticeship Course Outline", also submitted in evidence, scaffold tending and erection is shown as part of the six hour instruction program under RIGGING.

Evidence submitted in a letter from the Alberta Labourers Training Trust Fund shows the following members trained between 2000 and 2002.

Scaffold Refresher	- 60
Scaffold Tender	- 51
Scaffold Basics	- 50
Scaffold Tender	- 52

The Labourers claim that the Carpenters are also using Labourer trained scaffold tenders.

The Labourers submitted numerous "Confirmation of Work Experience" records showing beyond a doubt that their members have thousands of hours experience in scaffold work. 500 to 600 labourers have been working full time as scaffold tenders over the last four years -an estimate of 1.87 million man hours.

"It is difficult for the labourers to get on-job training in scaffold erection, even though 20% to 25% of Labourers are involved in scaffold tending work. Contractors should support the Labourers training program if they are interested in developing scaffolders."

Basis of Protest

On the PetroCanada Sulphur in Gasoline Project, the Labourers were already doing scaffold tending when on May 14,2002 the initial assignment of the work was made to the Carpenters. In fact labourers were even dispatched after that date and scaffold tending was performed by labourers on June 19 and 20, 2002. We believe the Contractor did not assign in good faith.

The Alberta J.A. Plan, Article IV requires a Contractor to continue an initial assignment once made, and to make an initial assignment without delay. This was not done.

4.

Labourers tended for almost three months before the final assignment was made. Article I 2.b of the Green Book was ignored.

A wage rate comparison between the Labourers and the Carpenters is provided. "If the argument by contractors is that there is an economic advantage, then that type of advantage is contentious." Evidence was provided.

There has been no recent, clear J .A. Plan Decisions relating to the work in dispute and this has resulted in fractured relationships between Labourers, Carpenters and Contractors.

Labourers have provided scaffold tending on numerous northern projects.

The Labourers conclude their evidence with a description of unsuccessful attempts on their part to reach an accommodation with the Carpenters.

Carpenters Rebuttal

Although the Labourers claim that they do not want to open the whole industry to review, they nevertheless presented material on an industry wide basis. The Carpenters feel that all of Alberta should be included in the Umpire's decision.

The reason the four areas of work in the erection and dismantling of scaffold is confused, is because of the Labourers desire for expansion. The person on the ground should be able to do other tasks required like cutting plywood. It is logical to use carpenter apprentices. Many persons come directly to the Carpenters for training as scaffold tenders, not through the Labourers as claimed.

Historically in Canada and the U.S. both the Carpenters and the Labourers have received many scaffold tending assignments. In other Provinces scaffolding is not a designated trade but a specialty, ie. Saskatchewan, where tending is done by carpenters.

Starting tending by the Labourers was not a specific assignment. It was a wrong decision that was later corrected.

The Labourers claim that fifteen projects used labourers as tenders is erroneous, and labourers do not tend carpenters on all industrial sites. A non-union contractor may use any employee they choose.

The Labourers' construction craft training program is a concern because it includes scaffold building, however the numbers in the Labourers' program are small. The Carpenters have one of the most extensive training programs in North America, with three training centres in Alberta. The program devotes only a small part to scaffolding, but when labourer scaffold tenders join the Carpenters, they receive a fourteen day training period.

5.

Most building trades have been short of men lately, but the Carpenters can now supply the demand for scaffold tenders. We need this position in order to train our members in scaffold building.

The Carpenters make the following additional points.

- ?? A trainee needs to work on the ground before working on the scaffold
- ?? July 7, 1998 Alberta Labour Board Decision -J.R.W. Blair. The grounds person is in the Carpenters bargaining unit.
- ?? Scaffold building starts with planning.
- ?? Not correct that scaffold disassembly is safer done on the ground.
- ?? Training and organizing go hand in glove.

The Carpenters take exception to the claim that labourers have provided scaffold tending on many northern projects. No evidence was presented to prove this. Multi-trade contractors are more often using vertically organized firms.

Carpenters Evidence

There is no agreement between the parties with respect to the work in question.

There is no Decision of Record which applies to the disputed work.

The established or prevailing practice in Alberta is that the "third man" or "helper" on a scaffold crew has overwhelmingly been assigned by contractors to the relevant locals of the United Brotherhood of Carpenters and Joiners of America. Eleven letters from contractors supporting the use of carpenter apprentices as scaffold tenders are included.

Prior decisions confirm the above.

- ?? July 7, 1998 -Alberta Labour Relations Board, J .R. W. Blair decision.
"The test is whether, as their prime function, they are engaged in erecting or dismantling scaffold. If the answer to that question is "yes", groundsmen will be considered to fall within the Carpenters' bargaining unit. "

- ?? June 29, 1998- Wallace decision. This referred to moonlighting scaffolding.

Scaffolding has changed over the years. It is no longer predominately frame scaffolding, but tube and clamp and integrated and speciality systems. As a result, the concept of the integrated three person crew predominates in Alberta and elsewhere.

The Carpenters' scaffold training program, which includes tending for first year apprentices, makes sense and is recognized throughout North America. Details of the program, its beginnings in the 1985, and courses were described. Cost records, numbers of trainees and scaffold student summary records were included as evidence.

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Carpenters performed 1,778,975 man-hours of scaffold work between 1997 and 2002. This does not include the hours worked for multi-trade contractors.

The Carpenters' rules require two journeymen to one apprentice on industrial work. There are almost always journeymen on every scaffold crew so no extra hiring is required. The Labourers' rules require the hiring of three certified journeymen for every trainee.

The Carpenters collective agreements include scaffolding in the scope clause, the Labourers agreements do not.

The Labourers have not been disputing the assignment of tending work for many years, even on multi-union Building Trades Council jobs (a list of projects included as evidence). We believe this is so because prevailing practice in Alberta assigns scaffold tending to carpenter apprentices.

Over forty letters from Contractors in Canada were included, assigning the work of scaffold erection and dismantling to the Carpenters. In most cases, the assignment also mentioned scaffold tending. The Carpenters concluded their evidence with copies of decisions by the National Joint Board in the U.S. The April 28, 1920 Green Book Decision formed the basis of these decisions as it awarded special designed scaffolds to the Carpenters. However the Green Book Decision does not support the Labourers which was confirmed by Robert P. McCormick on September 20, 1999.

Labourers Rebuttal

We agree that there is no agreement between the two trades because Carpenters have made no effort. There has been many international and local Provincial agreements and decisions of record from impartial jurisdictional disputes boards which we have submitted.

The large number of Saskatchewan letters of support and final assignments have no bearing on the labourers tending work in Alberta. The Labourers chose to contest these assignments during the pre-job mark up, not through the J.A. Plan. Also, these assignments were based on the argument that first year carpenter apprentices needed to learn the work of scaffold assembly and dismantling on the ground before they worked in the air. But the Labourers also need to train their members as efficient scaffold tenders and require the ground position in order to complete the blue book.

The British Columbia and Saskatchewan agreements do not reflect the true nature of the work in this Province. The U.S. decisions are also not relevant and do not address any scaffold tending issues. Tending is not part of the 1920 Green Book Decision.

Those who erect and dismantle scaffold in Alberta have been represented by the Carpenters as part of their collective bargaining unit. This is not in question. Our definition

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of the point of erection and dismantle is the point where you connect the two components, therefore the point of erection begins after the scaffold material is tied-on by the scaffold tender and received by the scaffold builder. The Carpenters have not defined what they mean by "tending at the point of installation." Because there has been no clear definition of the process to date, there is contention and division within the scaffold industry.

It is not correct to say that this project was "cherry picked" to bring to the Alberta J.A. Plan. it is just that we have no choice. It does not make economic sense to pursue smaller jobs. To have scaffolding skills in our trade gives us an element of self respect. "The claim for the quality of labourers who are scaffold tenders is not an issue and neither are the qualifications of the carpenter builder."

Multi-trade Contractors, KBR, MCC, ACJV and MRC and most of their subcontractors provide scaffold tenders who are labourers. Suncor Millennium Project used two scaffolders to one labourer. 500 to 600 labourers who passed the tests in knots, hitches, and material identification were dispatched to Fluor - ACJV.

"The Labourers do want to inform the Umpire that approximately 25% of our work is related to scaffold tending on the majority of major industrial projects. If one of the three positions on an integrated three man crew was rightfully given to labourers, then they could complete their designated certification, especially if the labourer was allowed the "tools of the trade" and could build as well as supply material...what benefit would this new wave of scaffolding be to the employer - more accessible manpower, no jurisdictional disputes and greater efficiency in the scaffold industry on a whole."

The Labourers collective agreement for industrial construction does have a 3:1 ratio existing between trainees, certified or non-certified labourers. This is the total ratio for the entire job and it cannot be assumed that this ratio would exist on a scaffold crew.

Contractors Evidence

Alberta Contractors support the Construction Craft Labourer program.

In surveying the findings of past Disputes Boards, one finds considerable variance in the Dispute Board conclusions pertaining to the assignment of the work of the groundperson. Many of the decisions do not address the work of the groundperson and others address scaffolding generally. In such cases, the Dispute Board awarded the work to the carpenter.

KBR concurs with the findings of the National Maintenance Agreements Policy Committee. "The April 28, 1920 Decision of Record does not apply to the work of the groundperson."

Under no circumstances, are collective agreement trade jurisdiction clauses to be

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contemplated as authorities for the purposes of resolving jurisdictional disputes before an Umpire. Any collective agreement that is read in such a way as to unilaterally establish exclusive trade jurisdiction to one Union over another, would be an attempt to circumvent the statutorily entrenched and exclusive jurisdiction of the J.A. Plan.

There are no applicable local area agreements between the Unions. Neither Union can conclusively establish exclusive jurisdiction over the work in question. Both trades have performed the work in question in Alberta.

KBR is satisfied with the quality of workmanship, level of training and work ethic of workers dispatched by the Labourers to perform the work of groundperson. However, KBR finds that the practice of using a labourer groundperson does not contribute to the training of competent scaffold erectors across Alberta. To have an apprenticeship program that does not allow for apprentices to gain on-the-ground experience before being required to perform the work in an elevated position, is an inherently unsafe system.

It is KBR's position that the pre-job mark-up conference was held at a point in time when necessary drawings, equipment lists and other information respecting the project came available. In any event, a party seeking an intended work assignment may request an Umpire at any time to direct a Contractor to make an intended assignment.

The period of time worked after the assignment was made was simply the amount of time it took to put the final assignment into practice.

KBR concludes that there are no applicable decisions or agreements in respect to the work in question. Concerning Alberta Labour Relations Board Decisions, the pattern of findings in respect to the appropriate bargaining unit of the groundperson is inconclusive.

Language in the April 28, 1920 Decision of Record suggests that the first fourteen feet of any scaffold is to be built by the trade using the scaffold. Occupational Health and Safety Regulations, employer policy and KBR's commitment to safety cannot allow the above noted section of the Decision to be put into practice. KBR believes that this Green Book Decision is in contravention of due diligence in respect to safety and Alberta law. In light of the above, KBR requests the Umpire to make a declaration that the portion of the Green Book Decision dealing with scaffolding under fourteen feet is outdated, unsafe and that contractor discretion consistent with workplace safety and efficiency shall prevail.

The Alberta Jurisdictional Assignment Plan has the statutorily entrenched exclusive jurisdiction to review and remedy work assignments in the Alberta construction industry.

9.

Labourers Rebuttal

We had the work of scaffold tending for two months and were still doing the work on July 8, 2002 when the rug was pulled out from under us.

Scaffold Building Below Fourteen Feet

Labourers- safety is the most important consideration.

Carpenters -other trades building scaffolds under fourteen feet in height is not common practice in Alberta, but they agree with KBR's position.

FINDINGS

All parties provided the Umpire with extensive evidence both written and oral. In reviewing it, I have endeavoured to consolidate and avoid repetition while ensuring that the major arguments are presented. Much hearsay evidence has been left unrecorded.

I see no point in restricting the application of this decision to one job. There is nothing unique in the evidence that would prevent its general application in Alberta.

There is no Decision of Record or Agreement of Record applicable to scaffold tending. The April 28, 1920 Decision of Record awards self-supporting scaffolds and specially designed scaffolds to the Carpenters.

There is no local area agreement between the Unions governing the work.

The Labourers have performed scaffold tending safely and efficiently in Alberta.

The Carpenters have performed scaffold tending safely and efficiently in Alberta.

Neither Union has established exclusive jurisdiction over the work of scaffold tending.

There was no change of assignment by the Contractor. The casual provision of services by the Labourers before May 14, 2002 did not constitute an assignment. The eight hour rule does not apply to this situation. The Contractor made the intended assignment when the necessary information was available. Either Union could have required the Contractor to make an intended assignment at any time, and both Unions were afforded an opportunity to support their claim before the final assignment was made.

Scaffold erection / dismantling in Alberta is the work of the Carpenters. It is logical that Carpenter apprentices should perform the work of groundman or tender in order to gain experience before working in elevated positions. I see no reason why this position is singled out rather than being made an integral part of the scaffold erection crew.

10.

The fourteen foot rule stipulated in the April 28, 1920 Green Book Decision is an unsafe practice and should no longer apply generally to the Alberta Construction Industry. If a specific situation arises where it is advantageous for the trade using a scaffold under fourteen feet to build it, then the decision should be at the discretion of the Contractor.

RULING

The Contractor's assignment is upheld.

The cost of this Application for Review shall be paid for by the Labourers.

G.R. Beatson, Umpire
J.A. Plan / Alberta Construction Industry