

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

DECISION OF THE UMPIRE

REVIEW OF CONTRACTOR'S INTENDED WORK ASSIGNMENT

ALL INSULATION MATERIAL HANDLING RESPONSIBILITIES

SYNCRUDE EMISSION REDUCTION PROJECT
Syncrude, Fort McMurray, Alberta

CONTRACTOR, JACOBS INDUSTRIAL SERVICES LTD.

J.A. Plan #0902. October 15, 2009

Disputing Trades

International Association of Heat and Frost Insulators and Allied Workers, Local Union #110 (IAHFIAW), Edmonton,
Alberta

Teamsters Local Union #362, Edmonton, Alberta

**Review of the Contractor's Intended Work Assignment
(Delay of Intended Work Assignment)
Handling of All Insulation Material Responsibilities
Syncrude Emission Reduction Project
Syncrude, Fort McMurray, Alberta**

HEARING

A hearing of the dispute was held in Edmonton on October 15, 2009 commencing at 8:05 a.m.

Appearing for the International Association of Heat and Frost Insulators and Allied Workers Local Union #110

Bill Spring, Local Union #110, Business Manager
Reg Gravelle, Local Union #110, Business Agent
Pat Tilley, Local Union #110, Director Marketing
Trish Humphrey, Local Union #110, E.A.

Contractors Providing Evidence for the Insulators

Neil Nilson, Aluma, Contracts Manager
Bill Cram, Fuller Austin, General Manager
Rick Cholak, Dewar Western, Projects Manager
Bob Martineau, Park Derochie, Insulation Division Manager
Bill Book, Book Insulations, President
Paul Ackerman, Westcor Services Limited, Insulation Manager
Lionel Williams, Altair Contracting, President

Appearing for Jacobs Industrial Services Ltd.

John Derijk, Consultant
Kevin Pretty, Labour Relations

Appearing for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union #362

Roy Finley, Teamsters Local Union #362, Teamsters International Representative
Rick Prouty, Teamsters Local Union #362, Business Agent
Ken Krawchenko, Teamsters Local Union #362, Business Agent
Adrian Seymour, Teamsters Local Union #362, Member
Russ Shaw, Teamsters Local Union #362, Member
Wayne Love, Teamsters Local Union #362, Member

Prior to the hearing, the Umpire asked the three parties if there were any objections to the Plan Administrator assigning the Umpire to act in the capacity for File Number 0902. There were no objections by any of the three parties.

Furthermore, in this document, the Insulators International Association of Heat and Frost Insulators and Allied Workers, Local Union #110 will be referred to as "Insulators"; the International Brotherhood of Teamsters, Chauffeurs and Warehousemen and Helpers, Local Union #362 will be referred to as "Teamsters"; and Jacobs Industrial Services Ltd. will be referred to as "Jacobs".

Agreed to by both the Insulators and the Teamsters that Mr. Spring and Mr. Finley will call their witnesses in the order that they desire.

Description of the Work

The work is currently being performed by the Teamster driving the vehicle and the expeditor who is an Insulator handling the material. The Teamster, who is an employee of Jacobs, comes from a truck pool which services multiple trades.

Presentation of the Evidence

Insulators Evidence

Mr. Spring at this time introduced an eight page document summarizing all his combined documentation previously submitted to the Plan Administrator. This was the first time the Umpire, the Teamsters and Jacobs had seen this document, and had no time to review its content. Mr. Finley strongly objected to the submission, but the Umpire assured the parties that any new evidence presented in that document, would not be allowed as evidence in this hearing.

Mr. Spring referred to the three letters of September 25, 2009, addressed to the J.A. Plan Administrator, respecting:

- Application for Review of the dispute of work in progress; and
- Jacobs assigning work wrongly without an Intended Work Assignment.

Respecting Jacobs assignments and reassignments of work as follows, the Insulators are looking for the Umpire to decide the following work assignments:

1. In essence, the driving of Vehicles by Teamsters all the time with insulation materials and insulators in them to be transported around on the SERProject as referred to in the Jacobs letter to the subcontractor dated September 10, 2009.
2. In essence, the driving of Vehicles sometimes by Teamsters with insulation materials and insulators in them to be transported around on the SERProject, as referred to in the Jacobs letter to the subcontractor dated September 21, 2009, when they reconsidered their position taken.
3. Handling of insulation materials by Teamsters or by Insulators to be loaded onto vehicles for transportation and offloaded where they are delivered to on the SERProject.

Basis of Protest

1. The dispute was prompted by Jacobs withdrawing all of the above scope of work from their subcontractor at the SERProject assigning it to the Teamsters, later revisiting the assignment and limiting some of the assigned work completely, and some on a more conditional basis.
2. Jacobs, when they took back the scope of work from their subcontractor, ignored the subcontractor mark-up meeting with the Alberta Building Trades and their Intended and Final Assignment of the work in question, which were not challenged by the Teamsters.

Mr. Spring is asking the Umpire to support the evidence that the Insulators should be assigned all the driving of all vehicles on a construction site used to transport both insulating trade materials and insulators to where they are needed. The Insulators should also be assigned all of the material handling responsibilities.

It is agreed among Jacobs, the Teamsters, and the Insulators, that there are no:

- a) Decisions of Record**
- b) Agreements of Record**

If no such Agreements are in effect, the Umpire shall consider established trade and prevailing practices, together with a reasonable acceptance of considerations for efficiency, safety, good management and a desire by all Parties to eliminate excessive allocation of manpower.

The Insulators claim that Jacobs did not follow Article IV, Section 5(c) thus the alleged violation.

The Insulators have provided substantial evidence by way of letters from most of the contractors that do construction insulating work on Industrial projects throughout Alberta. This reflects that the vast majority of all above referred to work (predominant practice) was assigned to and done by the Insulators for many years leading up to this dispute. Mr. Spring will call upon his witnesses when he ends his testimony.

Mr. Spring disagrees with the written evidence provided by the Teamsters. The Teamsters claimed that they have historically performed the above work within Alberta and Northwest Territories (District of Mackenzie).

By contrast, the Insulators have queried their own union records and prepared a pie graph reflecting the overall work in question by the Insulation Contractors.

This submission is new and since none of the two parties, including the Umpire, have seen this document, the Umpire will not allow this entry.

Mr. Spring tried to bring the language of the Teamsters and Insulators Collective Agreements into testimony. The Umpire concluded that under no circumstances, are Collective Agreement trade jurisdiction clauses to be contemplated as authorities for the purposes of resolving jurisdictional disputes. 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.

Mr. Spring tried to bring the language from the grievance dated September 14, 2009 into evidence. The umpire would not allow this entry.

Mr. Spring had stated that the predominant practice in the Province respecting this work in question, in written evidence provided by the Teamsters, was in fact maintenance work. Maintenance work is not applicable to this dispute and assignments of construction work is governed by the J.A. Plan.

Mr. Spring challenged the Teamsters in addressing Prevailing Practice. Evidence from Contractors which employ all of the trades involved in the dispute will be preferred. From the Insulators point of view, the practice by the Insulation Contractors is the only reasonable practice that an Umpire can rely upon to decide what is a Prevailing Practice.

Mr. Spring addressed the Teamsters evidence which indicates that efficiency and better management of work done is achieved when the work in question is assigned to the Teamsters because of their being "professional drivers". Mr. Spring disagreed with the above statement that only a Class Five license is required, as most of the work consists of delivering material in a smaller truck. Mr. Spring also stated that the Insulation Contractors can provide drivers with a Class One or Three license when necessary.

Mr. Spring also disagrees with a Truck pooling system that the Teamsters claim are more efficient and productive for they service multiple trades. The Insulators claim that there is an excessive allocation of manpower, thus increasing costs for the Contractor and their clients.

The Insulators have called upon their witness. The Umpire had requested that the Teamsters or the Contractor can have a rebuttal after each Contractor presents his evidence.

The seven Contractors provided oral and written evidence as follows:

- a) That historically the Contractors used Insulators to transport and handle insulation materials on all projects performed in Alberta.
- b) The majority of the Contractors have no affiliation with the Teamsters.
- c) They only used Teamsters when they were forced to by multi-trade contractors.
- d) The majority of the contractor work was in the Industrial Construction sector, although a couple of the Contractors did do maintenance work.

- e) All the Contractors claim that at their mark-up meetings with the ABTC, the Teamsters never claimed any of the Intended and Final Assignments.
- f) The Contractors provided that the Teamster part of their work, when forced to by the multi-trade contractors, was one half of one percent of the total man hours.

Teamsters Rebuttal

Mr. Finley requested that each Contractor address their scope of work (construction versus maintenance).

Mr. Finley also stated that percentages appeared low as identified by the Contractors, but there was no way to accurately identify the man hours used by the Teamsters.

Jacobs Evidence and Rebuttal

Mr. Derijk stated that Jacobs did make an Intended Work Assignment at the May 12, 2009 meeting with the Building Trades. Item 23(a) on Page 6 of 10 addresses the assignment.

23(a) Pick-up Trucks

Pick-up Trucks used to transport people, material or tools for a predominant part of the work day shall be assigned to the Teamsters.

Mr. Derijk disagreed with Mr. Spring that every item of work has to be addressed in the mark-up. There has never been a practice to assign common trade assignments. Mr. Derijk further went on to explain and give examples that the Pipefitters install pipe, the Boilermakers install vessels and boilers, and the Ironworkers erect steel.

Mr. Derijk addressed Jacobs letter of September 10, 2009 to Fuller Austin Insulation Inc. Mr. Siddeley, the Senior Subcontract Specialist for Jacobs, removed some scope of work from the subcontractor. Mr. Siddeley stated that effective September 21, 2009, the Teamsters will assume all material handling responsibilities associated with their scope of work.

Mr. Derijk further addressed the letter of September 21, 2009 by Mr. Siddeley, Senior Subcontract Specialist for Jacobs. Mr. Siddeley clarified that Jacobs is only concerned with the transportation or moving of material on site. All other work remains in Fuller Austin's scope of work.

Mr. Derijk further stated that Mr. Henniger was the sole point of contact who addresses the moving of material in question.

A clarification by Mr. Krawchenko of the Teamsters and by Reg Gravelle of the Insulators, stated that a labourer was used on September 23, 2009. This only occurred for one day.

Insulators Rebuttal

Mr. Spring reminded Mr. Derijk that the Umpire will decide if there was an Intended Work Assignment.

There was no Rebuttal by the Teamsters.

Teamsters Evidence

Mr. Finley began his presentation by expressing his disappointment that this issue came before the J.A. Plan. He stated that he will be presenting both oral and written evidence from Contractors which employ all of the trades involved in the dispute.

Mr. Finley agrees with Jacobs assignment at the mark-up meeting on May 12, 2009. The Teamsters have provided substantial evidence to support that they are currently and have historically performed the transportation of men and materials in Alberta and Northwest Territories (District of Mackenzie) which is the prevailing and trade practice among the Contractors that employ all of the trades.

Mr. Finley also stated that there were several instances that the Teamsters supplied Teamsters to the Insulators directly.

The Teamsters brought up efficiency and better management. The Teamsters claim that their professional drivers are trained in the transportation industry. They firmly believe that truck pooling can save money for both the Contractors and the Owners.

Mr. Finley addressed written evidence from three companies who employ all of the trades involved in the dispute. These companies assign the transportation of men and materials to the Teamsters.

In addition, one Business Agent and three members delivered both written and oral evidence that they transported men and material for Insulation Contractors. These Insulation Contractors worked for Contractors who employ multi-trades.

An additional fifteen members provided written submissions that they worked for Contractors who employ all of the trades involved in the dispute. These submissions all stated that men and materials were transported for Insulation Contractors who work for multi-trade contractors.

Insulators Rebuttal

Mr. Spring claimed that the majority of work was maintenance work provided in the evidence. The hours were hearsay and could not be proven.

Mr. Finley agreed, but it was the same when the Insulation Contractors came up with the percentages of man hours that were attributed to Teamsters work. Mr. Finley elaborated that in the construction boom years, starting with the year 2000, the majority of the hours worked were in the Construction sector.

The Insulators and Teamsters gave a very brief summation.

FINDINGS

All parties provided the Umpire with extensive evidence both in written and oral form. In reviewing it, I have endeavoured to consolidate and avoid repetition while ensuring the major arguments were presented.

I am restricting this application of this decision to **one** job. I look at the wording of the Application to the Plan Administrator:

Re: Application for Review of a dispute of work in progress – Jacobs Industrial Services Ltd. assigning work wrongly without giving an Intended Work Assignment (Delay of Intended Work Assignment) at the Syncrude SERP (Syncrude Emission Reduction Project). This was presented by the International Association of Heat and Frost Insulators and Allied Workers, Local #110.

Jacobs Industrial Services Ltd. held a **mark-up meeting** in Edmonton on May 12, 2009 with the Northern Alberta and NWT (District of Mackenzie) Building and Construction Trades Council. Item 23(a) under heading Pick-up Trucks reads as follows:

- (a) Pick-up Trucks used to transport people, material, or tools for a predominant part of the work day shall be assigned to the Teamsters.

The above wording in the Mark-up constituted an Assignment by the Contractor.

RULING

The Contractors assignment is upheld.

The cost of this Application for Review shall be paid for by the International Association of Heat and Frost Insulators and Allied Workers, Local #110.

Walter Semkowich, Umpire
J.A. Plan/Alberta Construction Industry