

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

Decision of the Umpire

REVIEW OF CONTRACTORS'S INTENDED WORK ASSIGNMENT

**Co BOILER DUCT CLADDING Contract #cc602
Ruth Lake - Fort McMurray, Ab.**

Contractor
NSL CONSTRUCTORS INC. / WOOD BUFFALO INSULATING LTD.

J.A. Plan #0307, December 22, 2003

Disputing Trades

Sheet Metal Workers' International Association, Local #8

International Association of Heat & Frost Insulators & Asbestos Workers, Local #110

1.

**Review of Contractor's Intended Work Assignment -
Co Boiler Cladding - Ruth Lake, Fort McMurray, Ab.
NSL Constructors Inc. / Wood Buffalo Insulating Ltd.**

HEARING

A hearing of the dispute was held in Edmonton, Ab. on December 15, 2003.

Appearing for the Sheet Metal Workers' International Association, Local #8

Gregory D. Reid - Business Manager, FST
Bert Ottenson - International Representative
J. Peter Wyatt - Business Representative, Calgary

**Appearing for the International Assoc. of Heat & Frost Insulators &
Asbestos Workers, Local #110**

Hardy Jensen - Business Manager
Tony Ceraldi - International Vice President

Appearing for Wood Buffalo Insulating Ltd.

Wayne Reap - General Foreman

In a letter dated December 10, 2003 addressed to the J.A. Plan Administrator, the International Association of Heat & Frost Insulators & Asbestos Workers, local #110, claimed that there were no grounds for the dispute. The Umpire agreed to hear this claim before the presentation of evidence. After discussion and presentation by both parties, the Umpire ruled that there were grounds to proceed. The parties accepted the ruling.

Description of the Work

The description of the work was provided by Wood Buffalo Insulating Ltd.

"We are pinning and insulating ducts and covering them with .016 gauge corrugated metal."

Authority

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the request and documentation submitted by the Sheet Metal Workers International Association, local #110 (SMW) and the response submitted by the International Association of Heat & Frost Insulators & Asbestos Workers, local #8 (INS).

2.

EVIDENCE**Sheet Metal Workers Presentation**

The SMW says that the contractor ignored prevailing practice and the J.A. Plan Appeal Panel Decision #0303 in making this assignment to the INS. The work in dispute is the cladding of the hot and cold air ducts integral to the operation of the boiler at the Ruth Lake project - work claimed by the SMW.

Tab 1. A copy of the project mark-up (item 25) assigning the cladding work to the INS - trade claim by the SMW

Tab 2. A copy of the 1957 agreements between the INS and the SMW.

Tab 3. A copy of the letter abrogating the above agreements. Note that the April 13, 1939 agreement between the SMW and the INS, dealing with insulating and acoustical material, was not abrogated. (Green Book pg.64)

Tab 4. A copy of the J.A. Plan Alberta decision #0302, awarding the cladding of the hot and cold air ducts integral to the operation of the boiler to the INS.

Tab 5. A copy of the J.A. Plan Alberta Appeal Panel decision #0303 overturning the Umpire's decision in #0302, and awarding the work to the SMW on the basis of prevailing practice.

Tab 6. Excerpt from the Occupational Analyses Series (Canada), describing the work of sheet metal workers. "Prepares and applies metal lagging on vessels and piping found in industrial gas plants, thermal generating plants and other industrial plants."

Tab 7. A copy of the June 28, 1957 agreement between the Sheet Metal Workers and the Boilermakers. The two trades agree that the erection of power boilers and all integral parts is the work of the Boilermakers. All other metal work, including "...the final metal application of covering pipe or duct lagging is recognized as the work of the Sheet Metal Workers."

Tab 8. A list of 18 power plants in Alberta on which the SMW has been awarded the metal lagging of duct work integral to the boiler.

Tab 9. Copies of letters from multi-trade contractors confirming the practice of assigning boiler and integral duct cladding to the SMW. In many cases, the Sheet Metal Workers - Boilermakers agreement of 1957 (tab 7) provides the basis for these assignments. The letters date from 1984 to the present.

Tab 10. A description of assignments of the disputed work in Alberta to the SMW.

3.

Tab 11. A copy of letters assigning the disputed work outside Alberta to the SMW.

Tab 12. A list of Impartial Jurisdictional Disputes Board decisions in favour of the SMW.

Rebuttal - Heat & Frost Insulators

The INS does not agree with parts of the SMW presentation. Referring to the numbered tabs in the SMW presentation.

Tab 5. J.A. Plan Appeal Panel decision #0303 was specific to that project. The INS agrees that ductwork, electrical systems, piping systems and framework are integral to the operation of a boiler, but ductwork is not the same as the boiler. The INS does all types of ductwork on numerous projects as stated in the letters from our contractors.

Tab 6. The National Occupation Classification used by the SMW is possibly outdated. The latest classification for the Sheet Metal Workers is NOC #7261 and for the Insulators is NOC #7293. Task 9 of #7293 includes the installation of protective coverings for piping, boilers, tanks, vessels, ductwork, breechings, chillers, precipitators, turbines, heat exchangers, pumps, fans and fittings. It is the contention of the INS "...as well as the Government's, that Insulators perform ductwork and breechings in industrial applications."

For the Sheet Metal Workers, #7261, two tasks reference breeching and lagging under HVAC Systems. There is no mention of boilers, furnaces or other related components as is the case for Insulators.

Tab 7. The June 28, 1957 agreement between the Sheet Metal Workers and the Boilermakers does not affect the Insulators but when used as a basis for assigning work it interferes with the work of the Insulators. The only agreement between these two trades that affects this dispute is the October 16, 1930 agreement of record, page 49 of the Green Book.

Tab 10. There is no general disagreement with the assignments listed under this tab. Some appear to be from the same company, and in some cases the INS did not claim the work.

The Babcock & Wilcox assignment at Suncor is for maintenance work.

Heat & Frost Workers Presentation

In the copy of the mark-up provided by NSL Constructors, the INS claim installing and removal of all insulation, including any and all cladding over insulation, and fireproofing that is within their scope.

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Position. The cladding in dispute is 0.016 aluminum, described by the SMW as boiler duct cladding. The INS understands that this job involves a furnace not boiler work. Assigning the insulation and cladding work to one trade is more efficient and cost effective for the contractor. Insulators as well as Sheet Metal Workers are trained in cladding and have established prevailing practice for the fabrication and installation of lagging on piping, vessels and equipment in their jurisdiction.

Documents. In the J.A. Plan decisions #0001 and #0012, cladding work on pipe, vessels and equipment was awarded to the INS and not to the SMW.

A copy of the assignment by Steeplejack Industrial Insulation Ltd. for insulation and cladding of the conveyor duct at the Genesee site - awarded to the INS, claimed by SMW.

A copy of apprenticeship and trade description documents. Insulators have the ability to do cladding work.

Copies of 38 letters, including 2 mark-ups from insulating contractors, attesting to the practice of assigning insulating and cladding to the INS. In many cases efficiency was the reason given for the use of a single trade to do this work. This is also the INS position. It claims all cladding over insulation without reference to the gauge of metal being used.

Rebuttal - Sheet Metal Workers

The work in dispute is the cladding of boiler duct not furnace duct. (see page 3 of mark-up) Other references to insulating and cladding of ductwork by the INS are not boiler ductwork. There are only 3 references to ductwork in the letters provided by INS. The SMW does not agree with parts of the INS presentation.

On the Ruth Lake project, the SMW have been attempting to get the contractor to have a mark-up since June 2003. Some of the work that was finally marked-up on October 31, 2003, started a full year ago. The SMW agrees that prevailing practice is a reasonable consideration for work assignments (see J.A. Plan #0303). The work in dispute in J.A. Plan #0001 and #0012 was not boiler duct cladding.

Insulating and cladding of ductwork on this project does not have to be done in conjunction. A description of the work in dispute, insulation specifications and related photographs were provided to prove this point.

At the Genesee phase 3 project for Steeplejack, the SMW installed the cladding. As proof of this, dispatches and remittance forms, along with a recognition letter from Altair Contracting Ltd. were provided.

5.

Summary. In their summaries both parties indicated that the two trades can work together when required. Hope was expressed that in the future an agreement could be reached between them. Greg Reid made the point that a mark-up can be held in respect to assembly yard work. It was in the assembly yard that the disputed work took place. Precedents were quoted.

FINDINGS

The evidence presented by the SMW shows that the cladding work in dispute is related to the hot and cold air ducts integral to the operation of the boiler. This was not disputed by the INS.

In its evidence the SMW stated that they had been trying to get the contractor to hold a mark-up of the work since June, 2003. The SMW should be aware that the J.A. Plan under Article IV: 4 can assist in such matters when requested.

Agreements. The only agreement in force between the SMW and the INS is dated April 13, 1939, and deals with the application of insulation and acoustical materials. It has no bearing on this dispute. The October 16, 1930 Agreement of Record between the Boilermakers and the Sheet Metal Workers deals with buildings. It has no bearing on this dispute. The 1957 agreement between the Sheet Metal Workers and the Boilermakers however forms the basis for assigning this work in the minds of many multi-trade contractors. This latter agreement is not binding on the Insulators but it does limit their access to this type of cladding.

Issues. For its part, the INS claims all cladding work applied over insulation, and its apprenticeship program trains workers in the application of insulation and cladding. The National Occupation Classification (Canada) acknowledges industrial application tasks such as "installs protective coverings" as belonging to the Insulators. Letters from single trade contractors confirm their preference to use one trade to do both jobs as it is more effective and economical.

Decisions. In J.A. Plan #0001 and #0012 the work in dispute was not boiler duct cladding. In the J.A. Plan Appeal Panel decision #0303 the work in dispute was boiler duct cladding.

The nub. This dispute revolves around two points. The first is the claim that boiler duct cladding is unique from other duct cladding. Not so says the INS, and they refer to NOC # 7293 to prove that this work, along with other types of duct cladding, is recognized nationally as work performed by Insulators. The SMW does not see it this way, and

6.

says that they have always done boiler duct cladding, it is unique, and there is an agreement with the Boilermakers giving them the work. I am not convinced however that the work is unique and therefore should be accorded a separate classification from other duct cladding.

The second point is prevailing practice. Because for many years the majority of boiler duct cladding has gone to the SMW, prevailing practice is in their favour. It was on this basis that the J.A. Plan Appeal Panel ruled in their decision #0303. Their ruling follows Article VI: Procedures of the Plan. "In rendering his decision, the Umpire shall ...consider established trade practice, prevailing practice, together with a reasonable acceptance of considerations for efficiency, safety, good management and a desire by all Parties to eliminate excessive allocation of manpower." (emphasis added)

As the work in this case is the same as the work in # 0303, the Appeal Panel decision must form the basis of the Umpire's decision.

RULING

The assignment of NSL Constructors Inc. / Wood Buffalo Insulating Ltd. is overturned. The work in dispute is assigned to the Sheet Metal Workers.

The cost of this application is to be paid by the Heat & Frost Insulators.



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