

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

J.A. Plan – File #0403

DECISION OF THE UMPIRE

Review of Contractor's Intended Work Assignment

BAILEY METERS, POWER ACTUATED CYLINDERS AND LINKAGES

PROJECT

GENESEE III POWER GENERATOR
Genesee, Alberta

CONTRACTOR

Jacobs Catalytic Ltd.
(Jacobs)

PROTESTING PARTY

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

RESPONDENT

Millwrights Local Union #1460
(MW)

Decision Published
March 18, 2004

by
W.A. Weir, Umpire

1. DEFINITION OF DISPUTE

The UA's Application of February 23, 2004 states:

1. "This work was assigned as per the UA/MW Agreement of April 8, 1975 on the Final Job Mark-Up."
2. "On site, the work was assigned contrary to the Mark-Up resulting in a change of assignment and/or misinterpretation of the Agreement."

The UA's Submission of February 23, 2004 covering letters states:

"During a properly constituted Mark-Up, the work in question was awarded as "UA/MW Agreement 75/07/08" in the Final Mark-Up. The work on site is not being done in accordance with the noted Mark-Up and Agreement governing same (Please see Tab A)".

Umpire's Comment - Tab A contained

- Page 4 of 14 of Jacobs (the Contractor that conducted the Assignment) with items 92 and 93 being hi-lited.

delete 93+94 being

Item #	Contr.	Tag #	Description	Remarks	Craft Assign't	Craft Claim	Final Assign't
92	Jacobs	28-14-00	Solenoid Valve		UA	-	UA
93	Jacobs	28-17	Control Drive	Mount the Drive	UA	MW	UA/MW Agreement 75/04/08
94	Jacobs	28-17 connect both 28-17	Control Drive	Connect Linkage	MW	UA	UA/MW Agreement 75/04/08

delete

- Pages CA-12-16 inclusive of the UA/MW April 8, 1975 Agreement

The UA's Rebuttal on March 6, 2004 in its Statement of Position covering letter states:

Quoted from the opening statement of UA's Rebuttal

The issues in dispute are...

- 1) *Handling and Setting of Bailey Meters/Actuators*
- 2) *Securing of Bailey Meters/Actuators*
- 3) *Stands for Bailey Meters/Actuators*
- 4) *Installation of Linkage*

Secondly, we must understand what has transpired to bring us to a dispute. The history is...

- 1) *Pre-Job Mark-Up held April 8th, 2002*
- 2) *Trades made claims and submissions*
- 3) *Final Awards distributed May 13, 2002 with the items in question being awarded as per the UA/MW Agreement of April 8th, 1975*
- 4) *Neither Union contested the Final Assignment*
- 5) *During the month of February 2004, a contractor clarification was made which was contrary to the Final Assignment of May 13, 2002. The result of this decision was that the MW obtained work they were never assigned and refuse to relinquish said work."*

2. SITE VISIT

Administrator Boyd arranged a site visit for the a.m. of Friday, February 27, 2004. Jacobs' Bob Dickson lead the tour which viewed different installations of the equipment in dispute.

The UA was represented by Larry Matychuk, Business Agent. The MW was represented by Gord Evers, Business Representative. Both the UA & the MW were accompanied by experienced hands ~~will~~ ^{well} versed in the equipment in dispute.

delete The tour allowed the Umpire to view the equipment and a portion of the approximately 30% placed.

3. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, as revised and issued May 1st, 2003. The Application

submission by the Protesting Party (UA) and the response submitted by the Respondent (MW) and the Contractor Jacobs.

4. SUBMISSIONS

Jacobs the Contractor submitted.

Both the UA and the MW presented acceptable Submissions. However for the reason explained, they both submitted an over abundance of written non-applicable evidence.

The Umpire thanks Jacobs and the UA/MW for their submissions

Disposition of Submissions

When no longer required all bound documents will be couriered to the J.A. Plan Administrator as will items presented at the Hearing. All other items will be shredded.

Reference Attachment A for detail of Submissions.

5. HEARING

A Hearing was held on Thursday, March 10, 2004 in the meeting room of the Alberta Building Trades Council, Edmonton office. The Umpire called the Hearing to order @ 1330 and adjourned at 1800.

Attendance

- Jacobs, the Contractor, was represented by Bob Dickson, who also represented the Genesee Contractors Association.
- UA, the Protesting party, was represented by
 - Larry Matychuk, Business Agent, Spokesperson and Bill Johnson, UA Site Rep.
 - Ken Nolan (replacing Dave Zarko) and Craig Johnson, witnesses.
- MW, the Respondent, was represented by
 - Ray Drisdelle, Canadian District Representative, Spokesperson
 - Gord Evers, Business Representative and Bob Hugh
- Umpire Weir

The Umpire had all in attendance sign the Attendance Record and take the Oath under their name affirming the evidence they were about to give was the truth, the whole truth and nothing but the truth.

The Hearing was called to Order and commenced with the MW Spokesperson, Ray Drisdelle raising the matter of:

- Why are the UA's workers employed by Lockerbie & Hole and not Jacobs (as the MW's workers are) who made the Assignments?

In reply, Bob Dickson, Jacobs Spokesperson explained he is employed by Jacobs Canada that made all the original Assignments and is responsible for all labour relations.

After discussions by the parties the Umpire, in consideration of the information presented, stated this is not an issue and proceeded to the next matter.

- MW's Ray Drisdelle stated the UA's rebuttal was not a rebuttal, it was new evidence elaborating on the UA's initial submission and should not be accepted.

The UA Spokesperson, Larry Matychuk stated from his experience this is what is always done.

After the parties discussed, the Umpire stated this is the first time in his many hearings this has been pointed out. He accepted the UA's rebuttal and said he would bring the MW's concern to the J.A. Plan Trustees attention.

The Umpire also thanked the MW's Spokesperson for bringing to the attention of the hearing:

- J.A. Plan File no*
1. The date on the UA's Rebuttal Statement of Position is incorrectly dated 0304. The correct is 0403.
 2. The first page of the Umpire's March 10, 2004 letter to the Administrator incorrectly records item 94 Claim MW, the correct statement is Claim UA. *file no. is 0403*

In reply to the Umpire's Mar. 10, 2004 letter Jacobs' Bob Dickson submitted (with copies to the UA and MW Spokespersons and Umpire) and reviewed his March 11, 2004 letter explaining the events as listed.

Reference Appendix B for copy of Bob Dickson's March 11, 2004 letter.

6. EVIDENCE

All submissions both written and oral have been considered as evidence.

The Umpire has reviewed all the written submissions, listened to all the presentations and has reviewed his notes recorded at the oral hearing.

7. FINDINGS

In accordance with the J.A. Plan Procedural Rules and in consideration of the written and Oral Evidence:

The Umpire Finds:

1. The Spokespersons for Jacobs, the Contractor, the UA and the MW clearly presented their positions which understandably included overlaps.
2. The work in dispute has stopped pending the issuing of this Decision.
3. Terry Burton's, Jacobs Catalytic Labour Relations person, May 13, 2002 letter distributed Jacobs Final Mark Up Genesee Power Project to twenty individuals including union representatives and others. The UA, MW and BM were included.
4. Over twenty months has elapsed since the MW received Jacobs Assignment and they have never taken action through the J.A. Plan of the Alberta Construction Industry to submit an Application objecting that Jacobs had assigned the work under the UA/MW 1975 Agreement instead of under the BM/MW 1964 Agreement.
5. The Trustees of the J.A. Plan never rescinded the rights of the J.A. Plan to Unions not affiliated with the Building Trades Council.
6. The MW in their closing Arguments and also in the Conclusion of their submission state "recommend that you rule that the Contractor has made an erroneous assignment on items Nos. 93 and 94 and that it should be changed to Boilermaker/Millwright Agreement of 1964" (Dated October 6, 1964).
7. Jacobs, the Contractor did not make an erroneous assignment in assigning the work under the UA/MW April 08, 1975 Agreement.
8. Also in MW's closing Arguments, as a fall back position, commented that if the Umpire did not agree with the BM/MW Agreement of 1964 he should agree on the UA/MW 1975 Agreement.

9. Article VI: PROCEDURES

Article VI (k) directs the Umpire on the procedure he is required to follow and states:

"In rendering his decision, the Umpire shall determine first whether a previous Decision of Record and/or Agreement of Record governs. If no such Decision or Agreement applies he shall then consider whether there is an applicable agreement between the disputing Unions governing the case. If no such Agreement is in effect, 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. (See the attached Letters of Understanding)."

10. The first step is to determine whether a previous Decision of Record and/or Agreement of Record governs.
11. The Hearing confirmed there are no previous Decisions of Record and/or Agreements of Record.
12. The Umpire then has to consider
 - Whether there is an applicable agreement between the disputing Unions governing the case.
The UA/MW 1975 Agreement governs.
13. There is no established trade or prevailing practice, as if there was this dispute would not exist.
14. During the site visit the Umpire was advised that International reps from both the UA and the MW met and were unable to resolve this case. That is very unfortunate as a settlement between the International Reps would have established the precedent for this and future cases.
15. The UA was justified to submit their Application when approximately 30% of some of the components were done without regard for Jacobs Assignment.
16. The Umpire accepts the position in Jacobs Bob Dickson's letter of Clarification. His comment that "No change of assignment has ever taken place."
17. The Umpire takes exception to the MW conducting approximately 30% of a phase of the work with assistance from the BM knowing the Contractors Assignment was made on the basis of the UA/MW April 8, 1975 not the BM/MW 1964 Agreement.

18. Tab 7 of the MW's Submission on the third page contains Poole Construction Ltd., August 15, 1977 Assignment which is two years after the UA/MW 1975 Agreement.
19. The letter pertains to Instrumentation Sundance #5 Unit Power Drive Installation and states "... please be advised of the following assignment:
 1. The handling and setting of the power drives on the base is the work of the United Association.
 2. The securing, aligning, and leveling shall be performed by the Millwrights.
 3. The fabrication and installation of all linkages which require no universal joint, coupling, bearing, or gear shall be the work of the United Association.
 4. The fabrication and installation of all linkages having a universal joint, coupling, bearing, or gear shall be the work of the Millwrights."
20. The UA Rebuttal Tab A introduction comments on correspondence between International Representatives of both affected Unions and reports by UA International Rep. Unfortunately it is mainly United States projects with International Rep. interpretation of the Agreement. The UA's introduction states "To ignore this evidence would put the Umpire in the position of making a ruling which could possibly be contrary to the intent of the authors of the Agreement".

In reviewing this material the Umpire is unable to establish a pattern leading to their intent.

Many of the submissions are prior to the UA/MW 1975 Agreement.

Page 11 referencing 1971 project comments on Linkage:

- "The connecting of simple linkage is the work of the United Association"
- "The connecting of complex linkage is the work of the Millwrights."

Page 12 defines the definition of linkage in lieu of simple and/or complex by a UA and a MW International Representative.

"Single linkage will be installed by UA. Single linkage to be defined as 1 piece with an adjustment."

"Multiple linkage will be installed by Millwrights (Carpenters). Multiple linkage is defined as more than one piece or linkage with critical tolerances."

Umpire's Comment: Letter is on United Brotherhood of Carpenters and Joiners of America dated January 26, 1972 prior to the UA/MW 1975 Agreement and does not name the two International Reps. And is issued from Pehin, Illinois addressed to "To whom it may concern"

Umpire's Comment: A number of the submissions are from UA to UA.

Page 21 "The following excerpt is taken from Minutes of Carpenters-United Association Joint Committee Meeting held February 11,12,13, 1976, Miami Beach, Florida:

Power actuated cylinders - "A general discussion was held on bailey meters and power actuated cylinders in regard to a clarification on bases and stands. After a lengthy discussion it was agreed by the committee that all bases and stands for bailey meters and power actuated cylinders would be fabricated and set by the United Association except where a bailey meter or a power actuated cylinder was mounted on a piece of Millwright equipment or machinery."

- 21. Tab 5 of the MW submission (the UA also submitted) contains as the first item a UA letter of January 30, 1980 (on UA Washington D.C. letterhead) signed by James E. Davis, United Brotherhood of Carpenters and Mack C. Roberts, United Association which states:

"Mr. R.B. Hambricht,
Project Manager, Jones/Boecon,
P.O. Box 2591,
Idaho Falls, Idaho, 83401

*Tab # 5 MW subm^{ssn}
missing letter
from submitted.*

"Dear Sir:

Due to the continuing dispute over the installation of power actuated cylinders on your project, we hereby offer this clarification of the April 8, 1975 Carpenter - U A. agreement as it pertains to power actuated cylinders.

The handling of the cylinder to the point of installation by Pipefitters means placing the cylinder over bolt holes or bolts by the United Association and if necessary in order to make the cylinder safe the United Association will put the the final securing, aligning and leveling of the cylinder.

Our offices would appreciate you implementing this procedure inasmuch as it was agreed by the two committees at the time of consummating the 1975 agreement.

Fraternally yours,

Signed by James E. Davis, United Brotherhood of Carpenters and Mack C. Roberts, United Association"

- 22. *Umpire's Comment: The Umpire agrees with the MW's statement at the Hearing that a Coupling is a Connection.*

8
9. THE DECISION

The Assignment by the Contractor Jacobs is upheld in part.

9. BAILEY METERS, AND POWER ACTUATE CYLINDERS

In accordance with the UA/MW April 8, 1975 Agreement item 9.

The handling and setting to the point of installation is the work of United Association.
Securing, aligning and leveling shall be done by the Millwrights.

BASES AND STANDS

The installation of bases and stands for the Bailey meters and power actuated cylinders shall be fabricated and set by the UA.

Should the base or stand require modification to enable the MW to do their securing, aligning and leveling the base or stand modification is to be done by the UA.

10. LINKAGE

In accordance with item 10 of the UA/MW 1975 Agreement

“10(a) The fabrication and installation of all linkage which requires no universal joint, coupling, bearing or gear shall be the work of the United Association.”

10(b) The fabrication and installation of all linkage having a universal joint, coupling bearing or gear shall be the work of the Millwrights.”

The costs are to be paid:

- 20% by Jacobs, the Contractor and 80% by the MW.

This Decision is for this job only.

W. A. Weir

W.A. Weir, Umpire
J.A. Plan/Alberta Construction Industry
March 18, 2004

Send

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GENESEE III POWER GENERATOR

Genesee, Alberta

ATTACHMENT A

WRITTEN SUBMISSIONS RECEIVED

FROM THE ADMINISTRATOR BY UMPIRE WEIR

ATTACHMENT B

RECEIVED MAR 11 2004
AT HEARINGGenesee Contractor Association
Genesee Phase 3
P.O. Box 20, Site 2 RR#1
Warburg Alberta
T0C 2T0

March 11, 2004

Jurisdictional Assignment Plan of the
Alberta Construction Industry
9667- Oakville Drive, SW
Calgary, AB T2V 3W6

Attention: Bill Weir

Dear Sir:

In regards to the dispute in Jacobs final assignment, please find the explanation of events listed below:

1. Millwrights moved air-actuated cylinders into the Boiler Building.
2. United Association claimed this work.
3. Construction Manager checked with Terry Burton, Jacobs Catalytic, Labour Relations, who informed him of the clarification of the assignment as per the U/A Millwrights Agreement of April 8, 1975.
 - "9. Bailey Meters and Power Actuated Cylinders.
The handling and setting to the point of installation is the work of the United Association. Securing, aligning and leveling shall be the work of the Millwrights."
 - "10. (b) The fabrication and installation of all linkage having a universal joint, coupling, bearing or gear shall be the work of the Millwrights."
4. The Millwrights proceeded to install the linkages approximately 30% when the United Association then took exception to the assignment made by Jacobs Construction Manager on the linkages.
5. The work was stopped and we are now involved in a jurisdiction dispute.
6. No change of assignment has ever taken place.

If you require any further clarification please do not hesitate to contact me.

Yours truly,

Bob Dickson
Site Labour Relations

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SUMMARY OF WRITTEN SUBMISSIONS RECEIVED BY UMPIRE WEIR

Received on March 03, 2004 (via courier) from Administrator Boyd.

1	<p>The CONTRACTOR – Jacobs Catalytic Ltd.</p> <ul style="list-style-type: none"> • Final Mark Up Genesee Power Plant dated 2002-05-13 containing a separate full page of signatures. • One page titled Epcor Genesee Phase 3 Boiler Equipment Markup (at bottom of page is note – Equipment Submissions List 5/13/02). • One page dated April 8, 1975 with item 9. Bailey Meters and Power Actuated cylinders and item 10. Linkage hi-lited. On right hand side of page were Carpenters and UA signatures. <p><i>Umpire's Comments: Item 9, hi-lited Bailey Meters and power Actuated Cylinders assigning certain aspects of the work to either the UA or the MW</i> <i>Item 10 Linkage assigning one class of linkage (item a) to the UA and another class (item b) to the MW.</i></p> <ul style="list-style-type: none"> • Two pages showing different linkages.
2	<p>THE UA LOCAL UNION #488 SUBMISSION</p> <ul style="list-style-type: none"> • February 23, 2004 one page covering letter. • Tab A <ul style="list-style-type: none"> • Epcor Genesee Phase 3 Boiler Equipment Markup (AS AS Jacobs submitted) showing Item 93 – Control Drive, Mount Drive, Assign't UA, Claim MW Item 94 – Control Drive, Connect Linkage Assign't MW, Claim UA. Final Assign't UA/MW Agreement 75/04/08 for both items 93 & 94 • Pages CA-12-16 inclusive of the April 8, 1975 UA/MW Agreements. • Tab B <ul style="list-style-type: none"> • Nov. 17, 1980 UA two page letter from UA's J.R. St. Eloi in Washington to Bryan Strong, UA Local No. 488 in Edmonton re installation of Bailey Meters levelling. <i>Umpire's Comments: an "in-house letter".</i> • Pages CA-4 & 5 titled PUMPS AND COMPRESSORS of October 6, 1964 between the Millwrights and the UA. • Five letters from Contractors all pre-dating April 8, 1975. • One telegram from UA Eloi to Supt. On project near Fox Creek, AB. • Five letters from Contractors on Alberta Projects all dated after April 8, 1985 • Tab C <ul style="list-style-type: none"> • Six letters from Contractors on non-Alberta Projects.

1964 correction

3. THE MILLWRIGHTS SUBMITTED

- A COIL BOUND BINDER WITH March 1, 2004 three page covering letter advising the installation started in October of 2003 and they are told it is approximately 1/3 complete with the work being performed by the MW and Boilermakers (BM) and is covered by an 1965 International Agreement between the MW & BM.

Umpire's Comment: The contractor Jacobs final assignment was to UA and the MW as stated and reference4d the UA/MW 75/04/08 Agreement.

- Tab1 – Four page Agreement of October 6, 1964 between the Boilermakers et al and Millwright et al.
 - Tab 2 – Copy of similar dispute at Wabamun Power Generation Plant.
- Umpire's Comments – During Hearing UA challenged as this might have been Maintenance – not applicable to JA Plan.*

- Tab 3 – Six pages of Jacobs' "Final Markup Genesee Power Plant".

MW covering note "At the time of this meeting Millwright Local Union 1460 was not affiliated with the Alberta Building Trades Council and therefore not present as indicated on the attendance sheet."

- Tab 4 – Copy of UA & MW Agreement of April 8, 1975.

Umpire's Comments: states the MW interpretation of the handling and setting of Bailey Meter and Actuator.

- Tab5 – Copies of letters clarifying the April 8, 1975 Agreement.

- Tab 6 – Pictures and drawings of the disputed work.

- Tab 7 – 55 pages of previous contractor assignments supporting Millwrights on this work.

Umpire's Comments: Only 4 or 5 are Alberta projects. How many are maintenance and not applicable to this work in dispute? The balance are not applicable.

- Tab 8 – Article VI: Procedures from the J.A. Plan of Alberta.

Umpire's Comments: Item (k) hi-lited.

Received on March 06, 2004 (via courier) from Administrator Boyd

4. UA LOCAL UNION #488 REBUTTAL

- March 4, 2004 two page covering letter stating the issues in dispute are:

- 1) Handling and Setting of Bailey Meters/Actuators
- 2) Securing of Bailey Meters/Actuators
- 3) Stands for Bailey Meters/Actuators
- 4) Installation of Linkage

Umpire's comments. These items formed part of the Oral Hearing Agenda.

- Tab A – 46 or more pages of correspondence between Union officials re United States projects.

- Tab B – Four Assignments in Canada but not in Alberta.

- Tab C – Technical information and many project construction drawings showing various configurations of "linkages".

Umpire's Comments: Very little of this information was referred to during the Hearing.

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ATTACHMENT B

RECEIVED FROM BOB DICKSON

AT MARCH 11, 2004 HEARING