

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

Decision of the Umpire

REVIEW OF CONTRACTOR'S INTENDED WORK ASSIGNMENT

FLY ASH CHUTES AND VALVES

GENESEE III POWER GENERATOR

Contractor: Jacobs Catalytic Ltd.

J.A. Plan #0404 May 17, 2004

Disputing Trades

United Association, Local Union #488, Edmonton

Millwrights Local Union #1460, Edmonton (together with)
Ironworkers Local Union #720, Edmonton

**Review of Contractor's Intended Work Assignment -
Fly Ash Chutes and Valves from Ash Silo to Ash Unloader
Genesee III Power Generator
Genesee Contractors Association**

HEARING

A hearing of the dispute was held in Edmonton on May 11, 2004 commencing at 9:30 AM

Appearing for the United Association, Local #488
Larry Matychuk - Business Agent
Bill Johnston - Business Agent
Gerard Tieulle - Witness

Appearing for the Millwrights, Local #1460
Ray Drisdelle - Canadian District Representative
Bob Hugh - Business Representative
Gord Evers - Business Representative
Jim Conolly - M/W G/F Jacobs

Appearing for the Iron Workers, Local #720
Harry Tostowaryk - Business Representative
Irv Duncan - Witness

Appearing for Jacobs Catalytic Ltd.
Bob Dickson - Site Labour Relations Manager

No challenges were offered and no pre-hearing matters were raised. The Umpire declared the hearing to be properly constituted in accordance with the rules of the J.A. Plan of the Alberta Construction Industry. The Umpire called the hearing to order.

Authority

The authority of the Umpire to hear this dispute is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the application for review submitted by the U.A. and the response made by the Millwrights and the Iron Workers.

Description of the Work

Bob Dickson reviewed the six drawings Jacobs Catalytic Ltd. had sent to the Administrator for the purpose of this hearing. He traced the progress of the ash from the silo through the chutes and valves to the ash unloader. The function of various pieces of equipment was explained and distinctions made between mechanically operated and manually operated valves.

PRESENTATION OF EVIDENCE

2.

U A Evidence

Larry Matychuk spoke to the written evidence submitted in support of the U.A. application. The U.A. believes that the work of fly ash chutes and valves has been awarded to the Millwrights contrary to historic area practice, and also the award was not addressed in the mark-up, item #159, page #7. This item deals only with mechanical equipment and not piping (chutes). A copy of page #7 of the mark-up showing this item was submitted.

Also on page #7 of the mark-up, item #152, the piping and hangers for the bottom ash handling system is awarded to the U.A. Other parts of the bottom ash handling system (items # 142 and #143) which relate to item #152, are also awarded to the U.A.

A copy of a "memorandum of understanding" dated July 9, 1951 between the U.A. and the Boilermakers was introduced. In this document, "Powdered Fuel Systems and Fly Ash Reburning Systems are the work of the United Association." and "Piping in connection with carrying away solids collected in the cyclones and the precipitator bottoms are the work of the United Association." The U.A. claims that this is the agreement that should have been used to assign the disputed work.

Two decisions were introduced one awarding "fly ash duct" and the other awarding "NuVu feeder valves and piping" to the U.A. In these decisions the reference to piping means duct, and refers to systems which are identical to the Genesee fly ash handling system. At this point Mr. Matychuk referred to his rebuttal material to show that a NuVu feeder is in fact a "pug- mill unloader", which functions to combine the fly ash from the storage silo with water to form a moist mixture that can be transported.

The U.A. concluded its presentation of evidence with five letters from contractors awarding various parts of fly ash handling systems in Alberta to the U.A.

Millwrights Evidence

Ray Drisdelle spoke to the written evidence submitted by the Millwrights in response to the U.A. application. An Agreement between the Millwrights and the Iron Workers entitled "Rotary Kilns and Related Equipment - October 1, 1968" was presented. Article #1, Section 7 deals with air slide conveyors and related chutes. "Iron workers will handle to approximate position, Millwrights will attach sections together and assemble gates." Mr. Drisdelle pointed out that chutes and knife gate valves are the work in dispute.

A copy of page #7 of the mark-up was again presented along with a copy of a letter dated April 16, 2004 from Bob Dickson of the Genesee Contractors Assoc. addressed to the Millwrights #1460 and the U.A. #488. Mr. Dickson points out that the discharge chutes from the ash silo were awarded in the final mark-up, item #159, and the award was based

on the Iron Workers / Millwrights Agreement dated October 1, 1968. Drawings and photographs were looked at and explained.

The Millwrights presented documentation dealing with projects in which chutes were awarded to it (17 in Alberta, 25 in Canada and 8 in other jurisdictions). Mr. Drisdelle drew attention to a decision under the Canadian Plan from Manitoba, dealing with various pieces of material handling equipment in a Potato Processing Plant. The chutes were awarded to the Millwrights. Also he referred again to the Jacobs Catalytic mark-up for Genesee III Power Generator, where chutes in other locations were also awarded to the Millwrights.

Further documentation was presented in which gates of various types were awarded to the Millwrights. The examples covered a wide variety of types of gates, some of which had little similarity to the gates in dispute.

The Millwrights concluded their presentation of evidence with an explanation by Jim Connelly of the Air-Slide Conveyor. This work is now complete.

Iron Worker Evidence

Harry Tostowayk spoke to the written evidence submitted by the Iron Workers in response to the U.A. application. Referring to the Genesee III mark-up, he said it lasted a full day, each numbered item was explained, its purpose stated, and all expressed concerns were addressed. After hearing this, the Iron Workers made its claim for item #159 and the work was assigned accordingly. The U.A. did not claim. There were other items similar to those in dispute, about which the U.A. made no claim. Item #119 - Coal Handling System Conveyor, item #130 - Coal Feeder and Coal Gate and Support, item #202 - Slide Gate Valve-Line Storage Site Hopper.

Further, the U.A. has made no attempt to contact the Iron Workers to resolve this dispute. Three craft agreements between the Iron Workers and the Millwrights were submitted in evidence. Key sections to note:

- Rigging with power equipment is the work of Iron Workers. Includes rigging of dismantled or knocked down machinery or equipment.
- Unloading and transporting of machinery and equipment is the work of Iron Workers.
- All aligning is work of the Millwrights.
- Air-Slide conveyors and related chutes. Iron Workers will handle to approximate position. Millwrights will attach sections together and assemble gates.
- The erection and construction of all iron, steel and ornamental iron for ash chutes

and hoppers shall be done by the Iron Workers.

The Iron Workers presented documentation dealing with projects in which chutes and gates were awarded to it (29 in Alberta, 5 in Canada). The projects covered a wide variety of process plants.

The Iron Workers concluded its presentation of evidence with copies of four decisions dealing with the assignment of gates and chutes. (3 from British Columbia and 1 from the U.S.) The decisions supported the Iron Workers claim to this work. Mr. Tostowaryk pointed out that it is only the valves and chutes that are in dispute, and possibly the air valve could be assigned either way. The Iron Workers are not disputing the pug mill.

REBUTTAL EVIDENCE

U A Rebuttal

Larry Matychuk spoke to the written rebuttal evidence submitted by the U.A. He pointed out that the U.A. is not disputing the pug mill.

A letter dated December 7, 1989 from the U.A. #488 to Mr. Roy Kendall at Combustion Engineering Canada was introduced, along with two pages of the mark-up dealing with Bottom Ash Handling at Genesee. In the December letter, the U.A. points out that even though the transition chute, other chutes, slide gates and hoppers have been completed by the U.A., the work was not assigned that way. For future reference an assignment acknowledging that they did the work is requested.

Concluding its written rebuttal evidence, the U.A. presented assignments from three ash handling projects in Alberta, where it was awarded the installation of various items of equipment, including chutes and gates. The awards by Flanders at the Alberta Power Plant at Forestburg were assigned in accordance with the U.A / BM Agreement.

Mr. Matychuk spent some time reviewing the projects previously presented by the Millwrights in which it was awarded chutes and gates. He pointed out that the projects were not just ash handling projects, but included food processing plants, coal handling plants and other bulk material handling plants. The examples of gates provided included spillway gates, hopper car gates and elevator doors - none of which are similar to the gates in the ash handling process. Also many of the examples were not local. For these reasons the projects presented by the Millwrights have no bearing on this dispute.

Mr. Matychuk makes the point that only examples of manufactured gates or valves (knife gates) which are used in ash handling systems in Alberta are applicable to this dispute.

The Alberta J.A Plan refers to an "applicable agreement." The "memorandum of

understanding" dated July 9, 1951, between the U.A. and the Boilermakers is such an agreement.

With regard to the Iron Workers evidence, Mr. Matychuk sees no reason for it to include four craft agreements which do not bear on the dispute. In other respects, his comments were the same as those he made about the Millwrights evidence. The projects presented have no bearing on this dispute.

Mr. Matychuk dismisses the findings of the J.A. Plan in British Columbia as not applicable to this dispute because they originate in a different jurisdiction and do not deal with ash handling.

Millwrights Rebuttal

Ray Drisdelle spoke in rebuttal to the U.A. evidence and made the following points.

- The work has been awarded correctly.
- Bottom ash handling system (all piping, hangers) is not in dispute.
- A Nuvu feeder and a pug mill are the same thing. This work is not in dispute.
- A difference is made when assigning work, depending on whether the system is handling wet material or dry material.
- The Millwrights claim chutes between mechanical equipment when alignment is required.

The projects submitted by the Millwrights are applicable in claiming prevailing practice for this work. A chute in any material handling process is still a chute, and a valve whether it is handling ash or lime, should not be assigned differently.

With respect to the items of work claimed in the U.A. evidence, not all of it is applicable to this dispute, ie. bifurcation pieces, bottom ash piping, bottom ash slurry pump. This work is not being claimed by the Millwrights, nor is the work described in the six letters from Flinders and two from PCL. The evidence is not applicable.

Iron Workers Rebuttal

Harry Tostowayk spoke to the written rebuttal evidence submitted by the Iron Workers. The memorandum of understanding dated July 9, 1951 between the U.A. and the Boilermakers deals with fly ash reburning systems and fuel systems, not the system in dispute. Likewise the examples of work presented by the U.A. They do not apply to this dispute.

The Iron Workers agree with the points raised in the Millwrights' rebuttal evidence. The only agreement that applies to the work in dispute is the IW / MW Agreement.

Re-Rebuttal Evidence

The "memorandum of agreement" dated July 9, 1951, between the U.A. and the B.M. was again referred to. The U.A. claimed the memorandum to be a bono fide agreement, and offered to send the parties and the Umpire a full copy of this agreement. After discussion, the parties agreed to accept the memorandum as a bono fide agreement between the U.A. and the B.M. - signed by their respective Presidents.

FINDINGS

There is no Decision of Record or Agreement of Record applicable to this dispute. There is no agreement in this Province between the disputing Unions that is applicable to this dispute.

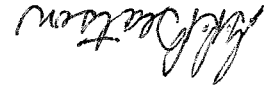
Neither the U.A./Boilermakers memorandum of agreement dated July 9, 1951, nor the Iron Workers / Millwrights Agreement dated October 1, 1968; is binding on another Union not signatory to the Agreement. That the Contractor in this case chose to assign on the basis of the IW / MW Agreement, indicates that it considers that agreement more applicable to the work in dispute. I agree. Whether or not the assignment of the work was clearly addressed in the mark-up is a moot point. It could have led the U.A. to not claim the work in a timely manner.

In its presentation and evaluation of evidence supporting prevailing practice, the U.A. has applied a very narrow standard of relevancy. I am inclined to a broader interpretation, although some examples of work completed by the Millwrights bear little resemblance to the work in dispute. Prevailing practice however favours the Millwrights / Iron Workers.

RULING

The assignment of the Contractor is confirmed.

The cost of this application shall be paid by the U.A.



G.R. Beatson, Umpire

J.A. Plan / Alberta Construction Industry