JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

RECONSIDERATION of the DECISION OF THE UMPIRE

REVIEW OF CONTRACTOR'S WORK ASSIGNMENT

FLY ASH CHUTES AND VALVES FROM THE ASH SILO TO THE ASH UNLOADER

GENESEE III POWER GENERATOR

Contractor. Jacobs Catalytic Ltd.

J.A. Plan # 0405 June 9, 2004

Disputing Trades

United Association, Local Union #488, Edmonton

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

Reconsideration of the Decision of the Umpire
Contractor's Work Assignment - Fly Ash Chutes and Valves
Genesee III Power Generator
Jacobs Catalytic Ltd. - Contractor

Reconsideration Request
The request for reconsideration was brought by the United Association, Local Union #488, Edmonton. The letter accompanying the application was dated May 19,2004.

An oral hearing was requested, however an unanimous agreement between the parties was not forthcoming so the Administrator advised that the reconsideration would be by written briefs.

Authority
The authority of the Umpire to reconsider is based on Article VII of the procedural Rules of the J.A. Plan, the request submitted by the United Association (UA) and the responses submitted by the Millwrights (MW) and the Ironworkers (IW).

The Umpire's Decision #0404 remains in effect, and a valid requisite for reconsideration has been established.

The Umpire agreed to reconsider his decision based on written briefs only.

Nature of the Request for Reconsideration
The United Association does not agree with the Umpire's decision, claiming a "substantial error of fact or law" [Article VII 3(iii)], "wherein the Umpire did not base his decision in accordance with the rules as stipulated in the JAPlan Procedural Rules."

There was no new evidence submitted.

Position of the Other Parties
The Millwrights and the Ironworkers agree with the Umpire's decision.

Written Brief of the UA
In claiming a "substantial error in fact or law", the UA said that the Umpire relied on prevailing practice to make his decision, but failed to follow the parameters of prevailing practice as stipulated by the J.A. Plan Procedural Rules. The definition of prevailing practice (Article II) was reproduced.

The UA also claimed that:

> The Umpire did not hold the Contractor accountable to the standards and definitions of the J.A. Plan.
>
> The Umpire did not require the MW or the IW to describe the evidence it presented to demonstrate established trade practice.
>
> The Umpire granted himself a latitude in interpreting the Rules to which he is not entitled.
>
> > He changed the description of the work
> > He expanded the issue to include non fly ash systems
> > He expanded the issue to include evidence from outside the jurisdictional boundaries of the Alberta J.A. Plan

Finally, the UA took exception to the Umpire's statement that the UA applied a very narrow standard of relevancy in its presentation and evaluation of evidence supporting its claim. The UA claims that its evidence is direct, accurate and relevant to the dispute.

The Umpire's Reply
The governing items [Article VI - (k)] on which an Umpire relies to arrive at a decision are not mutually exclusive. Of course the Decisions of Record, Agreements of Record and Agreements between the disputing Unions take precedence when applicable, but beyond that, established trade practice, prevailing practice, and letters of understanding may bear on the decision and be given the weight the Umpire considers appropriate.

That is the procedure the Umpire followed in arriving at the J.A. Plan #0404 Decision. It conforms to the requirements of Article VI of the rules.

It should also be noted that the term "prevailing practice" relates to work in Alberta and N.W.T., but the term "established trade practice" carries no such restriction. Both are criteria the Umpire may apply when arriving at a decision.

However let us consider prevailing practice for a moment. The UA made reference to 5 Alberta projects, the MW referenced 14 projects in Alberta and the IW also referenced 14 projects in Alberta. The projects referenced by the UA all dealt with ash handling systems while the projects referenced by the MW and IW dealt with a variety of plants and processes where chutes and gates were required - and this brings us to the nub of the UA protest.

If a chute or gate is part of an ash handling system, and is located between the ash silo and the ash unloader, then it is the work of the UA on the basis of prevailing practice. This was the claim put forward by the UA in their application dated April 21, 2004 and at the hearing on May 11, 2004. It was fully understood by the Umpire. But to assign a chute or valve (gate) on the basis of the material it carries or its location in a plant is not practical, and cannot be justified on the basis of prevailing practice. The number of projects referred to by the MW and IW in Alberta constitute more of the work in the area and give them the edge in prevailing practice.

Summary

I believe the above review covers the items raised by the UA in its application for reconsideration, but to be completely clear let me summarize.

The parameters of prevailing practice were followed.

The Contractor's assignment was upheld - it was not a matter of holding the Contractor accountable.

The Umpire received the description of evidence he judged adequate from the MW and the IW.

The description of the work was not changed. An abbreviated reference was made for the sake of economy of words.

The issue was expanded beyond what the UA introduced because of the evidence presented by the opposing parties.

Evidence was presented and accepted relating to projects beyond Alberta or N.W.T. The weight given to such evidence is the Umpire's prerogative.

Decision

The ruling of the Umpire dated May 14, 2004 remains in force. Costs of the reconsideration will be borne by the UA.

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