

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

Decision of the Umpire

REVIEW OF CONTRACTOR'S INTENDED WORK ASSIGNMENT

SOLE PURPOSE PIPE SUPPORTS

DIESEL DESULPHURIZATION PROJECT
Petro-Canada Refinery, Edmonton

Contractor. Bantrel Constructors Co.

J.A. Plan #0408 December 31, 2004

Disputing Trades

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting
Industry, Local Union #488, Edmonton

The International Association of Bridge, Structural, Ornamental and Reinforcing
Ironworkers, Local Union #720, Edmonton

1.

**Review of Contractor's Intended Work Assignment
Sole Purpose Pipe Supports
Diesel Desulphurization Project, Petro-Canada Refinery, Edmonton
Bantrel Constructors Co.**

HEARING

A hearing of the dispute was held in Edmonton on December 21, 2004 commencing at 9:00 AM.

Appearing for the United Association, Local #488

Larry Matychuk - Business Agent

Jay Grant - Witness

George Doty - Witness

Appearing for the Ironworkers, Local #720

Harry Tostowaryk - Business Agent

Barry Tachuk - Witness

Jeff Norris - Witness

Nick Denys - Witness

Appearing for Bantrel Constructors Co.

Brett Horan - 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 submitted by the Ironworkers.

Description of the Work

Brett Horan of Bantrel presented a written description of the assignments made at the mark-up meetings held on September 8 and November 16, 2004. After some discussion, it was agreed that Item 19. b) and d) of the November 16th mark-up describe the work in dispute. Electrical supports and multi-purpose supports are not in dispute.

19) Pipe Supports

b) Free standing pipe supports (not tied together) for the sole purpose of supporting pipe will be in accordance with the ~~IRONWORKER~~/United Association area agreement of October 1, 1956.

d) Multi-leg or bridge and truss type supports is the work of the Ironworker.

2.

Drawings and photos were provided to show various types of support.

The October 1, 1956 area agreement contains the following paragraphs.

Free standing pipe supports, one and two legged pipe supports along with pipe hangers, pipe supporting straps, saddles, roller type supports, U bolts, clamps or other devices designed for the sole purpose of supporting pipe is to be the work of the United Association.

All multi-leg supports consisting of three or more legs or two leg supports when tied together by structural members is to be the work of the ironworkers.

All bridge work for the purpose of supporting pipe or pipes, whether self supporting or tied into or becoming part of a building's structural steel is to be the work of the Ironworkers.

PRESENTATION OF EVIDENCE

U.A. Evidence

Larry Matychuk spoke to the UA evidence. Two years ago the Ironworkers began to interpret the October 1, 1956 agreement in a different manner. This has resulted in the dispute we are hearing today.

On this project, UA Local Union #488 claims all sole purpose pipe supports regardless of design or configuration.

In Alberta, area agreements generally follow legislation. The *Apprenticeship and Industry Training Act A-42 January 2001* defines the trade of steam fitter - pipe fitter as a *compulsory certified trade*. Clauses in the Act define the responsibilities of the employer in assigning work to a trade and the penalties for non-compliance. The work of this trade under Alberta Regulation 305/2000 includes "fabricating and installing pipe supports, hangers and equipment supports."

The Alberta Occupational Health and Safety Code gives the three characteristics used to describe a worker as *competent*. The characteristics are (1) adequately qualified, (2) suitably trained (3) with sufficient experience to safely perform work without supervision or with only a minimum degree of supervision. The Code goes on to say "where a compulsory trade exists this trade designation represents the minimum qualifications that must be met by qualified workers." The steamfitter - pipe fitter is listed as one of the *compulsory trades* in Alberta.

Coming back to the *Apprenticeship and Industry Training Act*, the work of the

3.

Ironworker includes structures and "platforms, ladders, walkways, floors, roofs, supports and similar equipment related to or used in respect of structures" There is no mention of pipe supports as being the work of this trade under Alberta Trade Regulation 285/2000.

In summary, the UA position is based on the legislative references given above. "No jurisdictional assignments may be made that are in contravention of Provincial statutes."

A certificate was provided confirming that UA local union #488 is the bargaining agent for the General Construction Plumbers and Pipefitters.

Eleven decisions by the Impartial Jurisdictional Disputes Board supporting the UA position were provided to indicate that such decisions are industry driven. Matychuk also described some of the differences between trade regulations and apprenticeship programs in the United States and Canada. Finally sixteen Canadian assignments of pipe supports in favour of the UA were provided.

Jay Grant, a plumber - pipe fitter for twenty five years and George Doty a plumber - pipe fitter with thirty five years experience, plus sixteen years on the Apprenticeship Board, gave evidence under direction from Larry Matychuk. The Provincial Advisory Councils (PAC) are made up of union and non-union employees plus employers. The PAC develop the trade descriptions which are listed in the Act. These are set out in order of importance. A PAC cannot change a trade description on its own and the Minister would never make a change to a trade description without first consulting the trades. The apprenticeship training program is developed by the PAC and based on the trade description. The fabrication and installation of pipe supports is included in the apprenticeship training for plumbers - pipefitters.

Pipe supports may take many configurations but are always designed to serve that particular type of piping system. Design deficiencies in the supports may affect the system and are usually corrected by the plumber - pipe fitter on the job. Matychuk points out that the support system is an integral part of the plumber - pipe fitter trade, and a knowledge of the codes governing the system is required to properly install supports.

Pipe supports may be joined together for a number of reasons, ie. because there is other piping coming off between supports or a hanger is required to be installed. Once the pipe supports are joined together, the Ironworker claims they are a bridge support and that is where we have our problem. "The way the Ironworker has been interpreting various types of supports over the last couple of years is contrary to Alberta legislation."

A number of years ago the UA hired Ironworkers because there was a manpower shortage. The UA received permission from the Apprenticeship Board but could only use the Ironworkers as riggers. This illustrates that trade regulations must be followed.

"The J.A. Plan decisions #0305 and #0306 have opened the door to permit the various piping trades to be infringed upon." Pipe supports assigned solely for the support of piping should be assigned to the trade installing the pipe, whether it be plumbers, steamfitters or gas fitters. "The installation of sole purpose pipe supports is determined by the piping system and dependent on size, weight, distance, grade, location and function of the system and is regulated by the appropriate code." Assigning pipe supports on the basis of configuration doesn't work. There is no standard configuration for a pipe support.

Ironworker Evidence.

Harry Tostowaryk spoke to the Ironworker evidence. Bantrel Constructors Co. has correctly assigned sole purpose pipe supports to the Ironworkers, based on the October 1, 1956 area agreement between the two trades (the Senio-Hickingbottom Agreement). This agreement speaks to all types of supports and has been the backbone of pipe support assignments for the twenty six years Tostowaryk has been in the trade. Many multi-trade contractors assign on the basis of the agreement

Two previous J.A. Plan decisions based on this agreement have been in favour of the ironworker. Umpire Weir found that a pipe support agreement based on use and configuration was workable. Concerning the UA claim that they no longer support the October 1, 1956 Agreement, he said "the Umpire does not agree with the UA's meaning/definition of abrogation and finds that even that the UA has discontinued to recognize various Agreements, the Agreements continue to exist."

All one and two legged pipe supports are the work of the UA. If there are three or more legs then the work belongs to the Ironworker. The term *tied together* when speaking of pipe supports refers to a member to stabilize the supports. These are the higher / bigger supports that require structural bracing. It was the intention of the agreement that this was ironworker work. The Ironworker is not interested in the hundreds of little supports that are not tied together. The reference in the October 1, 1956 Agreement to *sole purpose* refers to hangers, u-bolts, clamps, etc.

It is true that both trades employ members of the other trade from time to time. We help each other out. Also both trades have excellent job stewards who work together to solve problems on the job including which trade installs which support.

Barry Tachuk an Ironworker for twenty six years with experience at Joffre and presently Site Superintendent for Waiward Steel Fabricators at Genessee, spoke about how the two trades work together on the job. "The interpretation generally goes to the configuration of the support and the complexity. Single leg and double leg supports, we have never argued this with the fitters. It has been my experience in the past years on the larger sites the

5.

fitters even though it was awarded to them would ask us to work in complex situations - larger members, difficult to get at areas. As far as the interpretation, as Larry spoke of designing them, modifying them - we have no desire to do that. We have also given up things to the fitters which is more suitable to their capabilities"

Tachuk commented on the apprenticeship program and what makes up each trade jurisdiction. When the ironworker erects a building and there is a member shown on the drawing for the sole purpose of supporting pipe, the ironworker erects that. There is no reason why the ironworker is not capable of erecting the same kind of support if it comes out later on a plumbing drawing.

When asked about the type of support the fitters ask the ironworkers to do, Tachuk mentioned supports in higher locations. He also said that the fitters honour the best practice theory. "If its something like a support that is going to go in with the steel, and it is just a matter that you just hook it on with the rest of the pieces that are going ... that is a time saving factor to any client and they will cooperate with us on that."

Nick Denys is the job steward for Bantrel currently at the Petro Canada site and previously on other major projects. He gave evidence under the direction of Harry Tostowaryk. Sole purpose supports are being installed on the Petro Canada project by the ironworkers. The UA job steward has made no contact with Nick to complain about this. "The trades work together - the whole purpose is to get the job done."

Five decisions by the Impartial Jurisdictional Dispute Board were reviewed. In these, pipe supports were assigned to the Ironworker on the basis of configuration.

Next a copy of the October 8, 1953 letter from the International Presidents stating that their desire is "...that every effort be made to settle disputes on a local basis."

The Ironworkers provided copies of Canadian area agreements very similar in content to the October 1, 1956 agreement. Tostowaryk drew attention to the fact that dates of 2002 and 2003 indicate the agreements are still being used in other parts of Canada.

Eighteen awards on major projects in Alberta were presented, showing that the October 1, 1956 agreement is currently being followed by other multi-trade contractors.

A copy of the decision in favour of the Ironworkers by Umpire Fagan on the Hibernia Project was presented.

Tostowaryk next referred to the UA submission. When listing the ways in which work jurisdiction is determined between trades in Alberta, the UA omitted to list Area Agreements.

6.

Jeff Norris was asked to speak to the Apprenticeship and Industry Training Act. He is a member of the Board of Alberta Advanced Education - Apprenticeship and Industry Training.

He first reviewed the System Chart and complimented Jay Grant and George Doty for their many years of work in the system. "We have the best industry training system in the world"... all industry driven. Other countries are contacting us for information. There are fifty one trades in Alberta and each trade has a number of Local Apprenticeship Committees to solve local issues and pass information on to the Provincial Apprenticeship Committee and then to the Board. The difference between optional and compulsory trades was explained

In the course outline for Steam Fitters - Pipe Fitters, port hangers and pipe supports have recently been added. In the course outline for Ironworkers, the various types of material such as beams, angles, etc. that are used to create structures and supports are included.

The Board does recognize PAC recommendations, particularly with respect to new technology and meets with the PAC's from time to time. In Jeff's opinion the Ironworkers are qualified to erect secondary steel.

Tostowaryk next spoke to the decisions of the Impartial Jurisdictional Disputes Board provided by the UA. He agreed with much of the information but pointed out that it was not detailed enough to determine if the decisions had application to this dispute. Again in the UA list of mark-up assignments, the Ironworker does not know what type of supports are referred to and therefore cannot determine relevancy. None of the Impartial Jurisdictional Disputes Board decisions state that all sole purpose pipe supports regardless of configuration is the work of the UA.

The letter from Wil Mechanical is not applicable as this firm never hires Ironworkers. Photos of various types of pipe supports were reviewed and explained.

REBUTTAL EVIDENCE

U.A. Rebuttal

Referring to the change in assignment of pipe supports on Genesee Stage 3, Matychuk claims that the original assignment was correct. The J.A. Plan decision #0305 to reassign the work to the Ironworker contravenes the Alberta Apprenticeship Training Act. Supports are an integral part of a piping system and must be installed according to the appropriate codes in order to ensure efficiency of the system and public safety.

There has been no agreement on pipe supports since 1959 and much technology has been developed since then.

7.

George Doty added that supports are usually installed by the trade using them. This is a logical division of the work.

Pipe supports are not a miscellaneous steel item.

In the list of assignments provided by the UA, the type of support or configuration is not given because it is not an issue in this dispute. Definitions are the problem.

Ironworker Rebuttal

Jeff Norris points out that pipe supports are made of structural steel. This forms the basis of the UA claim to the work. "Any time you attach to structural steel it involves a structural engineer in this Province."

The UA is trying a whole new argument that has never even been conceived at any pre-job mark-up held by any contractor.

Any problems that occurred at Genesee 3 because of the change in assignment were worked out.

There has been no agreement on pipe supports since 1959 because the present agreement works well.

FINDINGS

The Senio - Hickingbottom Agreement dated October 1, 1956 is still in force, and local agreements are recognized in the J.A. Plan Procedure Rules as taking precedence if there is no applicable Decision of Record or Agreement of Record. However both parties have spent considerable time in preparing their evidence and it deserves comment.

The UA says that "no jurisdictional assignments may be made that are in contravention of Provincial statutes." and "the way the Ironworker has been interpreting various types of supports over the last couple of years is contrary to Alberta legislation." The UA highlights the penalties for such actions in their written submission.

The concept introduced by the UA is that two pieces of legislation, to the exclusion of others, control the assignment of work in the construction industry in Alberta. The legislation referred to are the Apprenticeship and Industry Training Act A-42 together with its associated trade regulations, and the Alberta Occupational Health and Safety Code. A specious concept in my opinion but one that should not be dismissed out-of-hand.

8.

The Apprenticeship and Industry Training Act, clause 26, says an employer shall not employ a person to work in a designated trade if that person is not permitted to carry out the work of that trade. If a disputing trade believes this is taking place, they could seek a *compliance order* requiring the employer to comply with the Act, and if that didn't work, application could be made to the Court of Queens Bench. The Occupational Health and Safety Code deals with the definition of competent as it applies to a member of a trade.

However, two requirements immediately come to mind if the UA concept is to work.

1. The legislation must clearly be applicable to the matter.
2. A provision of the legislation must have been contravened.

In my opinion the concept fails on both requirements, for the following reasons.

1. We do not know over what pieces of legislation, if any, the Apprenticeship and Industry Training Act takes precedence. Nor do we know if it takes precedence over the Alberta Labour Relations Code, under which the Alberta Jurisdictional Assignment Plan is constituted.
2. The provision being contravened is section 26 - members of a trade are doing work for which they are not certified. But the work is the fabrication and installation of a shape of structural steel and the trade involved is the Ironworker.

Let us return to other points in the dispute that require comment.

The UA points out that there has been no agreement on pipe supports since 1959 and much technology has been developed since then. Without an example(s) of the new technology no weight can be given to this statement.

The UA says that when pipe supports are joined together because there is other piping coming off between the supports or because a hanger is required to be installed, it is no reason for the ironworker to claim the work. This appears to be a minor problem that should be worked out on the job.

Pipe supports are an integral part of the plumber pipe - fitter trade and they fabricate and install many of them. Regulation 305 / 2000 however does not list pipe supports as an integral part of a piping system.

The UA claim *sole purpose pipe supports* regardless of configuration because the work is determined by the piping system and dependent on size, weight, distance, grade, location and function of the system, and is regulated by the appropriate code. The plumber - pipe fitter know the Codes and they can spot problems and make the necessary corrections efficiently. Supports should be installed by the trade using them. These are logical arguments and I suspect they have been put forward on many occasions. However to

9.

assign on this basis creates other problems. A sole purpose pipe support may also be a complicated piece of structural steel, or a part of the building structure. In these cases the ironworker is best suited to do the work.

It really comes back to a workable agreement, and the majority of evidence confirms that such an agreement exists - the Senio - Hickingbottom Agreement dated October 1, 1956. Umpire Weir says it is workable. The Ironworkers say it is workable - "not perfect but we live with it." The job stewards on the site seem able to adjust to it and cooperate with each other. "The trades work together - the whole purpose is to get the job done." And finally the Apprenticeship and Industry Training Board is not complaining.

It seems that Barry Tachuk has the best advice. Honour the best practice theory. Trades should co-operate to save the client money.

DECISION

The assignment of the Contractor is upheld.

The cost of this application shall be paid by U.A. Local Union #488.



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