

JURISDICTIONAL ASSIGNMENT PLAN  
of the  
ALBERTA CONSTRUCTION INDUSTRY

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**DECISION OF THE UMPIRE**

REVIEW OF CONTRACTOR'S  
INTENDED WORK ASSIGNMENT

OPERATION OF FORK LIFTS OUTSIDE OF THE (MAIN) WAREHOUSE  
AND THE STORAGE / LAYDOWN AREA IMMEDIATELY ADJACENT

SUNCOR MILLENNIUM PROJECT  
FORT MCMURRAY, ALBERTA

CONTRACTOR. MILLENNIUM CONSTRUCTION CONTRACTORS

**J.A.Plan #0014. November 16, 2000**

**Disputing Trades**

International Union of Operating Engineers, Local 955, Edmonton.

General Teamsters, Local Union No. 362, Edmonton.

## **HEARING**

A hearing on the Application to Review Millennium Construction Contractors Intended Work Assignment of **operation of fork lifts in the warehouse and general lay-down areas**, was held in Edmonton on Wednesday November 8, 2000, commencing at 9:00AM

### **For the International Union of Operating Engineers, Local 955**

Mr. Paul Bokowski – Business Agent

### **For the General Teamsters, Local Union No. 362**

Mr. D.C. (Dave) Kemp – Vice President and Business Agent

Mr. Roy A. Finley – Secretary Treasurer

Mr. Ken Krawchenko – Site Supervisor

Mr. Garnet Corbin – Supervisor

The parties agreed that the hearing was properly constituted in accordance with the Rules of the J.A. Plan of the Alberta Construction Industry. It was agreed by the parties to accept as evidence the description of the work provided by Millennium Construction Contractors, even though this was received late by the J.A. Plan Administrator. No challenges were offered. The Umpire called the hearing to order.

### **Description of the Work**

The description of the work was provided by Millennium Construction Contractors (MCC) in a letter to the J.A. Plan Administrator dated October 25, 2000.

MCC assignment of this work at the mark-up meeting reads:

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in the general warehouse or designated storage area shall be the work of the Teamsters.

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in all other instance shall be the work of the Operating Engineers.

MCC holds to this assignment and does not direct the Teamsters to perform work with the fork lifts or zoom booms outside the warehouse or designated storage area in the “general work area.”

MCC defines the warehouse to be the building and attached area where material is received and stored.

MCC defines a designated storage area or designated lay-down as an area remote from the main warehouse, used to receive and store material and equipment, and which provides extra storage space and is an area which is used on a permanent or temporary basis.

These areas are “designated” by the Construction Manager in conjunction with the Labour Relations Manager in order to prevent any temporary placement of material or equipment from being called a “designated lay-down” area.

Teamsters use fork lifts and zoom booms in the warehouse and designated storage or designated lay-down areas to off load and move material and equipment within these areas. Teamsters do not have jurisdiction on fork lifts or zoom booms outside these areas.

There has been no work stoppage reported.

### **Nature of the Protest**

The performance of work by the General Teamsters, Local Union No. 362 (Teamsters) that falls within the scope of the International Union of Operating Engineers, Local 955 (Operating Engineers). The work in dispute is the operation of a fork lift / zoom boom outside of the designated general (main) warehouse or storage / lay-down area immediately adjacent to the general (main) warehouse.

The Operating Engineers request that the operation of fork lifts or zoom booms outside the main warehouse or the storage / lay-down area immediately adjacent, be assigned to the Operating Engineers as per the Decision of Record, March 28, 2000.

### **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 Operating Engineers and the response submitted by the Teamsters.

## **EVIDENCE**

### **Operating Engineers Written Submission**

In the letter introducing their submission, the Operating Engineers note that this dispute is long standing, and would have been brought before the J.A. Plan earlier except that an identical dispute was already in the process. Both the J.A. Plan and the Canadian Plan have found this type of work to be the work of the Operating Engineers.

Three assignments of this work to the Operating Engineers were presented. These assignments are in accordance with the Canadian Plan Decision dated March 28, 2000. In the accompanying site plans, there appeared to be one warehouse with adjacent lay-down area shown. Several other lay-down areas were noted on the site plans.

A copy of the March 28, 2000 arbitrator’s decision and clarification, upholding Umpire Weir’s decision of January 19, 2000 were provided. The copy of Umpire Weir’s letter to Fluor Canada Constructors Ltd., dated June 22, 2000 was not considered by the Umpire.

A copy of a letter dated July 11, 2000 from Mr. Frank Hanley, General President of the Operating Engineers to Mr. Phil Benson of the Canadian Plan. Referring to Case : C# 02 / 03 / 2000. In it Mr. Hanley says that work outside the designated general warehouse and attached storage area, including pickup and installation from the warehouse and attached storage area, is the work of the Operating Engineers.

Copies of six assignments and two Joint Board Decisions are provided, awarding the operation of forklifts to the Operating Engineers.

A resolution from the Green Book governing jurisdiction, plus three letters from Frank Hanley, General President of the Operating Engineers confirming that the Construction Site Jurisdictional Agreement ( '69 Agreement) between the Operating Engineers and the Teamsters was terminated on December 31, 1996. There is no current jurisdictional agreement in Canada between the two Unions.

A plan of a typical construction site and description and drawings of a zoom boom complete the Operating Engineers exhibit evidence. Reference is made to an unsuccessful attempt between the parties to resolve this issue on September 26, 2000.

In reviewing their evidence, the Operating Engineers acknowledge the right of the Teamsters to work in the warehouse and the adjacent storage area. One warehouse and one storage area. Traditionally, one particular storage area was “designated” as a Teamster area. All other areas, designated or not, belong to the Operating Engineers.

#### **Teamsters Written Submission**

The Teamsters began with a review of four recent decisions relating to the Shell Meg project at Scotford. Contractor - Fluor Constructors Canada Ltd.

J.A. Plan Decision - November 8, 1999

J.A. Plan Reconsideration – January 19, 2000

J.A. Plan Trustees – rejection of application to review

Canadian Plan Decision – March 28, 2000

In these decisions, the operation of fork lifts and zoom booms by the Teamsters was limited to the general warehouse area or designated storage area or designated lay-down area. The Decisions were for the duration of the Shell Meg project only.

The Teamsters point out that this case has already been reviewed four times

In presenting its case the Teamsters reviewed the written evidence. They feel that the decisions at the Shell Meg project confirm the assignment of work at the MCC project, i.e. the Teamsters may work in more than one storage / lay-down area if it is designated. In large construction projects there may be multiple lay-down areas as each trade may have its own.

Ken Krawchenko drew a site plan on the board showing the main roadways, warehouses and storage / lay-down areas at the site. There are ten storage / lay-down areas and seven warehouses. He explained that these may change in number and location as the project develops. The Teamsters work is to unload the material as it arrives and keep a record of what was received and where it is stored. When required, the material is loaded and delivered by a Teamster driver to where it is off-loaded by others. The fork lifts do not leave the storage / lay-down areas.

Garnet Corbin reviewed the many years and many projects on which he has worked as a Teamster. He confirmed that the description of work at the MCC project was the norm, and had been done that way since he began work in 1974. Fork lift operators and warehousemen are interchangeable he said. The point being that off-loading and loading within the lay-down areas has traditionally been done by the Teamsters.

## **REBUTTAL EVIDENCE**

### **Operating Engineers**

Although much time has been spent on the J.A. Plan decisions, clarification is needed.

There is no doubt that the operation described by Ken Krawchenko is taking place at the MCC project. That is the reason for the dispute. The Teamster operated fork lifts do leave the storage / lay-down areas. Cheating at this site has become the norm.

Recollections from years ago are not always accurate.

Sometimes there are twenty to thirty trucks waiting to be unloaded. This is Operating Engineers work. If the Operating Engineers work in the storage / lay-down areas, they can pick-up material, deliver and erect all in one operation. New equipment permits this to be done and that results in efficiency.

### **Teamsters**

The reality is multiple warehouses and multiple lay-down areas. Efficiency demands this.

The J.A. Plan Decisions were correct based on the information given to the Umpire. This Umpire is requested to read them carefully as well as the reasons given by MCC for assigning as they did.

One warehouse and one lay-down area is not achievable.

## **ISSUES**

### **Perhaps at this point it would be helpful to set out what Decisions have been made:**

1. Operation of fork lifts and zoom booms in the general warehouse, designated storage area and designated lay-down area adjacent to the storage area, is the work of the Teamsters. This in accordance with the Canadian Plan Decision dated March 28, 2000, upholding the J.A. Plan Decisions dated November 8, 1999 and January 19, 2000. Applicable only to the Shell Meg project at Scotford.
2. The Teamsters may not operate fork lifts or zoom booms on any other area of the site. This also in accordance with the above noted Decisions and applicable only to the Shell Meg project at Scotford.

### **And what decisions have yet to be made:**

1. When a construction site has more than one warehouse with adjacent storage / lay-down area, which Trade may operate fork lifts and zoom booms in these locations ?
2. When a construction site has more than one designated storage / lay-down area, which Trade may operate fork lifts and zoom booms in these locations ?

## **FINDINGS**

The J.A. Plan Decision dated January 19, 2000, and the subsequent Canadian Plan Decision dated March 28, 2000, has given direction to Contractors assigning the operation of fork lifts and zoom booms in the general warehouse and adjacent designated storage / lay-down area. The Decisions however applied to a single project, and although no objection has been raised to date as to the application of this Decision to subsequent assignments, that may yet happen as the Teamsters reserve the right to apply to the J.A. Plan on all of these assignments.

There is no negotiated Agreement between the two trades in Canada regarding the assignment of this work. The July 11, 2000 letter from Frank Hanley, General President of the Operating Engineers, to Phil Benson of the Canadian Plan must be considered in evidence as the opinion of one of the parties. Mr. Hanley believes that the pick-up and installation of any material from the designated general warehouse and /or attached

storage area is the work of the Operating Engineers. Installation is not in dispute, but pick-up and delivery on the MCC site is being done by the Teamsters.

Six assignments from the 1960's - 1990's indicate the operation of fork lifts on the site, except in the warehouse area, to be the work of the Operating Engineers. Only four of these assignments qualify as prevailing practice.

There is a Decision of Record dated November 11 – 23, 1907 assigning the operation of fork lifts to the Operating Engineers.

The Teamsters support the J.A. Plan Decisions of November 8, 1999 and January 19, 2000, and the Canadian Plan Decision of March 28, 2000. Correspondence relating to this matter dated after March 28, 2000 has not been considered by the Umpire.

The Teamsters also support the MCC assignment to them of the operation of fork lifts and zoom booms on this project "...in the general warehouse or designated storage area ...". Although MCC uses the singular tense, it becomes obvious in reading the letter that they mean more than one area. More than one warehouse and more than one designated storage / lay-down area. This interpretation coincides with the description of work at the site given by Ken Krawchenko.

To the operation of fork lifts and zoom booms by the Teamsters in these multiple warehouse / storage / lay-down areas, the Operating Engineers object. They interpret the J.A. Plan Decision of January 19, 2000 to mean one warehouse and one adjacent storage / lay-down area. For their part, the Teamsters interpret the same decision to mean any and all warehouses and designated storage / lay-down areas on the site. In the March 28, 2000 Decision, the arbitrator says "There is not any Agreements that define what a storage or lay down area entail."

Concerning the pick-up and delivery of material on the site, work that is claimed by both Trades, the Decision of Record dated October 27, 1939 says that all power driven equipment that is used exclusively to transport any material or other matter for building or other construction comes within the jurisdiction of the Teamsters.

Finally, with regard to the two decisions I suggest have yet to be made ( page 5 ). These are the activities that need clarification and which continue to fuel this on-going dispute.

1. The warehouse is the jurisdiction of the Teamsters. The Operating Engineers have presented no evidence to dispute this. If more than one warehouse is required, then it too must fall to the jurisdiction of the Teamsters. That such warehouses have storage / lay-down areas adjacent, is a fact of the operation of the construction project. It would be operationally impractical to assign jurisdiction in the warehouse to one Trade and jurisdiction in the adjacent storage / lay-down area to another Trade.

2. The operation of fork lifts and zoom booms in designated storage / lay-down areas must remain the work of the Operating Engineers. The operation of fork lifts is covered by a Decision of Record and confirmed by Joint Board Decisions and prevailing practice.

**Ruling**

The operation of fork lifts and zoom booms in all warehouses and adjacent designated storage / lay-down areas is the work of the Teamsters.

The operation of fork lifts and zoom booms in designated storage / lay-down areas is the work of the Operating Engineers.

The operation of fork lifts and zoom booms in all other areas of the site, except the warehouses and adjacent designated storage / lay-down areas, is the work of the Operating Engineers.

The Umpire's costs shall be shared equally between the Operating Engineers and the Teamsters.

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