

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

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**DECISION OF THE UMPIRE - File #0015**

**Review of Contractor's Intended Work Assignment**  
**Installation of Unassembled (Broke Down) Compressors**

**PROJECT**

**SHELL ATHABASCA OIL SANDS DOWN STREAM PROJECT**  
**SCOTFORD, ALBERTA**

**CONTRACTOR**

**Fluor Constructors Canada Ltd. (Fluor)**

**PROTESTING PARTY**

**United Association of Journeymen and Apprentices of the Plumbing and Pipefitting**  
**Industry, Local Union 488, Edmonton**  
**(UA)**

**RESPONDENTS**

**International Association of Bridge, Structural, Ornamental**  
**and Reinforcing Iron Workers #720, Edmonton**

**(IW)**

**Millwrights, Machinery Erectors & Maintenance Workers Local #1460, Edmonton**  
**(Millwrights)**

**Decision Published**  
**December 21, 2000**

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**Shell Athabasca Oil Sands Down Stream Project**  
**Scotford, Alberta**

**1. NATURE OF PROTEST**

UA, the protesting party have stated:

Installation of Unassembled (broke down) Compressors:-

- C-22203 PSA Tail Gas Compressor  
and
- C-22301 A/B H<sub>2</sub> Make-Up/Recycle Compressors

should have been assigned in accordance with the UA/MW Agreement not the IW/MW Agreement.

**2. DESCRIPTION OF THE WORK**

The description of the work in dispute was provided by Fluor in their November 22, 2000 letter to the J.A. Plan Administrator

*"This equipment was assigned in the final markup on the Athabasca Oilsands Project (ASOP) at Scotford, Alberta, for the Shell Scotford Upgrader; under the IW/MW Agreement, IW - Rigging, MW - Assembly. There is a provision that if this equipment is received in an assembled state that the UA/MW Agreement will be implemented."*

**3. AUTHORITY**

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application submission by the Protesting Party and response(s) submitted by the Respondent(s) and Contractor.

**4. J.A. PLAN, PROCEDURAL RULES**

**Article IV: Contractor's Responsibility (in part)**

Item IV 5 states:

*"5. The intended work assignment by the Contractor shall be made on the following basis:*

- (a) Where a Decision of Record applies to the disputed work, or where an Agreement of Record between the disputing Unions applies to the disputed work, the*

*Contractor shall assign the work in accordance with such Agreement or Decision of Record. Where a local trade agreement between two unions has been filed with the Umpire, the Contractor shall assign the work in accordance with such trade agreement providing such trade agreement does not affect another trade."*

- (b) Where no decision or agreement under (a) applies, the intended work assignment shall be made by the Contractor in accordance with established trade practice and the Prevailing Practice and with due consideration for efficiency, safety, good management, and the presence within the membership of the local union of workers qualified to perform the work, and a desire by all Parties to eliminate excessive allocation of manpower.*
- (c) If a dispute has arisen prior to the intended work assignment where no decision or agreement under (a) applies, or where there is no predominant practice in the Province, the Contractor shall nonetheless make an intended work assignment after consulting the representatives of the contesting Unions and considering any arguments or facts the Unions may wish to present regarding the applicable Decisions or Agreements of Record or Prevailing Practice. The Contractor should also consult any local association of Contractors in the locality regarding the established practice (amended by "Plan Amendments No. 2", (02/12/97)).*

**Article V: Union's Responsibility (in part)**

- 4. *A Union may file with the Umpire through the Administrator a protest against the intended work assignment of a Contractor on a particular project. Such protest of assignment shall indicate.*
  - (i) the project,*
  - (ii) the disputing Unions*
  - (iii) those Unions and parties affected by the dispute,*
  - (iv) contact information for all parties,*
  - (v) an account of events leading to the work assignment, and*
  - (vi) a full and detailed description of the work in dispute in sufficient detail that the subject work or activities are obvious to the responding parties.*

*(amended by "Plan Amendments No. 3" (10/07/2000))*

## **5. SUBMISSIONS**

I have reviewed all documentation received from the J.A. Plan Administrator transmissions of:

### **5.1 15 Fax Transmissions from B. Davidson, J.A. Plan Administrator (total of Pages A2 and A3 of Attachment A)**

### **5.2 UA Submission**

Tabs A – D

*UA Rebuttal to Iron Workers' Submissions*

Tabs A and B

*U.A.'s Oral Presentation Notes - submitted prior to conclusion of oral hearing*

### **5.3 I.W. Submission**

Tabs A - M

*IW – Additional Information/Rebuttal*

Tab N

*IW – Oral Submission Notes – submitted prior to conclusion of oral hearing.*

### **5.4 Millwright's Submission**

### **5.5 Fluor Submission**

### **5.6 Disposition of Submissions**

With this Decision all documentation has been returned to the J.A. Plan Administrator located at the Alberta Arbitration and Mediation Society Office, Decore Centre at the Law Centre, University of Alberta, Edmonton.

Submissions listed in detail in Attachment A.

All documentation both written and oral presentations has been accepted as Evidence and have been reviewed with Umpire's comments as detailed in Attachment A.

A computer disk containing a record of all the Evidence, Attachment A & B has been delivered with this Decision to the J.A. Administrator.

## **EVIDENCE**

### **6.1 ORAL HEARING**

An oral hearing was held on December 04, 2000 from approximately 1300 - 1630 at the Construction Labour Relations meeting room #904, 10050 – 112 Street, Edmonton, Alberta.

Present:

*UA* - Larry Matychuk, Business Agent.

*IW* - Darrell LaBoucan, Business Manager.

Harry Tostowaryk, Business Agent.

*MW* - Bob Hugh, Business Representative.

The transcription of the evidence recorded at the hearing is attached as Appendix B.

### **6.2 EVIDENCE**

All submissions both written and oral presentations have been accepted as Evidence and have been reviewed with Umpire's comments as detailed in Attachment A.

See Attachment A

### **7. J.A. PLAN ARTICLE VI: PROCEDURES TO BE USED BY THE UMPIRE**

*In making my decision I have followed this procedure.*

### **8. J.A. PLAN ARTICLE II: DEFINITIONS:**

**Defines:**

*"Agreements between Unions" - There are various types of Agreements - Agreements of Record and other National, Provincial and Local Agreements. These Agreements are not binding on other crafts not signatory to the Agreements and, insofar as the Canadian Plan is concerned, they do not affect the claims or rights of work jurisdiction of Unions not party to the Agreement.*

*"Agreements of Record" - are those Agreements between Building Trades Unions which have been recorded with the Canadian Plan and are binding on the signatory Unions. These are the only Agreements contained in the "Green Book". Agreements of Record are applicable only to the parties signatory to such agreements.*

*"Decision of Record" – Decisions of Record are those which appear in the publication commonly referred to as the "Green Book" published and approved by the Building and Construction Trades Department, AFLCIO (current issue) and are*

*international or national in scope. They are applicable to all trades even though a dispute which resulted in a Decision of Record may originally have involved only two trades.*

*They are not to be confused with job decisions rendered by the Canadian Plan which apply only to the SPECIFIC JOBS and crafts named in the job decisions. However, the Canadian Plan is required to give due consideration to Decisions of Record in arriving at job decisions.*

*Decisions of Record in the “Green Book” do not appear in chronological order and are always referred to by dates.*

***“Prevailing Practice”*** - *Prevailing Practice is the practice of that craft which submits valid evidence indicating that its members have performed more of the work in the area where the dispute exists than have members of other crafts. Evidence from contractors which employ all of the trades involved in the dispute will be preferred.*

*The area, for the purpose of determining the Prevailing Practice, shall be defined ordinarily to mean the geographical jurisdiction of the Alberta & N.W.T. (District of MacKenzie) Building and Construction Trades Council.*

## **9. FINDINGS**

From the written and oral Evidence submitted and the parties’ replies to the Umpire’s December 15, 2000 letter I find:

- There are no Agreements or Decisions of Record.
- There is no Applicable Agreement between the UA and the IW.
- Contractors have assigned this work using the IW/MW 1971 Agreement considering trade practice, efficiency, safety and good management.
- There is an Applicable Agreement between the UA and the MW dated October 06, 1964.
- The IW/MW 1971 Agreement contains Article #8 which applies to previous agreements signed by the IW or the MW with other International Unions. Those agreements will not be superseded by the IW/MW 1971 Agreement.
- The UA/MW 1964 Agreement supersedes the IW/MW 1971 Agreement.
- No evidence that the MW or the UA have previously applied their rights under Article #8 of the IW/MW 1971 Agreement. I can only assume they are satisfied with the contractor’s assignments.
- The MW is party to both the UA/MW 1964 and the IW/MW 1971 Agreements. As such the MW had an obligation to conform with the UA/MW 1964 Agreement in accordance with Article #8 of the IW/MW 1971 Agreement.

- Since 1971 the MW has not honoured this obligation. Hence by past practice the MW has not enforced one of its rights.
- The UA since 1971 has not enforced one of its rights.
- Both the MW and the UA have basically waived this right.
- It is not reasonable to expect the Contractor to apply Article #8 when neither the UA nor the MW have.
- Under the UA/MW 1964 Agreement the work of unassembled compressors belongs to the MW.
- The MW assigns a lot of their rigging to the IW.
- The protesting party to this Dispute is the UA. It is not the MW.
- It is unfair for the UA and/or the MW to be silent since 1971 on Article #8 and now bring this matter up as they have in this Dispute and argue the Contractor's Assignment should be overturned.
- Article VI m and n of the J.A. Plan allows the Umpire discretion in applying the "losing" party (UA) pay which I have taken into consideration in the allocation of the costs.

## 10. RULING

- Fluor's Assignment is upheld.
- This Decision applies to this Project only.
- The costs shall be paid 60% by the UA and 40% by the MW.

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W.A. Weir, Umpire  
J.A. Plan/Alberta Construction Industry  
December 21, 2000