

JURISDICTIONAL ASSIGNMENT PLAN  
of the  
ALBERTA CONSTRUCTION INDUSTRY

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**RECONSIDERATION  
of  
THE DECISION OF THE UMPIRE**

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 #0016. December 15, 2000**

**Disputing Trades**

General Teamsters, Local Union No. 362, Edmonton.

International Union of Operating Engineers, Local 955, Edmonton.

## **HEARING**

A hearing to review the Decision of the Umpire, J.A. Plan # 0014 November 16, 2000, was held in Edmonton on Friday December 8, 2000, commencing at 9:00 AM.

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

Mr. Roy A. Finley – Secretary Treasurer

Mr. Dave Bennett – Business Agent

Mr. Ken Krawchenko – Site Supervisor

Mr. Garnet Corbin – Supervisor

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

Mr. Paul Bokowski – Business Agent

The parties agreed that the reconsideration hearing was properly constituted in accordance with the Rules of the J.A. Plan of the Alberta Construction Industry. Receipt of a letter from Millennium Construction Contractors to the Plan Administrator dated December 4, 2000 was acknowledged. In it, Millennium advised that they are in compliance with the Umpire's Decision of November 16, 2000 with respect to the operation of fork lifts in designated lay-down areas. The Operating Engineers agreed to proceed with the hearing, but as they had not had the opportunity to verify compliance with the Umpire's Decision, they reserved the right to object later.

### **Description of the Work**

The description of the work is the same as outlined in the Umpire's Decision J.A. Plan # 0014, dated November 16, 2000.

### **Basis for the Reconsideration**

An application from the Teamsters to the J.A. Plan dated November 23, 2000 with an accompanying letter of the same date. The Teamsters claim that the Umpire committed a substantial error of fact or law in failing to consider evidence that was placed before him. In addition, the Umpire failed to consider a decision of record or agreement of record, but did consider extraneous evidence not applicable to the case.

### **Authority**

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the application and letter submitted by the Teamsters and the agreement of the Operating Engineers to participate. An oral hearing was requested.

## **EVIDENCE**

The evidence presented at the J.A. Plan hearing, # 0014, November 16, 2000, is made part of the evidence of this reconsideration.

### **Teamsters**

The Teamsters base their request for reconsideration on Article VII 1. (iii) and (iv) of the J.A. Plan Procedural Rules. The grounds for reconsideration are:

(iii) *substantial error of fact or law*

(iv) *failure of the Umpire to consider a decision of record or agreement of record*

The J.A. Plan Procedural Rules define decisions of record and agreements of record. Based on these definitions, there is no decision of record or agreement of record that applies to this case. A 1969 agreement of record between the two Unions was revoked in 1996. Also, there are no agreements between the two Unions on a local level.

Prevailing practice favours the Teamsters. The evidence given by Garnet Corbin confirms this. Over many years the Teamsters have operated fork lifts in the warehouse and designated storage / lay-down areas throughout the construction site.

Referring again to the J.A. Plan Procedural Rules, Article VI (k) instructs the Umpire to give reasonable acceptance to considerations for efficiency. Subsequent to the ruling of the Umpire, (J.A. Plan # 0014 November 16, 2000), the Teamsters were removed from two storage / lay-down areas. This is not efficient and is not supported by management.

In the J.A. Plan Decision # 9913, November 8, 1999, the Umpire gave the operation of forklifts in the numerous storage / lay-down areas to the Teamsters. By the time the reconsideration of this decision took place, there were only two storage / lay-down areas left in operation. Because of this, and the statement by Fluor Constructors that it is unlikely that more storage areas will be designated, the Umpire only assigned two storage / lay-down areas to the Teamsters.

### **Operating Engineers**

The Operating Engineers made reference to the J.A. Plan Decision #9913, November 8, 1999. On page 10 of that decision, the Umpire disagreed with the Teamsters claim to have exclusive jurisdiction over the moving of men and material. "If such was so we would not have this or like jurisdictional disputes."

In the reconsideration, J.A. Plan # 9919, January 19, 2000, the Umpire says that "the Teamsters did not submit valid evidence indicating its members have performed more of the work in dispute than the IUOE."

Much of the evidence presented by the Teamsters is unsupported and unsubstantiated. The evidence presented by the Operating Engineers is documented.

The assignments documented by the Operating Engineers' give the storage / lay-down area adjacent to one warehouse to the Teamsters.

It is more efficient for the Operating Engineers to operate in the storage / lay-down areas. The equipment when not being used to unload can be used by the Operating Engineers in other areas of the site. If operated by the Teamsters, the equipment stays idle. The cost of non-usage of equipment is higher than the cost of labour.

In the J.A. Plan # 9919, January 19, 2000, the Teamsters were permitted to operate fork lifts "...only in the general warehouse, designated storage area and designated laydown area adjacent to the storage area." Any additional assignments are in direct contravention of the Canadian Plan. There are no other Canadian Plan decisions that support this.

## **REBUTTAL EVIDENCE**

### **Teamsters**

The Teamsters object to the consideration of any letters that were not part of the J.A. Plan Decisions.

Witness evidence presented by the Teamsters should not be discredited. The Operating Engineers had the opportunity to question Teamster witnesses and chose not to. Additional witnesses could have been produced to confirm that the Teamsters have traditionally operated fork lifts in designated storage / lay-down areas.

Since the J.A. Plan decision # 0014, November 16, 2000, the electrical reel storage area has been given to the Operating Engineers. This creates problems of control as the Teamsters are still in charge of material. Efficiency remains with the Teamsters.

The J.A. Plan decision # 9913, November 8, 1999 is the one to follow.

### **Operating Engineers**

The Operating Engineers did not ask for reconsideration because the Teamsters had already made the request.

The Operating Engineers win on prevailing practice.

The Operating Engineers do not contest the Teamster right to control, but as they work for other Unions they can also work for the Teamsters. Efficiency can be maintained.

The Operating Engineers are of the opinion that any document that clarifies the intent of a decision should be considered as evidence.

## SUMMARY

### **Teamsters**

Request the Umpire to particularly note prevailing practice and the J.A. Plan # 9913 decision, November 8, 1999.

The Teamsters want operation jurisdiction in all designated storage / lay-down areas.

### **Operating Engineers**

Request the Umpire to particularly note prevailing practice and the J.A. Plan # 9919 decision, January 19, 2000, backed-up by the Canadian Plan decision March 28, 2000.

The Operating Engineers want Teamster operations confined to one warehouse and the adjacent storage / lay-down area.

## FINDINGS

There are no decisions of record, agreements of record or agreements between the two Unions that apply to the work in dispute. The decision of record, November 11-23, 1907 deals with hoisting and portable engines on building and construction work, and has been referred to in the past when assigning the operation of fork lifts. But the operation of fork lifts *per se* is not really the issue. The members of both Unions operate fork lifts. The issue is who operates the fork lifts in which areas of the construction site.

Both Unions presented evidence that prevailing practice favours them. The witness evidence submitted by the Teamsters was extensive and believable and not really challenged by the Operating Engineers. On the other hand, the documented evidence submitted by the Operating Engineers was concise and not challenged by the Teamsters. Both Unions have a valid claim to prevailing practice.

However there is one more consideration to evaluate, and that is efficiency. Here we must go back to the initial assignment by Millennium Construction Contractors. Both the warehouse and its attached area where material is received and stored was assigned to the Teamsters. Also, designated storage / lay-down areas remote from the main warehouse were assigned to the Teamsters. As both Unions agree that control of material and equipment on the site is the responsibility of the Teamsters, it makes sense from management's point of view to not fracture this control by making different assignments in different warehouse / storage / lay-down areas.

I am not convinced that it would be more efficient for the Operating Engineers to operate fork lifts in the designated storage / lay-down areas.

The J.A. Plan decision # 9919, January 19, 2000 and the Canadian Plan decision of March 28, 2000, dealt with one warehouse and adjacent storage / lay-down area, and the decision was only applicable to the Shell Meg Project at Scotford. Although these decisions set precedent, the precedent is limited because the Suncor Millennium Project presents a different situation, with many more warehouses and storage / lay-down areas. This situation at the Suncor Millennium Project was not previously dealt with.

Finally, I will not consider as evidence, correspondence that post dated the J.A. Plan and Canadian Plan decisions and dealt with clarification of those decisions.

The explanations and debate that took place during this reconsideration hearing convinces me that my ruling in J.A. Plan # 0014, November 16, 2000 should be altered.

**Reconsideration Ruling**

The operation of fork lifts and zoom booms in all warehouses and adjacent 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 Teamsters.

The operation of fork lifts and zoom booms in all other areas of the site is the work of the Operating Engineers.

This ruling is based on evidence presented and shall apply to this job only.

The Umpire's costs shall be paid by the Operating Engineers.

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