

JURISDICTIONAL ASSIGNMENT PLAN  
of the  
ALBERTA CONSTRUCTION INDUSTRY

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**DECISION OF THE UMPIRE**

REVIEW OF CONTRACTOR'S  
INTENDED WORK ASSIGNMENT

THE OPENING, CLOSING AND INSPECTION  
OF STRAINERS AND FILTERS

LAO BP AMOCO PROJECT – JOFFRE, AB.

CONTRACTOR. KELLOGG BROWN & ROOT

**J.A. Plan # 0017. December 28, 2000**

**Disputing Trades**

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

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local Lodge 146, Edmonton.

**Review of Contractor's Intended Work Assignment –  
The Opening, Closing and Inspection of Strainers and Filters  
LAO BP Amoco Project – Joffre, Ab.  
Contractor. Kellogg Brown & Root, Edmonton.**

**Description of the Work**

The contractor, Kellogg Brown & Root (KBR) describes the work in dispute as the opening, closing and inspection of strainers and filters. The installation of the strainers and filters and the units that enclose them is not in dispute.

The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (UA) describes the work as the opening, cleaning, inspection and closing of filters, strainers and enclosures.

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers (Boilermakers) agrees with the contractor's description of the work.

**Nature of the Protest**

The performance of work by the Boilermakers that was assigned to the UA.

KBR is asking the Umpire to confirm the correctness of its assignment of “the opening, closing and inspection of strainers and filters” to the UA.

**Authority**

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the request and documentation submitted by KBR, the supporting documentation submitted by the UA and the response submitted by the Boilermakers.

**PRIMARY EVIDENCE**

**Kellogg Brown & Root**

The pre-job mark-up for this project took place on November 12, 1999. Subsequently, there were three meetings with the UA and the Boilermakers to explain any concerns and answer any questions raised by either union. The final assignment was made on December 10, 1999 to the UA. The erection and installation of the filters and strainers was completed by the UA.

On October 3, 2000, the Boilermakers were directed by a General Foreman, who is a member of the Boilermakers Union, to begin opening , inspecting and closing the filters and strainers. The work continued sporadically for approximately nine days before being brought to the attention of KBR during the week of October 23, 2000. It appeared there was no dispute as to whether the work was included within the original assignment to the UA, but in any case the KBR General Superintendent invited evidence and submissions

from both unions on that subject. After review, the award of the work to the UA was confirmed in a letter dated October 27, 2000. KBR has made similar assignments in the past to the UA and none of the assignments were questioned by the Boilermakers.

KBR concluded the statement of its case with evidence as to why efficiency requires the work to be done by the UA and a discussion of the application of the common law rule of *contra proferentum*.

Supporting evidence included by KBR

Rule 7 (pg.68 of the green book) from the Agreement of Record between the UA and the Boilermakers.

Six drawings of the filter and strainer enclosures.

Mark-ups from three KBR projects assigning this type of work to the UA.

A copy of the letter dated October 27, 2000 from KBR to the Project General Superintendent confirming the award of the work to the UA.

A copy of the contractor's final mark-up with covering letter dated Dec.10, 1999. Items 307, 308, 311 – 362 were awarded to the UA, ie. the work in dispute.

Additional evidence included by KBR

Wolfgang / Canadian Plan decision.

KBR presentation to the Canadian Plan.

Five letters from the Administrator of the Canadian Plan to KBR dated November 2, 15, 17, 21 and 28, 2000.

Three letters from KBR to the Administrator of the Canadian Plan dated November 3, 20 and 22, 2000.

UA Local Union # 488 letter to the Administrator of the Canadian Plan dated November 9, 2000.

Letter from the Boilermakers International President to the Administrator of the Canadian Plan dated November 1, 2000.

UA / Boilermaker evidence supplied to KBR General superintendent October 23, 2000.

Rule 7 (pg.68 of the green book) from the Agreement of Record between the UA and the Boilermakers. This rule awards “all internal and external piping, valves, strainers and floats to the UA.” (emphasis added)

A copy of a letter from the General Organizer of the UA to a Business Rep. in Texas, dated September 15, 1952, advising that the “Testing, inspecting, repairing and handling all vapor, steam, water, gas, air or oil tight pressure vessels” belong to the Boilermakers. The letter concludes by noting that because of the Agreement between the UA and the Boilermakers, the two organizations enjoy a splendid relationship.

Article I 2.b. from the Canadian Plan. “Starting of work by a trade without a specific assignment by an authorized representative of the responsible contractor shall not be considered an original assignment to that trade, provided that the responsible contractor, or his authorized representative, promptly, and in any event within eight working hours following the start of the work, takes positive steps to stop further unauthorized performance of the work by that trade.”

Two excerpts from Boilermaker / UA joint committee meetings. The first deals with the installation of Powdex elements which are recognized as a vessel internal and therefore the work of the Boilermakers. The second deals with the opening and closing of manways on vessels which is also the work of the Boilermakers.

#### **United Association Local Union 488**

The UA supports the contractor’s award. Evidence presented by the UA which was also presented by KBR will not be repeated.

The terms filter and strainer are interchangeable in this context as the function is the determining factor. Dictionary definitions were supplied.

The Boilermakers have earlier claimed this work as manways on vessels, however filter / strainer enclosures are not process vessels. No process takes place. Nor can the removable flanges and access covers be considered as manways. Manways are designed for the entrance and egress of manpower in a large vessel.

The pre-job mark-up was preceded by approximately two information meetings on equipment function. The Boilermakers attended all meetings along with the UA and made no claim on the work. Inline process filters / strainers are the work of the UA and have been historically awarded as such.

#### **Supporting evidence included by the UA**

Copies of various letters and the mark-up.

A statement given under oath by Robert Kinsey, Business Manager / Financial Secretary of UA Local Union # 488, describing the events leading up to the dispute and this arbitration.

### **Boilermakers Local Lodge 146**

The Boilermakers do not support the contractor's award. Evidence presented by the Boilermakers which was also presented by KBR or the UA will not be repeated.

The Boilermakers presented evidence on three issues supported by 13 exhibits.

#### **Issue #1**

The contractor is attempting to use the J.A. Plan to circumvent the Canadian Plan. The Administrator's directive and subsequent decision by Arbitrator James Wolfgang is clear on the issue of a change of original assignment.

The Boilermakers were assigned the opening, inspection and closing of various tanks and vessels by KBR's Quality Assurance department as early as May 2000. The assignment list included filter and strainer vessels. The Boilermakers began this work on October 3, 2000 but the work was stopped after the Boilermakers had performed in excess of 120 hours on this work.

By taking work that was being performed by the Boilermakers and assigning it to the UA, the contractor was in violation of the procedural rules of the Canadian Plan. The Boilermakers filed a complaint with the Administrator of the Canadian Plan who found that the contractor had changed the original assignment and directed that the work be returned to the Boilermakers. The UA appealed this directive and Arbitrator James Wolfgang heard the issue on November 30, 2000. His ruling supported the Administrator.

During arguments before Arbitrator Wolfgang, the supremacy of the J.A. Plan to first hear jurisdictional disputes arising in Alberta was made. The Boilermakers position is that the J.A. Plan only deals with jurisdictional disputes and makes no provision for a change on an original assignment by a contractor. Article 1.2 (c) "The Administrator shall determine all questions of original assignment of work..."

The Boilermakers also point out that Article II of the Memorandum of Understanding establishing the J.A. Plan says that the J.A. "...Plan is a serious attempt ...to work out a viable system...within the construction industry in Alberta that is **within** and **supplementary** to the workings of the (Canadian) Plan..."

In support of the above, the Boilermakers include as exhibits a copy of the directive of the Administrator of the Canadian Plan, the decision of Arbitrator Wolfgang, references to the applicable language of the Canadian Plan and the Boilermakers submission to Arbitrator Wolfgang. There is also provided a series of daily log entries to prove that the Boilermakers worked for the length claimed on the disputed work.

#### **Issue # 2**

The Boilermakers present a copy of the Agreement of Record between the UA and the Boilermakers dated August 1, 1941. On page 71, items 25 and 26 provide for the

resolution of any dispute that fails to be settled locally. Such dispute shall be submitted to the two International Presidents, and if the International Presidents fail to agree, they may submit the dispute to a neutral umpire jointly selected by them. The Boilermakers point out that neither Union has followed this course of action, and to force them and the UA into arbitration before allowing the two Unions to resolve the matter, is in conflict with the Agreement of Record.

Exhibits are provided to demonstrate that the above commitment has been reaffirmed throughout the years. Furthermore, the Procedural Rules of the J.A. Plan require that the Umpire give precedence to an Agreement of Record and an agreement between the crafts.

The Boilermakers request the Umpire to direct the contractor to adhere to the directive of the Canadian Plan Administrator and to the decision of Arbitrator Wolfgang.

### **Issue # 3**

This final issue deals with the Boilermakers' claim to the work in dispute.

The opening, inspecting and closing of any tank or vessel is the work of the Boilermaker. The installation of tanks and vessels allocated to the UA is limited to completed tanks and vessels which are an integral part of a piping system. All other tanks and vessels are allocated to the Boilermakers, including all tanks and vessels from the point where processing, mixing or manufacturing begins. After installation by the UA, any further work on the tank or vessel, except for any internal or external piping, is the work of the Boilermakers.

Exhibits are provided to prove the above claim. Telegrams from the General President of the UA deal with the opening, cleaning and closing of vessels and tanks and the installation of manway covers as being the work of the Boilermakers.

Other examples of agreement between the two trades on the opening and closing of any vessel, the opening and closing of manways, all tanks and vessels in the process system, the opening and closing of foam water separators, testing and inspection of all vessels – examples of work awarded to the Boilermakers. Fifteen examples where the UA has agreed that the opening, inspecting and closing of tanks and vessels is the work of the Boilermaker.

The evidence of the Boilermakers concludes with assignments to the Boilermakers from multi-craft contractors. The evidence intended to establish prevailing practice.

## **REBUTTAL EVIDENCE**

If parts of the rebuttal evidence are a repeat of evidence contained in the primary evidence, they will not be repeated here.

### **Kellogg Brown & Root**

The Umpire is not being asked by KBR to respond to the procedural aspects of this dispute, those issues are being addressed at the Court of Queen's Bench.

Boilermaker Issue # 3, Exhibit # 5. The claim that Rule 17 is applicable in determining the assignment of the disputed work. Rule 17 does not address strainers and filters.

Boilermaker Exhibit #6 to #9. These exhibits address tanks and vessels, not strainers and filters.

Boilermaker Exhibit #10 to #12. These exhibits address tanks, vessels and separators. They do not clearly and precisely address the disputed work.

Boilermaker Exhibit #13. The letters from the contractors address the opening, closing and inspection of vessels. They do not mention strainers and filters.

The only Agreement of Record which mentions strainers is in the Green Book, Rule #7 on page 68. These filters and strainers are inline in a piping system where no process takes place.

### **United Association Local Union 488**

The Boilermaker request that the Umpire first deal with the authority of the Canadian Plan to address "a change of original assignment" and rule that such authority is not in conflict or inconsistent with the provisions of the J.A. Plan, and secondly to require the contractor to proceed with the disputed work as directed by the Canadian Plan Administrator; these requests go to the heart of the UA's argument on this entire matter. We contend that the Canadian Plan has the authority to deal with changes of assignment, if the matter has been referred to the Canadian Plan by the Alberta J.A. Plan. The Alberta J.A. Plan was carefully worded to reflect a tie to the Canadian Plan, but it was clearly intended that the Alberta J.A. Plan be the pre-eminent body for the purposes of resolution of jurisdictional issues amongst those industrial crafts and contractors within the Alberta construction industry. Nowhere in the Alberta J.A. Plan does there exist an avenue stipulated whereby referral to the Canadian Plan is allowed on issues dealing with original assignment, except through final appeal.

We disagree with the Boilermaker claim that there was a change of assignment respecting the work in dispute. The Boilermakers chose to do work associated with the original assignment that was not directed to them through properly constituted management. When discovered, KBR issued a clarification which supported the original assignment to the UA.

It would further appear evident that such a referral to the Canadian Plan under the **8 hour rule** was clearly intended to bypass the recognized Procedural Rules of the Alberta J.A. Plan in order that the Boilermakers could re-coup work that had originally been both

assigned and clarified by the contractor as belonging to the UA. In finalization of this item, we contend that the Boilermakers retained the right to resolve our differences under items 25 and 26, page 71 of the Green Book. In failing to do so, they had no right to go to the Canadian Plan.

Next follows a description of the difference between manways and flanged inspection ports, including a series of illustrative photographs. This is followed by a review of the Boilermakers' Exhibit # 6, pages 11 – 35, showing why the examples are not applicable to the work in dispute. The Boilermaker evidence cannot be compared to filters and strainers which are an integral part of a piping system and covered in our joint agreement as being the work of the UA.

The assignments on pages 37 to 45 of the Boilermakers' evidence are from predominantly Boilermaker contractors and all dated December 12 and 13, 2000.

The UA rebuttal evidence concludes with twenty examples of work similar to the work in dispute which were assigned to the UA.

#### **Boilermakers Local Lodge 146**

The Boilermakers open their rebuttal evidence with two challenges to the contractor's submission. Firstly, the use of a Construction Labour Relations person to assist in the preparation of the submission, and secondly, the inclusion in the submission of a complex legal issue.

The Boilermakers do not agree that Rule 7 of the Agreement of Record is applicable. Rule 7 addresses boilermaker vessels, and the strainers referred to apply to those found within the internal and external piping, not those within Boilermaker vessels. Rules 7,10, 11,14,15,17,18, 19, and 20 support this interpretation just as the work allocated to the UA is supported by Rules 4, 6, 12, 13, and 16. Rule 24 must also apply. The Boilermakers do not dispute the UA's right to install any strainers contained within their piping system. However tank and vessel type filters and strainers are a different matter and are covered under Rule 17 of the UA / BM Agreement. The drawings of the filter and strainer vessels show them to be self supporting and not within a pipeline.

Next follows a discussion of manways and why it is the right term to use in this case.

The concern by KBR of adverse economic impact if the Boilermakers do the work is self-inflicted. Much of the work in dispute could have been completed by the Boilermakers on the job since October 23, 2000 if the directive of the Canadian Plan Administrator had been followed.

The Boilermakers conclude with a request to the Umpire to render a decision as quickly as possible.



## FINDINGS

The two challenges posed by the Boilermakers must be dealt with first.

The Boilermakers are concerned that the contractor, Kellogg Brown & Root enlisted assistance outside of its own organization in the preparation of its submission. Portions of Article II and Article VI of the J.A. Plan Procedural Rules are quoted to show that there is no provision for the contractor to enlist the aid of any outside party.

In order for there to be a violation of the J.A. Plan Procedural Rules, the activity must be prohibited. This is not the case. The Rules are silent on the subject of assistance in preparing a submission except in the case of the use of lawyers (see Article X ). The individual who assisted the contractor is not a lawyer and I understand that the Boilermakers have been so informed. The challenge is rejected.

The second challenge deals with the inclusion in the contractor's submission of the rule of *contra proferentum*. The Boilermakers claim that the inclusion is not consistent with the provisions of the J.A. Plan. They further state "To determine whether or not this complex legal maneuver has any merit, the Umpire would certainly have to enlist the aid of legal counsel. This is contrary to the design and intent of the J.A. Plan, hence Article X."

There is no provision in the J.A. Plan Procedural Rules [Article VI 1. (k)] for the Umpire to rely on a rule of law in making a decision. I agree with the arguments presented by the Boilermakers. The rule of *contra proferentum* will not be considered in this decision.

Evidence has been presented by the parties on the matter of whether the Alberta J.A. Plan or the Canadian Plan has primary jurisdiction at a particular point in a dispute. While it is tempting to comment, this evidence is not germane to the issue raised in the Application for Review, and therefore is beyond the purview of this decision. Some considerable space has been devoted earlier to a precis of the arguments presented on this subject. This was done because I felt that the arguments should be recorded.

There was ample opportunity between November 12, 1999 and December 10, 1999 for the Boilermakers to make an Application for Review of the Contractors Intended Work Assignment. They chose not to do so, but waited almost a year until the work of opening, closing and inspection of the strainers and filters was due to begin. At that time they started the work without proper authorization. The Boilermakers claim that they were authorized to undertake the work by the contractor's Quality Assurance department. This may be so, but it stretches credibility to believe that the Boilermakers considered this department to be the proper authority to assign work on the site.

The Boilermakers on October 31, 2000 complained to their International Representative that the contractor took "...it upon themselves to issue an assignment for further continuance of the above noted work and awarding this work to the United Association." This was after the Boilermakers had completed "200 hours" of work. The Boilermakers go on to refer to the **8 hour rule** and say "In conclusion to this under the Canadian Plan Rules this would constitute a work assignment." What is surprising is the fact that no request was made to the International Representative to resolve the dispute using the dispute resolution mechanism contained in the Boilermaker / UA Agreement. Why was that? After all, the Boilermakers point out that "To force the Boilermakers and the UA into arbitration prior to allowing the two Unions to resolve this matter is in conflict with the agreement of record." Am I to believe that there is no conflict to arbitrate under the Canadian Plan, but there is a conflict to arbitrate under the Alberta J.A. Plan? Or perhaps there is a hidden reason for going the route chosen by the Boilermakers.

Rule 7 and Rule 17 are both applicable in part to this dispute. Rule 7 because it assigns all internal and external piping, valves, strainers and floats to the UA. In the absence of any direction to the contrary, I think it reasonable to assume that the concluding work of inspecting and cleaning belongs to the UA. Rule 17 because it refers to completed tanks which are an integral part of a piping system as being the work of the UA. The strainers / filters are obviously "in line" to a piping system and this has traditionally been the work of the UA. No process takes place. Finally, the claim that "manways" are involved in this work is a bit of a red herring. Judging by the photographs provided, the inspection ports shown were not intended for the entrance of a man.

I find that there was no change of assignment as claimed.

If additional evidence was needed, then the reasons given by KBR that efficiency dictates that the work in dispute be done by the UA, would be considered.

### **RULING**

The final assignment of the contractor made on December 10, 1999 to the UA, including the opening, inspection and closing of the strainer / filter vessels, is upheld.

The Umpire's costs are to be paid by the Boilermakers.

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

