

DECISION OF THE UMPIRE

PROTEST OF FINAL WORK ASSIGNMENT  
COMPLETED FIN FAN COOIER

A.T. PLASTICS - 5R COPOLYNER EXPANSION  
EDMONTON, ALBERTA

CONTRACTOR PCL INDUSTRIAL CONSTRUCTORS INC.

December 11, 1998

Disputing Trades

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

International Brotherhood of Boilermaker Lodge 146 Edmonton.

United Association of Journeyman Apprenticeship of the Plumbing and Pipefitting  
Industry Local 488, Edmonton.

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Protest of Work Assignment - Completed Fin Fan Cooler A.T. Plastics Edmonton PCL Industrial Contractors Inc.

#### Description of the Work

The description of the disputed work and reasons assignment were provided by PCL in a letter with attachments to the Administrator dated September 29, 199 B.

1. An "Attested Agreement" exists between the United Association and the Boilermakers regarding to handling and setting of completed heat exchangers which assigns the work to the United Association.
2. A local area agreement dated April 18, 1972 –exists between the Ironworkers and the Boilermakers. Outlining jurisdiction on Fin Fan coolers and reformer furnaces. This is not an attested agreement and does not speak to completed coolers containing coils.
3. PCL reviewed evidence regarding "prevailing practices" both in Alberta and the rest of Canada. " We have established that the majority of the assignments for the erection of completed Fin Fan coolers. In favour of the United Association."

The agreements mentioned above along with several pages of drawings and explanation were provided by PCL.

At the oral hearing held in Edmonton on November 18, 1998, the contractor advised that prior to the 1980's PCL assigned one way, but changed throughout the 1980's and '90's. "We were n errors during the '80's and'90's and have now gone back to -the pre '80's." The types of equipment in question (assignment) a meeting of the affected trades was held and all parties made submissions. The types of equipment in question are specific types of heat exchangers, but nevertheless are heat exchangers. The term "Fin Fan" is actually a trademark name of the Hudson Products Corporation.

#### Nature of the Protest

The work assignment by PCL Industrial Constructors Inc., of completed Fin Fan Cooler Exchangers to the United Association. Final assignment page 1 of 11 – Ref. #632A, 632B, 632C

The Ironworkers argue that assignments submitted by the United Association (UA) are questionable, and that the Ironworkers (IW) and Boiler Makers (BM) have assignments indicating the work should have been assigned to Ironworkers and Boiler Makers.

The IW requests a decision from the Umpire regarding Completed Fin Fan Coolers.

At the oral hearing, the IW pointed out that the work was initially assigned to the IW/BM by PCL because the work had to start.

“Work is rigging of a completed unit and ought to be assigned in accordance of area practice. This being the IW/BM 1972 agreement of fin fan coolers which area contractors have based their previous awards.

#### 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 IW and the response submitted by the UA.

#### IW Submission

The IW base their protest as follows:

1. The contractor erred in not following their own previous awards of completed Fin fan Coolers which were assigned Ironworker/Boiler Maker See tab (A)
2. Agreement of record between the Ironworker and Boiler Maker on Fin Fan Coolers & Reformer Furnaces dated April 18, Item C of the agreement speaks to completed units. See tab (B)
3. Contractor assignments awarding completed Fin Fan Cooler Units - Ironworker and Boiler Maker. See tab C.

#### UA Submission

1. The Contractor's final assignment was based solely upon the issue of completed Fin Fan Coolers.
2. The United Association/Boilermaker Agreement specifically assigns all work-associated with complete Fin Fan Coolers to the United States
3. The Ironworkers/Boiler Makers Agreement does not speak specifically to complete Fin-Fan Coolers.
4. The United Association has carried out the vast majority of installation of Fin Fan Coolers in this region.

### EVIDENCE

#### IW Evidence

The first piece of evidence presented by the IW are previous assignments by PCL of Cooled Condensers and Compressors. After coolers (complete) Fin Fan Condenser (complete) and Air Coolers (complete) to the IW/BM. based on the agreement between

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these two unions.. The assignments cover three local and one Saskatchewan project, and the dates cover the previously referred to by PCL.

The second piece of evidence presented is the agreement between the IW and the BM entitled:

FIN FAN COOLERS & REFORMER FURNACES April 18, 1972

This agreement deals with the erection and fastening of structural members and plate, along with platforms, ladders etc., as they affect Fin Fan Coolers and Reformer Furnaces. Paragraph C says:

“Units consisting of structural steel columns or beams: and plates shall be erected on a composite crew basis of equal numbers.”

In evaluating this agreement in support of the IW position, two weaknesses are apparent. First, it is an agreement between Unions, and second, there is no reference in the agreement to completed fin fan coolers. On the first point the Procedural Rules of the Jurisdictional Assignment Plan (JAPlan) state that this type of agreement is not binding on other crafts not signatory to the agreement. In this case the United Association. Second my reading of the Agreement leads me to believe that it was intended to cover erection and assembly of parts and was not intended to cover the installation of a completed unit.

The third group: of evidence by the IW comprises examples of cooler assignments awarded to the Ironworkers, either on their own or jointly with other trades. Twenty five (25) projects located in the four western Provinces are listed.

Local (Alberta)	-12
Sask/Man.	- 6
B.C.	- 7

The majority of the assignments are made jointly to the IW/BM, others to the IW alone and others to the IW/Mach. The latter in B.C. Many types of coolers are assigned, and the term Fin Fan is referred to six cases. Also the word “complete” or “assembled” is used in a number of cases. There is no doubt that a precedent for the claim put forward by the IW exists.

The final piece of evidence submitted IW is the PCL Industrial Constructors work assignment at the Dow Chemical Polyethylene Train III at Fort Saskatchewan. In it the assignment of fully assembled air coolers was initially made to the IW/BM. The final work assignment was to the UA/MW.

At the oral hearing, the IW made reference to the Craft agreement dated October 8, 1953 between the IW and the UA, in which the respective local unions and all contractors are requested to proceed on the same basis that has been the practice in the area in the past. The UA says that it is seldom used by the parties to the agreement but it is nevertheless an Agreement of Record. For my part I find it not particularly helpful in trying to determine premium practice in this issue, and I give it little weight.

Also at the oral hearing, the IW said that the decision of the Impartial Jurisdictional Disputes Board dated July 30, 1976 is not a Decision of Record and it is not in the Green Book. The UA claims that it is a Decision of Record, and it does not matter that such a decision was based upon a UA/Sheetmetal dispute but rather that the dispute centered around the installation of complete fin fan coolers. In general terms the Decision supports the UA position, and when it is made by the Impartial Jurisdictional Disputes Board, it is a Decision of Record for the construction industry. The Board however goes on to say that "This action of the Board was predicted upon particular facts and evidence before it regarding this dispute and shall be effective on this particular job only." Although I agree with the US that a Decision of Record applies to all trades, as confirmed by Article II of the JAPlan Rules, I believe that the Board did not intend the decision to be applied universally.

With regard to rule #12 of the UA/BM agreement, the UW claims that it only gives heat exchangers to the UA. And in any case the agreement is not binding on the IW. Rule # 12 of the UA/BM Agreement deals with completed heat exchangers as being the work of the UA. No problem with this being an Agreement of Record, but the IW is correct in saying that the Agreement does not apply to them as they were not signatories.

A letter from the Boiler Makers to the JAPlan administrator dated September 25, 1998 was tabled. In the letter the BM says that their agreement with the UA " only gives them the work if the coil is built or installed separately. I agree with the UA that the Boiler Makers Trust be referring to incomplete or broke-down fin fan coolers and not complete equipment which is the issue in this dispute.

The IW stated that their agreement with the Boiler Makers began as a local agreement. It is not limited to knock-down units and it is used across Canada.

Drawing and site photos supplied by the IW were examined. The difference between fin fan coolers and shell and tube coolers or heaters was explained, and the IW offered to supply drawings and minutes on this issue.

## UA Response

The evidence given by the IW is not correct Specifically, and in point form:

- The UA/BM agreement is an Agreement of Record
- The decision of the Impartial Jurisdictional Disputes Board is a Decision of Record
- A fin fan cooler is a heat exchanger.
- The issue in the dispute is solely completed fin fan coolers.
- Local area practice is in favour of the LUA.
- The JAPlan rules set out the priority the Umpire shall use in making his decision.
- The NEA Book- Is a compilation of Decisions of Record, Agreements of Record and Local Agreements.
- The IW/UA procedural rule agreement has never been followed.
- Tube and shell -exchange and fin fan coolers are all heat exchangers.

## UA Evidence

The letter dated September 25, 1998 to JAPlan from the U/A was reviewed and the four points explained:

- The issue is complete Fin Fan Coolers only.
- The UA/Boilermaker Agreement and its appendages is an Agreement of Record and assigns all work associated with completed fin fan coolers to the UA.
- The LW/BM Agreement dated April 18, 1972 does not speak specifically to complete fin fan coolers. It is a local trade agreement.
- Comments or the contractor's assessment in making the assignment to the UA

The GLOSSARY OF TERMS provided by the UA states that the term "Fin fan" is a HPC trademark for air cooled heat exchange and steam condensers. Any equipment that meets this definition would therefore be relevant to this issue.

The UA claim to fin Fan Coolers is explained. They claim the unloading handling and setting of coils, air actuator, linkage etc. belong to the UA., whether knocked down or forming part of a completed unit. They say area practice confirms this. Also, the IW/BM fin fan and reformer furnace agreement, paragraph C, does not cover or include reference to completed fin fan coolers. Finally, the UA suggests that Fin Fan Cooler is really a heat exchanger using air instead of liquid as a cooling agent

Reference is made to the *Craft Jurisdiction Guide* indicating that the UA/BM Agreement is covered, within the Green Book (including Addendum to Agreement dated 3/20/42) and Craft Agreement sections as internationally attested "Agreement of Record".

The attention of the Umpire is drawn to clauses in the agreement awarding to the UA the handling and setting of completed heat exchangers, moving of condensers and installation of cooling coils. Further, the *Craft Jurisdiction Guide* lists the IW/BM agreement, referred to previously, as an area agreement only in three U.S. States.

The decision of the Impartial Jurisdictional Disputes Board dated 7130/76, awarding the complete installation of a manufactured unit consisting of supports, fin tube radiation and cover to the UA is included, along with rule # 12 of the UA/BM Agreement, awarding the handling of all completed exchangers to the UA. Several pieces of correspondence of the Boiler Makers attest to the understanding that complete shell and tube type equipment belongs to the UA. If knocked down, then the work belongs to the BM. The UA concludes this portion of their evidence with a copy of a directive from the International Presidents of the UA and the BM, on the procedure to be followed in disputes. Finally, extracts from the JAPlan - Alberta rules, setting out the basis on which contractors shall make intended work assignments.

The next group of evidence comprises examples of Cooler assignments awarded to the UA. Forty one (41) projects are listed.

Local (Alberta)	- 24
Saskatchewan	- 6
B.C.	- 1
Ontario	- 10

There is no doubt that a strong precedent for awarding this work to the UA exists.

The various assignments in favour of the IW were reviewed and weaknesses pointed out.

#### IW Response

The IW disagrees with the UA evidence. Specifically and in point form:

- The claim by the UA that a large portion of the IW/BM evidence relates to broke down component parts of fin fan coolers is not correct.
- The IW/BM Agreement excluding the UA is no different than the UA/BM Agreement cutting out the IW.
- Historically, different types of heat exchanger have been assigned differently.
- The BM/UA Green Book reference does not speak directly to fin fan coolers while the IW/BM Local Agreement does
- The decision of the Impartial Jurisdictional Disputes Board of July 30, 1976 makes no reference to fin fan coolers. Also, it is not a binding decision because it is not in the Green Book-

- The IW does not believe that there is a Decision of Record in place that applies to this issue.
- The decision of the Umpire should be based on area practice.
- The various assignments in favour of the UA were received and weakness pointed out.

#### Other Assignments

A series of letters were provided from various contractors in favour of awarding the cooler work to the IW. In some cases a description of the work was included and the reasons for the award.

### ADDITIONAL EVPDIENE (Written Submission after the Hearing)

#### IW Submission

Some of this evidence was a repeat of item introduced at the hearing and will not be dealt with again.

The nub of the matter from the IW Point of view is two fold:

1. The work involved is rigging and bolting, core of the Ironworkers trade.
2. The dispute must be determined on the basis of prevailing practice.

The difference between a tube and shell exchanger and a fin fan cooler was described along with drawings. A letter from Heavy Systems Engineering dates September 15, 1998 and a letter from the IW dated May 8, 1998 on this subject were also submitted.

The IW concludes their submission with written comments which were delivered at the Hearing on the UA contractor assignments within the area of protest. Also, a paper on the modular handling procedure developed by Fluor Constructors Canada Ltd.



## UA Submission

The UA replied to the additional evidence submitted by the IW. Again repeat evidence will be avoided.

The UA accepts the Background of the work in protest as described by the IW up to the point where the installation is made out to be simply rigging and bolting. The UA points out that the installation also includes connection of the piping system which includes core skills of the Pipefitters. "...United Association member have quite capably and I for over a expeditiously performed all rigging of out equipment and piping system's over a century".

Finally, the to localized agreement (USA) on Reformer furnaces and Fin Fans is definitely limited to knocked-down units as confirmed by the complete text of the agreement as well as by Brown & Root and PCL.

The sketch and site photos are accepted by the UA. The IW/UA procedural agreement has been dealt with previously and does not apply to the issue of prevailing practice. The UA points out why the IW comments on the UA contractor within the area of protest are unconvincing. An explanation about Fluor's modular handling procedure concludes the UA submission.

## Summary

I reject the area agreement between the Iron Workers and the Boiler Makers dated April 18, 1972 as having any bearing on this dispute. It is not binding on the UA and paragraph C does not deal with the matter in dispute, which is completed fin fan coolers. It should be used for the purpose intended, ie to settle disagreements between the two Unions named. Likewise, the UA/BM Agreement is not binding on the IW. The difference here being that it does deal with the matter in dispute in rule #12, which is binding on the UA, and I would expect on the Boiler Makers. PCL were correct in using this rule in making their assignment, but it does not prevent the Iron Workers from protesting that assignment. The Decision of Record by the Impartial Jurisdictional Dispute Board is only applicable to ft project named, however I believe it conveys a general intent of the Board-

Much evidence was presented by both parties on the issue of fin fan coolers heat exchangers. Without going into detail about the evidence presented, it was not until after the hearing that the most satisfactory explanation in my opinion was supplied by Heavy Systems Engineering in their letter to the Iron Workers dated September 15, 1998. In it Mr. Auld says "A fin fan cooler is a specific style of the much broader- class of equipment known as heat exchangers. Although the letter goes on to say that the term "heat exchanger" is popularly applied to a cylinder vessel compromised of an outer shell

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containing multiple tube bundles, it also says that :A Fin Fan cooler, also know as a radiator, is a heat exchanger which uses fans to force atmospheric air over fins containing a fluid which h requires cooling.” Put simply, and in respect to this issue, a fin fan cooler is a heat exchanger.

Concerning prevailing practice, the UA have clearly shown that they enjoy the majority of awards when it comes to complete coolers/exchangers.

In view of the above, the assignment by PCL Industrial Constructors Inc. is upheld.

G.R.Beatson, Umpire  
JAPlan I Alberta Construction Industry