

**DECISION OF THE
PROTEST OF FINAL WORK ASSIGNMENT
COMPLETE FIN FAN COOLER
A.T. PLASTICS –5R COPOLYMER EXPANSION
EDMONTON, ALBERTA**

CONTRACTOR: Brown &. Root Job 6070

December 11, 1998

Disputing Trades

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

International Brotherhood of Boilermakers, Lodge146, Edmonton.

United Association of Journeymen Apprentices of the Plumbing and Pipefitting Industry,
Local 488. Edmonton.

PROTEST Work Assignment - Completed Fin Fan Cooler, A.T. Plastics, Edmonton

Description of the Work

The description of the disputed work was provided by Brown & Root in the form of three drawings.

- a) The structural steel to hold the completed Fin Fan Coolers Exchangers created by others. (Iron Workers))
- b) The completed F-M Fan Cooler Exchanger erected 1-y Brown & Root. (United Association)

- c) Ladders and platforms erected by others. (Iron Workers)
At the oral hearing held in Edmonton on November 19, 1998, the contractor advised that the assignment had been made with reference to the United Association / Boiler Makers agreement rule #12. The completed fin fan coolers had supports attached and only, required setting and bolting.

Nature of the Protest

The work assignment by Brown & Root of Completed Fin Fan Cooler Exchanger to the United Association (UA), Assignment made at the pre mark-up meeting – job

The above assignment, is objected to by the Iron Workers Local. 720 (IW and the Boilermakers Local 146

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

In the oral hearing and in the further submission made afterward, the IW explained the difference between fin fan coolers delivered in a knocked-down state or a pre-assembled (complete) state, and how this difference requires an altered trade input. "Work is rigging of a completed unit and ought to be assigned in accordance of area practice. This being (IW/BM 1972 agreement of fin fan coolers which contractors have based their previous award,..."

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 IVV and the response submitted by the UA.

IW Submission

The IW base their protest as follows:

1. The Contractor has erred in the assignment by not taking into consideration the record of agreement between the Ironworkers and Boilermakers dated April 18, 1972. In the oral hearing submission, the IW state that there are no governing- trade agreements, agreements of record or decisions of record that bear on this issue, and the case should be determined on the basis of prevailing practice.
2. The work is rigging and bolting, core of the Iron Workers trade.
3. The Ironworker contests that the Contractor in his: review of evidence submitted by both the Ironworker and Boilermakers, as a result of the pre-job, did not recognize the set precedence in concluding, completed Fin Fan

Cooler unit!; are awarded to a composite crew of Iron Workers/Boilermakers.

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 Association.
3. The Ironworker/Boilermaker Agreement does not speak specifically to the issue:
4. The United Association has carried out the vast majority of installation of Fin Fan coolers in this region.

EVEDENCE

IW Evidence

The first piece of evidence presented is the agreement between 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 sans -

"Unit consisting of structural steel column 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 seconds 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 no 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 die installation of a completed unit.

The second 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 seven (27) projects located in the four western Provinces are listed.

Local (Alberta) - 14
Sask./Man. - 6

The majority of the assignments are made jointly to the IW/E.M. 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 in 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.

In the Brown & Root assignment for job #6070, the broke-down glycol air fin coolers are assigned to a composite crew made up of the IW, BM and MW. The complete glycol air fin coolers are assigned to the UA. This is in line with the evidence given by Brown & Root at the oral hearing with respect to their agreement.

At the oral hearing, the DV 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 IW says that this agreement should not be in evidence. 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 prevailing 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 cooler. 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

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that "This action of the Board was predicated upon. Particular facts and evidence before it regarding this dispute and shall be effective on this particular job only" .Although I agree with the UA that a Decision of Record applies to all trades, as confirmed, by article 11 of the JAPlan Rules, believe that the Board did not intend the decision to be applied universally.

With regard to rule #12 of the UA/BM agreement, the IW 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 must be refining 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.

Drawings and site photos supplied by both the IW and Brown & Root were examined. The difference between fin fan coolers and shell and tube coolers or heaters was explained, and the RV 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.. I

- The UA/BM agreement is an Agreement of Record.
- The decision of the impartial Jurisdictional Dispute 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 favor of the UA
- 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, Agreement of Record and Local Agreements.
- The IW/UA procedural rule agreement has never been followed.
- Tube and shell exchangers and fin fan coolers are all heat exchangers

UA Evidence

The letter dated September 25, 1998 to JAPlan from the UA was received and the four points explained.

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

The GLOSSARY OF TERMS provided by the UA states the terms "Fin Fan" is a

HPC -trademark. for air cooled heat exchangers 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 that 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 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 really a heat exchanger using air instead of liquid as a agent.

Reference is made to the Craft Jurisdictional Guide indicating that the UA/BM Agreement is covered within the Green Book (including Addendum to Agreement dated 3/40/42), and Craft Agreement sections as an internationally attested "Agreement of Record" 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 condensed and installation of cooling coils. Further, the Craft Jurisdictional Guide lists the IW/BM Agreement on the Fin Fan Coolers, referred to previously, as an agreement only in three U.S. States.

The decision of the Impartial Jurisdictional Disputes dated 7/30/76, 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. the completed exchangers to the UA. Several pieces of correspondence of the Boilermakers attest to the understanding that complete shell and tube type equipment belongs to the UA. If knocked down, then the work belongs in 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 assignments.

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

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

There is no doubt that a strong precedent for 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 the 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 exchangers have been assigned differently.
- The IW/BM 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 the 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 various assignments in favour of the UA were reviewer and
- weaknesses pointed out.

Other Assignments

A series of letter 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 ward.

ADDITIONAL EVIDENCE (Written Submission after the Hearing)

IW Submission

Some of this evidence was a repeat of items 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 dated September 12, 1998 and a letter from the IW dated May 8, 2998 on this subject was also submitted.

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

UA Submissions

The UA replied to the additional evidence submitted by the IA. 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 members have quite capably and expeditiously performed all rigging of our equipment and piping systems for over a century."

Finally, the localized agreement (USA) on Reformer Furnaces and Fin Fan 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 issues of prevailing practice. The UA points out why the IW comments on the UA contractor assignments within the area of protest are unconvincing. An explanation about Fluor's modular handling procedure concludes the IJA submission

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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. Brown & Root were correct in relying on this rule in making their assignment because it deals specifically with the issue. However it does not prevent the Iron Workers from protesting that assignment. The Decision of Record by the Impartial Jurisdictional Disputes Board is only applicable to the 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 it 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 cylindrical vessel comprised of an outer shell containing multiple tube bundles, it also says that "A fin fan cooler, also known as a radiator, is a heat exchanger which uses fans to force atmospheric air over fins containing a fluid which 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.

Ruling

In view of the above, the assignment by Grown & Root is upheld.

G.R-Beatson, Umpire
JAPlan / Alberta Construction Industry