

**RECONSIDERATION
OF THE
DECISIONS OF THE UMPIRE**

PROTEST OF FINAL WORK ASSIGNMENT
COMPLETED FIN FAN COOLER

DOW CHEMICAL POLYETHYLENE TRAIN # 3
FORT SASKATCHEWAN, ALBERTA
PCL INDUSTRIAL. CONSTRUCTORS INC.

A.T. PLASTICS - 5R COPOLYMER EXPANSION
EDMONTON, ALBERTA
BROWN & ROOT JOB 6070

April 15, 1999

Disputing Trades

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

International Brotherhood of Boilermakers Local Union 146.

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

**Reconsideration of the Decisions of the Umpire, dated December 11, 1998
Completed Fin Fan Cooler**

**Dow Chemical - Polyethylene Train 3, Fort Saskatchewan, Alberta
PCL Industrial Constructors Inc.-
A.T.PLASTICS- 5R Copolymer Expansion, Edmonton, Alberta
Brown and Root job 6070**

Reconsideration Request

The panic request for consideration was brought by the International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers, in their letter to the Jurisdictional Assignment Plan of Alberta Construction Industry (JA Plan), dated December 23m, 1998. An oral hearing was requested.

Authority

The - Authority of the Umpire to undertake this reconsideration is based on Article VII of the Procedural Rules of the JAPlan, the request and documentation submitted by the International Association of Bridge, Structural Ornamental and Reinforcing Iron Workers (IW), and the response submitted by the United Association of journeymen Apprentices of the Plumbing and Pipefitting Industry (UA).

The parties confirmed that the decision of the Umpire has been put into effect and remains in effect.

Oral Hearing

An oral hearing was convened on Wednesday April 7, 1999 in the board room of the Alberta Arbitration and Mediation Society.

For the IW	Darrell LaBoucan, business manager local 720 Greg J. Zaba, general organizer for the IW, Regina
For the UA	Rob Kinsey, business manage/ financial secretary local 488
Contractor	Walter Semkowich, Brown & Root

The Umpire advised the parties that the Reconsideration would deal only with the written submissions provided by the parties and previously circulates, and evidence related thereto. The parties agreed.

The IW advised that the Boilermakers were unable to attend the hearing because of the change of date, but the IW agreed to proceed nevertheless. There was no obligation form the UA.

EVIDENCE

The grounds for reconsideration were five in number and are set out below along with the evidence given by the IW and the UA

1. Umpire Beatson failed to properly apply the Procedural rules of the Jurisdictional Assignment Plan when he found that PCL was correct in applying Rule 12 of the UA/Boilermaker Agreement.

The IW contended that Rule 12 applies to heat exchangers and not to Fin Fan Coolers. Although the process may be similar to a tube and shell heat exchanger, the Fin Fan Cooler is of a different construction and because of this it has been awarded differently. The ladders, structural supports and louvers are all traditional IW work.

The UA responded that the Umpire correctly identified Rule 12 in three points.

1. It is only agreement that refers to complete cooler/exchanger.
2. The agreement containing Rule 12 is not binding on the IW.
- 3 PCL and Brown & Root retain the ability to assign based upon Rule 12, and the IW retains the right to protest that assignment.

The contractor utilized other available evidence in assigning to the UA, and the umpire followed the JA Plan Procedural Rules by utilizing factors such as "Decisions, 4 of Record", "Agreements of Record", "Scope of Work in Dispute", "Prevailing Practice" and not just Rule 12.

2. Umpire. Beatson failed to properly apply the Procedural Rules of the Jurisdictional Assignment Plan when he decided that the job decision of JULY 3, 1976 is a decision of record.

The IW contended that the job description of July 30,1976 is a decision and not a Decision of Record. It is not contained in the Green Book. Also, it makes no mention of the IW and has no bearing on the IW. It has no general application.

The IW responded that Decisions of Record flow from the "Plan for Settlement of Jurisdictional Disputes in the Construction Industry." There are hundreds of these decision and they cannot all be contained in the; Green Book.

2. Umpire Beatson failed to properly apply the Procedural Rule, of the Jurisdictional Assignment Plan in finding that this said decision "conveys a general intent of the Board."

The IW pointed out that the derision should not be applied universally, The Impartial Jurisdictional Disputes Board says that their decision is "effective on this particular job only.

The UA responded that the Umpire was referring to the subject matter or scope of the decision, which remains the underlying purpose of the decision of record, ie. To generally infer jurisdictional lines in order that future disputes among crafts can be more easily resolved.

4. Umpire Beatson erred in finding that the Ironworker/Boilermaker Agreement does not cover completed Fin Fan Coolers.

The IW contended that the IW/BM agreement should be apply because it has been followed in this area and elsewhere in making jurisdictional assignments. Shell and tube beat exchangers are accepted its UA work, but Fin Fan Coolers involve the work of other crafts, not just the UA.

The UA responded that the IW/BM Agreement dated July 26,1965 does not mention complete Fin Fan Coolers. "This agreement has historically been viewed by ourselves and others as solely an agreement covering incomplete Fin Fan's."

5. The Umpire was wrong in finding that the UA has the predominant prevailing practice on completed fin Fan Coolers.

The IW reviewed the assignments previously submitted by the UA. They pointed out that projects in Ontario were included while the IW only included western Canadian projects. Fault was found with many of the UA assignments as being true assignments, not relevant, coils only, etc. The IW does not know where the 24 projects credited by the Umpire to the UA came from.

Reference was also inside to previous assignments by PCL and Brown & Root that were In favour of the IW.

The UA acknowledged that Ontario projects were included in its submission, but said that the majority were all local. All the IW projects can be criticized. The IW inclusion of incomplete or broke-down units and assignments by single trade contractors lessens the credibility of their material. The only assignments that refer to complete units were awarded to the

A free ranging discussion followed between the- parties, pointing out weaknesses in the material supplied by the other. Mr. Zaba stressed that the assignments by small contractors are also important. "They may be single trade now but they will act bigger."

Summary

Using the numbered headings listed above.

1. Rule 12 of the UA/BM agreement does have an application to this dispute. Firstly because it is contained in an Agreement of Record and secondly because it refers to completed heat exchangers. The I W is not a party to this agreement and therefore retains the right to protest.

The assignment of Fin Fan Coolers in a different manner to other heat exchangers because of the difference in construction, must be considered in the context of prevailing practice. That will be dealt with under item 5.

2. The Procedural Rules of the Jurisdictional Assignment Plan defines a Decision of Record as "...those which appear in the, publication commonly referred to as the "Green Book..." The job decision of July 30, 1976 does not appear in the Green Book, but the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry" does appear. From this plan, flowed the job direction of July 30, 1976, and based on this relationship I consider the job decision has the same force as a Decision of Record.
3. The job description of July 30, 1976, coming as it does from the Impartial Jurisdictional; Disputes Board, in my opinion conveys a message to the Construction Industry beyond its application to the particular project to which it refers. The overall purpose of the Plan is surely to provide the same direction to the Crafts and employers who are signatories, so that the same disputes do have to be dealt with again and again.
4. The wording of the Agreement between the IW and the Boilermakers deal with the erection and fastening of structural members and platforms, ladders, with etc. These activities refer- to constructing something but do not refer to the placing of something already constructed. I believe that the Agreement is trying to be used to cover an activity for which it was never intended.

I do not doubt that the Agreement has been used in the, past to justify assigning completed Fin Fan Coolers work to the IW/BM, but I believe it was used incorrectly.

5. .Withoutit putting, too fine a point on it, the Umpire gave both parties credit for the projects they listed in the evidence provided at the original bearing. Based on the explanations given at the Reconsideration hearing, there would be a reduction in the numbers credited to each. However, the UA still enjoys the predominance of assignments of completed coolers/exchangers.

Regarding the additional assignments reviewed at the Reconsideration hearing, the IW provided examples in which they were part of composite crows erecting

cookers/exchangers or assigned the unloading of units. The word complete was not mentioned in the examples provided.

The UA provided examples of successful assignments to the UA, all of them dealing with projects in the United States.

Decision

The arguments presented by the IW fail to prove improve applications of the Procedural Rules of the Jurisdictional Assignment Plan of the Alberta Construction Industry.

The agreements also fail to prove errors in the decision of the Umpire.

The Umpire's Decision dated December 11, 1998, in respect to completed Fin Fan coolers, remain in force.

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