

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

(J.A. Plan)

DECISION OF THE UMPIRE - File 9902
Review of Contractor’s Intended Work Assignment
Multi Purpose Free Standing Supports

PROJECT
Shell Chemicals Canada Ltd.
Mono-Ethylene Glycol Project
Scofford, Alberta

CONTRACTOR

Fluor Constructors Canada Ltd. (Fluor), Calgary, AB

AFFECTED TRADES

United Association of Journeyman Apprentices of the
Plumbing and Pipefitting Industry, Edmonton
(UA Local #488)

International Brotherhood of Electrical Workers, Edmonton
(IBEW Local 0424)

International Association of Bridge,
Structural and Ornamental Iron Works Local, Edmonton
(IW Local 720)

Decision Published
April 16,1999
By
W.A. Weir, Umpire

Review of Contractor's Intended Work Assignment - Multi Purpose Free Standing Supports

1. NATURE OF THE PROTEST

United Association of Journeyman Apprentices of the Plumbing and Pipefitting Industry Local #488. The protesting partying, have stated:

"Fluor Constructors Canada Ltd. Awarding Dual Purpose Free Standing Piping/Electrical Supports to Local Union 720 of the Ironworkers. Basis of this protest is that this award is contrary to the attested UA/IBEW Agreement dated August 23, 1968. This is also in contravention of JAPlan Umpire Beatson's decision of January 30, 1996, upholding Fluor's award at the Dupont Canada Phase 11 Expansion in Gibbons, Alberta to the UA/IBEW.

2. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application submission by UA Local #488, the documentation submitted by the IBEW Local 0424 and responses submitted by Fluor and IW Local 720.

The 18' Local 720 challenges the right of the IBEW Local 4424 to have their evidence considered by the Umpire as IBEW Local 9424 do not participate in the operation of the Alberta & N. W. T. (District of MacKenzie) Building and Construction Trades Council and should not be considered as a party to this resolution process.

As neither the UA Local 9488 nor the IBEW Local #424 have disputed this statement I accept it as correct and as such have not considered the IBEW's March 29, 1999 letter in my deliberations.

3. JA PLAN, PROCEDURAL RULES

Article IV: Contractor's Responsibility (in part)

Item IV 5(a) states:

"5 The intended work assignment by the Contractor shall be made on the following basis:

(a) Where a Decision of Record applies to the disputed work-, or where an Agreement of Record between the disputing trades applies to the disputed work the Contractor shall assign the work in accordance with such Agreement or Decision of Record. Where a local trade agreement between two unions has been filed with the Umpire, the Contractor shall assign the work in accordance with such trade agreement providing such trade agreement does not affect another trade. "

Article V 4: Contractor's Responsibility (in part)

Item V 4 states:

"4. A Union may file with the Umpire through the Administrator a protest against the indented work assignment of a Contractor on a particular project. Such protest of assignment shall indicate the project, the disputing trades, those trades and parties affected by the dispute, an account of events leading to the work assignment, and a full and detailed description of the work in dispute. The Union shall also indicate the basis of its protest of the assignment by the contractor. The Union shall cite any Decision or Agreement of Record on which its protest is based. When no Decisions or Agreements of Record are applicable, the Union shall cite the basis for its protest of assignment. Any Union may also notify the Umpire through the Administrator of a work stoppage engaged in by another Union. Prior to filing protest, the Union shall advise the Contractor and the Union in possession of the disputed work of its claim for the dispute work and seek to settle the same. (amended by "Plan Amendments No. 2 ", (02/12/97). "

4. SUBMISSIONS

I have reviewed all documentation submitted by the parties.

4.1 UA Local #488

Did not further describe the nature of their protest as required in the Procedure Rules Article V, Item 4.

In raising this matter by filing an application they were required to provide the required information.

In my October 03, 1997 reconsideration decision I stated:

I agree with Umpire Beatson's comments in his January 30' &, 1996 Decision on the Fluor/Dupont matter where he states:

"The Impartial Jurisdictional Disputes Board (IJD.B.) and the Jurisdictional Assignment Umpire of B. C have ruled on this confusing situation. In the examples provided, the rulings have been clouded with such ancillary issues as changing an original assignment, application to a specific project, reference to an understanding between two of the Unions and not the third, and supports installed simultaneously with structural steel. The Jurisdictional Assignment Umpire of B. C says that assignments of multi-purpose supports have been significantly in favour of the Ironworker, and he has ruled accordingly in his area. He goes on to say, 'Review of relevant job decisions has determined that work is awarded to one trade or the other after consideration of the circumstances of the project.' The circumstances referred

*to are purpose, type, and time of installation of the supports. ”
At the September 23””, 1997 hearing there was agreement that mark ups are a
"guiding tool" and site conditions may not allow all assignments to be followed "to
the letter there may be site trade-offs”*

The UA address none of these matters.

4.2 IBKW Local #424, March 29,1999 letter states:

- These are Dual Purpose Free Standing Piping/Electrical Supports
- They support the UA Local 488 application.
- Their belief is there are errors in the past decision.
- They are Dual Purpose not Multi-Purpose Supports.
- Previous evidence by contractors not signatory to the IBEW Local #424 preferred to assign the work to the Ironworkers.

4.3 Fluor Constructors Canada Ltd. (FCCL or Fluor), March 24, 1999 letter states:

- Mark-up held December 10, 1999 has assigned "Free Standing Supports (not tied together) and other supports for the purpose of supporting electrical and piping..." to the Ironworker.
- This is a general assignment applicable where the supports are not integral to structural steel. FCCL can supply specific examples.
- We feel the intent of the U.A. through submission of this issue to the Umpire, is to clarify whether or not a "Dual Support" is "Multi-Support" and further whether or not the work should be awarded under the August 23, 1998 U.A., I.B.E.W. Agreement, or to the Ironworker.
- Fluor will cooperate in providing specific examples if they are required, but at this time no specific example has been identified by the U.A., the I.B.E.W., nor the Ironworker.
- Included copy of August 23, 1998 Memorandum of Understanding U.A - I.B.E.W. Supports for Piping & Wiring.
- A sheet with 7 different types of supports and the craft to which each was assigned.

4.4 IW Local #720, March 31, 1999 letter states:

- Concern over Umpire considering any IBEW Local 0424 evidence as the J.A. Plan Rules state they must be part of the Alberta and N.W.T. (District of MacKenize) Building and Construction Trades Council.
- At this time the IBEW Local #424 do not participate in the operation of the council and should not be considered as a party to this resolution process.

March 23, 1999 letters states:

- The Ironworkers is not aware of any multi purpose supports that are currently

under dispute at the site. J.A. Plan Article V: Item 4 states the unions responsibility is that the protesting parties must give an account of events leading to the work assignment and a full and detailed description of the work in dispute. This application would appear to lack those particulars.

- The Ironworkers support Fluor Constructors Canada Ltd. Assignment of awarding all free standing multi purpose supports to Local 720. The Ironworkers will be forwarding documentation and support evidence which will conclude Fluor Constructors Canada Ltd. were justified in making their assignment of multi purpose support to the Ironworker.

March 26, 1999 letter (supported by a 2 inch thick binder of documentation) states

- It appears the basis of the UA/IBEW is two fold:
 - A - the matter of dual purpose having a different intent to the disputed work than multi purpose.
 - B - that the award of multi purpose free standing supports to the IW is in contravention of Umpire Beatson's January 30, 1996 decision.

(A) MULTIPURPOSE vs DUAL PURPOSE (definition)

- (1) *Each decision from the Alberta JA. Plan Umpires refers to the support steel being multi purpose meaning the ability to carry more than one crafts material*
- (2) *All corresponding documentation the Administrator received from the U,411BEW dating back to January of 1996 refers to the support steel as multi purpose.*
- (3) *We would ask the Umpire to again review the evidence presented in TAB III of the Ironworkers submission binder which defines multi purpose supports in relationship to dual purpose supports.*

The preponderance of evidence in regards to this matter concludes that multi purpose defined means carrying more than one crafts, material This evidence does not exempt the UAIIBE8' claim of their material being dual, and therefore should be assigned under the UAIIBE8' understanding of August 23, 1996

IW Submission cont'd.

**"(B) UAIIBEW PROTEST OF FLUOR CONSTRUCTORS CANADA
ASSIGNMENT OF MULTI PURPOSE SUPPORTS TO THE IRONWORKER
(MEG CANADA PROJECT, FORT SASKATCHEWAN)**

"The Ironworkers reconsideration request of March 27", 1996 in regards to Umpire Beatson's January 30th, 1996 decision awarding multi purpose supports to the UA/IBEW at the Fluor Constructors Canada Dupont Canada Phase 11 expansion located at Gibbons, Alberta was never granted.

Umpire Weir identifies his concerns of why this reconsideration was not granted

and so noted in his P. CL Industrial Constructors contract decision of October 03, 1997. Reference is also made to the Beatson decision in Umpire Weir's summation of the NATURE OF THE RECONSIDERATION.

The Ironworker suggests that Umpire Weir's decision of October 03, 1997 has substantial relevance to the current March 10th, 1999 protest. To support Umpire Weir's decision the Ironworker also submits a recent decision from the JA. Plan appeal board denying the UA/IBEW appeal request regarding Umpire Weir's decision of October 03, 1997. Awarding multi purpose supports to the Ironworker.

Within the history of this dispute the following contractors have agreed to adhere to the most recent Alberta JA. Plan decision. Comments to this are referred to in both P.C.L. Industrial Constructors Inc. and Fluor Constructors Canada Ltd. In all their recent jurisdictional assignment mark ups."

- Agree with Fluor's assignment.

Binder of supporting material

Contained documentation on this matter including:

- Correspondence requesting reconsideration of January 30, 1996 decision re Dupont Canada Gibbons, AB - Contractor, Fluor
- Umpire Beatson's May 26, 1997 decision re Suncor Plant #25 - General Mechanical Contract, Ft. McMurray, AB - Contractors PCL Industrial Constructors Inc.
- Umpire Weir's reconsideration decision of October 03, 1997 of Umpire Beatson's May 26, 1997 decision.
- A great amount of other material

5. EVIDENCE

The majority of the evidence was presented by the IW, some of which was the same as previously provided to me for the reconsideration of Umpire Beatson's May 26, 1997 decision.

6. THE J.A. PLAN ARTICLE 11: DEFINITIONS:

Defines:

"Agreements between Unions" – There are various types of Agreements – Agreements of Record and other National, Provincial and Local Agreements. These Agreements are not binding on other crafts not signatory to the Agreements and, insofar as the Canadian Plan is concerned, they do not affect the claims or rights of work jurisdiction of Unions not party to the Agreement.

"Agreements of Record" - are those Agreements between Building Trades Unions which have been recorded with the Canadian Plan and are binding on the signatory Unions. These are the only, agreements contained in the "Green Book" Agreements of Record are applicable only to the parties signatory to such agreements.

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7. THE FINDINGS

From the Evidence submitted I recognize there are major policy disputes underlining this application.

However the role of the J.A. Plan and it's Umpire(s) is to deal exclusively with jurisdiction issues.

From my review of all the evidence submitted I find:

- No new evidence was submitted that would change my reconsideration decision of October 03, 1997 which awarded free standing supports to the IW.
- The Appeal Board of the J.A. Plan upheld my October 03, 1997 reconsideration decision in their February 23, 1999 decision when they stated "the Panel has determined that there are no grounds for an appeal, thus, the appeal request has no merit."
- A review of the evidence confirms the IW was not granted it's request for a reconsideration of Umpire's Beatson's January 30, 1996 decision re the Dupont Canada Phase 11 Expansion at Gibbons, AB - contractor Fluor.
- The August 23, 1968 Memorandum of Understanding between the U.A. and I.B.E.W. titled SUPPORTS FOR PIPING AND WIRING (which was also evidence presented for the reconsideration October 30, 1997 decision) refers only to supports. Not free standing supports or dual purpose supports.
- In my October 03, 1997 reconsideration decision I stated in part:
There are no Decision of Record or Agreements of Record that apply to the disputed work.

It is clear that free standing supports for more than one purpose are defined as multi purpose.

8. The March 10, 1999 UA Local 4448 application states - "This is also a contravention of J.A. Plan Umpire Beatson's decision of January 3 0, 1996..." "

On the basis of my previous findings, I do not agree

My interpretation of Umpire Beatson's short two page May 26, 1997 Decision is the 'Conditions' were the same as he considered in his January 30, 1996 Decision.

My October 03, 1997 reconsideration decision of a May 26, 1997 decision has precedence over the January 30, 1996 decision.

- The prevailing practice is to assign free standing multi purpose supports to the IW.

- I do not intend to second guess the intent of the UA as both Fluor and the IW have.

9. RULING

Fluor's assignment of multi purpose free standing supports to the IW is upheld.

W.A. Weir, Umpire
JA Plan/Alberta Construction Industry
April 16, 1999