

JURISDICTIONAL ASSIGNMENT PLAN
OF THE ALBERTA CONSTRUCTION INDUSTRY
(JA Plan)

DECISION OF THE UMPIRE
PROTEST OF FINAL WORK ASSIGNMENT
TRANSPORTATION OF MEN AND MATERIALS
VIOLATION OF JA PLAN PROCEDURAL RULE, ARTICLE IV5(a)

PROJECT: NOVA - COGEN
JOFFRE SITE, ALBERTA

CONTRACTOR - SPANTEC CONSTRUCTORS LTD.

AFFECTED TRADES

General Teamsters, Local Union No. 362

International Union of Operating Engineers, Local #955

Decision Published
March 4, 1999
By
W.A. Weir, Umpire

Protest of Work Assignment - Transportation of Men and Equipment, Violation of Article IV5(a)

1. NATURE OF THE PROTEST

The General Teamsters Local 362 (Teamsters) have stated - transportation of men and materials - violation of Article IVS (a).

2. 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 Teamsters and the responses submitted by Spantec Constructors Ltd. (Spantec) and the International Union of Operating Engineers (O E).

Article IV: Contractor's Responsibility

3. JA PLAN, PROCEDURAL RULES

Article IV: Contractor's Responsibility

Item IV5(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. "

4. SUBMISSIONS

4.1 Teamsters

- Did not further describe the nature of their protest.
- Did not provide copy of a local trade agreement with the O E.
- Stated Spantec is bound to the Teamsters Collective Agreement through the Nova Memorandum of Agreement (copy provided).
- Provided copy of Letter of Understanding.

- Provided copy of Spantec's Pre-Job Conference Detail sheets,
- Provided copy of October 27, 1939 Teamster - Engineer Decision and National Erector's Association with excerpts on two Decisions of Record (dated October 27, 1939 and January 17, 1938) and one Agreement dated February 16, 1945 which is not in the Green Book.
- Attendance list at pre-job/mark up meeting and notes taken at meeting by Building Trades Council Rep.
- Their January 21, 1999 letter to Spantec referencing their October 16, 1999 letter which was not included.
- Copy of the Teamsters Collective Agreement with the Industrial Contractors Association.

4.2 Operating Engineers

- Submitted their February 23, 1999 letter supporting the Teamster's jurisdiction to the transportation of men and material.
- Did not provide copy of a local trade agreement with the Teamsters.

4.3 Spantec

- Submitted their February 25, 1999 two page letter explaining their position and stating the Teamsters application lacked adequate description.

5.0 EVIDENCE

Teamsters

Statement "Spantec is bound to the Collective Agreement of the Union, General Teamsters L. U. 362 affiliated with the International Brotherhood of Teamsters, through the Nova 2000 Memorandum of Agreement and Letter of Understanding which states in part, "The Collective Agreement to which these standard terms are attached shall govern the relationship in respect of the Nova Chemicals Joffre 2000 Program (The "Project), at or near Joffre, Alberta, except as modified by these standard terms. "

- A copy of three page Memorandum of Agreement dated January 28, 1998 and signed on behalf of both the Coordinating Committee of Registered Employers Organizations and the Alberta and NWT (District of MacKenzie) Building and Construction Trades Council.

- A copy of five page Appendix "A": from the Memorandum of Agreement Re: Standard Terms for Nova Chemicals Joffre 2000. This Appendix records the Trade Jurisdiction, Parties and Registration Certificate (where issued) of 28 unions. It includes the O E as Certificate #24 and the Teamsters as Certificate #25.
- An **unsigned and undated** Letter of Understanding by and between The Appropriate Registered Employers' Organization or Employers' Organization and

The Appropriate Groups of Building Trades' Union Locals
This document contains: A. Overarching Provisions

B. Uniformity Provisions.

- A copy of Spantec's November 16, 1998 one page letter containing the seven marked up Pre-Job Conference Detail sheets.
- A copy of the October 27, 1939 Teamster-Engineer Decision (as recorded in the "Green Book" Agreements and Decisions Rendered Affecting the Building Industry).
- A copy of the National Erector's Association, Craft Jurisdiction Guide Volume III consisting of cover page, index, and two pages entitled:

Teamsters - Operating Engineers
Decisions of Record - Building & Construction
Trades Department, AFL-CIO

This again documented the October 27, 1939 Decision.

- one page: Teamsters - Laborers - Cement Masons - Operating Engineers

Decision of Record - January 17, 1938

with respect to the unloading of ready mix concrete from trucks, etc. is the worker of the Teamsters.

- 3 pages: Operating Engineers - Teamsters

Engineers, Teamsters -- "Dual-Purpose Trucks"

- An attendance list of those attending Spantec's November 14, 1998 pre-job and mark up meeting in Red Deer, AB.

- Handwritten notes recorded (at the above noted pre-job and mark up meeting) by the southern Alberta Building Trades Council's representative.
- A copy of the Teamsters January 21, 1999 letter to Spantec referring to the Teamsters October 16, 1998 letter (not included)
- A copy of the Teamsters Collective Agreement with the Industrial Contractors Association for the General Construction Sector July 28, 1997 to April 30, 1999.

Did not provide:

- Adequate description of the work and basis of dispute.
- Documentation of local trade agreement with the O.E.

5.2 Operating Engineers

- Their February 23, 1999 one page letter stating - "*recognizes the jurisdiction of the Teamsters, with regard to the transportation of men and materials in industrial construction*".

Did not provide

- Documentation of local trade agreement with the Teamsters.

5.3 Spantec

Their February 25, 1999 two page letter stating in summary:

1. Transportation of Men

- "*is being taken care of by Nova with the utilization of "trams" driven by Teamsters*"
- "*there is an informal agreement on site that pickup trucks, as long as they are not hauling excessive amounts of construction material are a 'tool of the trade I'*".

2. Transportation of Material

- "*they have contracted the 'Heavy Haul' portion of the works to Etarco and are utilizing Rhino Contracting's tractor trailer unit for moving material from the lay down areas to the erection area Both these contractors use Teamsters to drive their trucks*".

- *"Our Boom truck on the site is being utilized primary as a 'pick, carry and place' unit and as such is being operated by the Operating Engineers, in accordance with the Operating Engineer/Teamsters Agreement".*
3. Other Items
- take exception to the Teamsters statement that Spantec is bound to the Collective Agreement of the Teamsters through the Letter of Understanding. That Spantec is not and never has been signatory to any Teamsters agreement.
 - Due to the Teamsters lack of description in their Application of the work in question can only assume they have covered the correct issues.
 - Questions why it has taken the Teamsters the inordinate delay of two months (from November 16, 1998 to January 21, 1998) to submit this matter to the JA Plan.
 - States there is a flaw in the JA Plan system when the Applicant does not have to provide a clear and concise description of the work in question.

6. DECISION OF RECORD

6.1

TEAMSTERS - OPERATING ENGINEERS

DECISIONS OF RECORD - BUILDING AND CONSTRUCTION
TRADES DEPARTKMT, AFL-CIO -.

TEAMSTER-ENGINEER DECISION

October 27, 1939

Decision rendered by subcommittee of the Executive Council of the Executive council of the Building and Construction Trades Department, A. F. of L. and approved by the 34th Annual Convention of the Department, New Orleans, La. , November, 1940.)

For a complete report of subcommittee see pages 138 to 143, inclusive, of the Proceedings of the 34th Annual Convention.

DECISION

All power-driven equipment that is used exclusively as a vehicle to transport any material or other matter for building or other construction work comes within the jurisdiction of the Teamsters and Chauffeurs.

All power-driven equipment used on any and all types of building and other construction work, including any and all power-driven equipment that has been in dispute between the Teamsters and Engineers, core" within the jurisdiction of the International Union of Operating Engineers.

Wm. L. Hutcheson, Chairman.
R. J. Gray, Secretary.
D. W. Tracy.
January 29, 1940.

The Executive Council,
Building and Construction Trades Department,
American Federation of Labor.

Your committee appointed to handle the matter of the dispute between the International Brotherhood of Teams, Chauffeurs, Stablemen and Helpers and the International Union of Operating Engineers received a request from President Tobin of the Teamsters for a clarification of the decision

6. DECISION OF RECORD (continued)
6.1 continued
TEAMSTERS - OPERATING ENGINEERS (Continued)

President Hutcheson President Tracey and Mr. Gray met with Messrs. Toblin, Gillespie and Farrell on Sunday evening, January 28. And the Teamsters requested information on the following:

1. On agreements on the Pacific coast, west of the Rocky Mountains which he claimed it would be impossible for him to immediately abrogate without considerable difficulty.
2. The matter of operation of what is known as trac-trucks which are used exclusively for the transportation of materials.
3. The questions of the members of Teamster Unions who had been employed as Chauffeurs on what is known as a crane mounted on a truck chassis which is used exclusively in the New York metropolitan area.

The conference adjourned after it was agreed that your committee would confer with the representatives of the Engineers on Monday, January 29.

At the conference with the Engineers the following were present: John Possehl, Brothers Fay, Maloney and Stuhr. President Possehl agreed that he would not call for immediate operation of the decision that would affect any existing agreements on the Pacific coast, west of the Rocky Mountains. However, he expressly stated that this would not apply to any agreements that may have been made after the decision of the committee had been rendered.

On question number two -- on the operation of trac-trucks used exclusively to transport materials - the Engineers agreed that the operation of such trucks is the work of the Teamster.

The operation of trucks, which have a crane mounted on the truck chassis was next discussed. The Engineers agreed that they would accept any Teamster members who had been employed for any length of time in the driving of these trucks to membership in their organization. Brothers Possehl, Pay and Delaney agreed to sit down with representatives of the Teamsters as far as the metropolitan area of New York was concerned and adjust the matter in a peaceful manner locally.

Wm. L. Hutcheson,
D. W. Tracy,
R. J. Gray.

Source Document: Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (Green Book)

6. DECISION OF RECORD (continued)

6.2

TEAMSTERS – LABOURERS – CEMENT MASONS – OPERATING ENGINEERS

DECISIONS OF RECORD – DR. JOHN A. LAPP, REFEREE

JURISDICTION OVER THE UNLOADING OF READY MIXED CONCRETE
FROM CERTAIN TYPES OF TRUCKS TO THE GROUND BUILDING
AND CONSTRUCTION JOBS

DECISION RENDERED JANUARY 17, 1938

The Referee decides that the unloading of ready mixed concrete from trucks to a building or construction job, by means of machinery, attached to the truck, that remove the concrete from the bin of the truck, and the operation of the motor or piece of machinery used in the unloading, is the work of the International Brotherhood of Teamsters, Chauffers, Stablemen and Helpers of America.

Source Document: Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (Green Book)

Page 10

7. AGREEMENT OF RECORD

7.1

OPERATING ENGINEERS – TEAMSTERS

ACREEMENT SIGNED BEFORE 1948, RECOGNIZED By
NATIONAL JOINT BOARD, NOT IN THE GREEN BOOK

ENGINEERS, TEAMSTERS -- "Dual-Purpose Trucks"

OPERATING OF DUAL-PURPOSE TRUCKS SUPPLEMENTAL AGREEMENT
BETWEEN THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA AND THE
INTERNATIONAL UNION OF OPERATING ENGINEERS

Miami, Florida, February 15, 1945.

1. Whereas, new developments in the use and types of dual-purpose trucks present questions of jurisdiction requiring clarifications between our *two* organizations, this

agreement is drawn as a separate supplement in addition to existing agreements now being honored between us, and shall in no way restrict the decision previously rendered by the Building and Construction Trades Department dated October, 1939;

2. It is agreed that: A dual-purpose truck shall mean that type of truck equipment having both hoisting facilities and a load-bearing surface there and utilized in combined hoisting and transporting operations;

3. Where such dual-purpose truck is used exclusively in the transportation of material it comes under the jurisdiction of the Teamster. Transportation means that tie materials to be conveyed at rest upon the load-bearing surface or floor of the truck and cannot be carried in suspension from a ho or similar attachment as found in "A" frame trucks or cranes, except use 0-; hook or chain for tie purpose of supporting a load on the bed of the truck shall be allowed;

4. Where such dual-purpose truck is used exclusively for hoisting, lowering and erecting material it shall come under the jurisdiction of the Operating Engineer. In such instance the moving of the dual-purpose truck from the yard to the site of the operation and the return thereof shall be under the jurisdiction of the Operating Engineer;

5. Where such dual-purpose truck is used to hoist, lower, erect material and to transport loads thereon not on bed of truck but suspended from boom or hook, within the reasonable confines of yards, plants or projects, such operation comes within the jurisdiction of the Operating Engineer. If the confines of the yards, plants and projects, however, are unreasonably large then the hauling portion of such operation shall be deemed transportation and comes under the jurisdiction of the Teamster, and in such cases the Operating Engineer agrees to respect the jurisdiction of the Teamster over the hoisting-lowering-erecting portion of the operation, and there shall be an insistence by both crafts that members of each Union be employed to do the work of the craft in question, necessitating the employment of both operating Engineers and Teamsters under certain specific conditions.

Page 11

7. AGREEMENT OF RECORD

7.1 Continued

OPERATING ENGINEERS - TEAMSTERS (Continued)

6. It is the purpose of this agreement to establish a period to work out the cooperative relationship between the operating Engineers and the Teamsters wherein each will fully recognize the work of each craft. During this period the representatives in the field of the local unions shall continuously strive for the recognition of the jurisdiction of both crafts and shall refuse to permit the infringement of one craft by the other on the part of the employer. In the event representatives in the field of the local unions cannot work out settlements of disputes in the case of the equipment described herein, then the district representatives of both organizations shall attempt to settle such disputes and in the instances where the district representatives are unable to solve the difficulty such matters shall be referred to the international Presidents. During this process of adjustment there shall be no stoppage of work and the equipment shall continue to be operated by the craft involved until the settlement is arrived at.

7. There shall be no system of permits by local unions permitting man to do the work of both crafts unless such system is specifically approved by the International Preside-its of our organizations

8. Whenever the operation of equipment combines both hoisting and transporting work the jurisdiction of both drafts shall be respected and maintained and each parry to this agreement agrees to employ his economic strength in support of the other so that

9. Our respective committees shall be continued and shall be confer at six month intervals during the life of this agreement unless otherwise instructed or dissolved by the General Presidents.

10. A committee conference shall take place six months from the date hereof at a place and date,decided by the General Presidents, at which conference a full review of the operation of this-agreement shall be made and any further clarification recommended as deemed necessary by tie conference.

11. This contract shall run for six months from the date hereof and thereafter automatically renewed in successive six month periods unless either party give notice to the other of an intention not to renew at the end of the then current six month term.

Signed at Miami, Florida, February 16, 1945.

APPROVED
WM. E. MALONEY,
General President, International,
Union of Operating Engineers

DANIEL J. TOBIN
General President, International
Brotherhood of Teamsters
Chauffeurs, Warehousemen and
Helpers of America

Page 12

7. AGREEMENT OF RECORD

7.1 Continued

OPERATING ENGINEERS - TEAMSTEARS (Continued)

International Brotherhood of
Teamsters, Chauffeurs, Warehousemen
and Helpers of America

John M. Gillispie
Dave Back
Thomas E. Flynn

Committee

International Union Of Operating
Engineers

Joseph S. FAY

W. Carter

Frank F. Comrise

8. FINDINGS

I recognize there may be major policy disputes underlining this application. However, the role of the JA Plan is to deal exclusively with jurisdiction issues.

On the basis of the Evidence submitted I find:

- I am in agreement with the O E's February 23, 1999 letter which recognizes the jurisdiction of the Teamsters, with regards to the transportation of men and materials on this project.
- Spantec has complied with the Teamsters jurisdiction by contracting the heavy haul portion of the work and in addition the moving of material from the lay down areas to the erection area to contractors who employ Teamsters to drive their trucks.
- Nova has complied with the Teamsters jurisdiction in the transportation of men by utilizing trains driven by Teamsters.
- There is no opposing evidence to Spantec's statement that pick up trucks hauling limited amounts of construction materials are classified as 'tools of the trade.'

These are to be used intermittently.

- The October 27, 1939 Decision of Record (reference mk **6.1** for complete wording) assigns the jurisdiction for all power driven equipment **used exclusively** as a vehicle to transport material or other construction matter to the Teamsters.
- This same October 27, 1939 Decision of Record assigns the jurisdiction of all other power driven equipment to the O E.
- The January 17, 1938 Decision of Record (reference mk **6.2** for complete wording) pertains to the unloading of ready mix concrete from trucks by means of equipment attached to the truck or the operation of the motor or machinery used in unloading is the work of the Teamster.

The Evidence does not state the stage of construction on this project. If ready mix concrete is still required this Decision of Record applies.

- The February 16, 1945 Agreement of Record (reference mk 7.1 for complete wording) clearly records the jurisdiction for dual-purpose trucks. It states:

- *"when used exclusively in the transportation of material must rest on the load-bearing surface or floor of the truck is the jurisdiction of the Teamsters."*
- *"when used exclusively for hoisting, lowering, erecting material; and to transport suspended loads within the reasonable confines of yards, plants or projects; and the moving and returning the truck to the yard is the jurisdiction of the O E."*

If the hauling portion of such operation shall be deemed transportation it comes under the jurisdiction of the Teamsters. "

The evidence supports Spantec's statement that their boom truck is being used in accordance with this Agreement of Record. I find Spantec is upholding the principle of this Agreement of Record.

- I find Spantec was correct in their **final** awards of awarding both item 4 Equipment Operation and item 5 Operation of Hoisting Equipment to the O E.
- I find Nova's 2000 Memorandum of Agreement and Letter of Understanding do not in any way bind Spantec to the Teamsters Collective Agreement.
- I urge all who wish to protest a final work assignment to do so upon receipt of the contractor's final assignment documentation.
- I fail to understand why the Teamsters have waited two months to protest.

9. RULING

In view of the above the jurisdiction of both the Teamsters and the Operating Engineers on this project is correctly assigned.

W.A. Weir, Umpire
JA Plan/Alberta Construction Industry
March 4, 1999