

JURISDICTIONAL ASSIGNMENT PLAN

*of the*

ALBERTA CONSTRUCTION INDUSTRY  
(J.A. Plan)

**RECONSIDERATION - File #9904**

*of the*

MARCH 04, 1999 DECISION OF THE UMPIRE – *File #9903*

Protest of Final Work Assignment  
Transportation of Men and Materials  
Violation of J.A. 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

May 13, 1999

by

W.A. Weir,

J.A. Plan Umpire

Reconsideration of the Umpire's March 04,1999 Decision  
Transportation of Men and Materials

Project: Nova-Cogen, Joffre Site, Alberta

**1.Reconsideration Request**

The request for reconsideration was brought by the General Teamsters, Local Union No. 3 62 (Teamsters), in their March 12, 1999 letter to the J.A. Plan. An oral hearing was requested. The grounds for reconsideration were three in number as set out in the Teamsters' March 12, 1999 letter and stated here.

- i) Signed RF0 re: Nova
- ii) Rebuttal to employer's presentation
- iii) Errors in Umpire's decision

Neither Spantec Constructors Ltd. (Spantec) nor the International Union of Operating Engineers, Local#955 (OE) submitted additional documentation in response to the Reconsideration.

**2. Authority**

The authority of the Umpire to undertake this reconsideration is based on Article VII of the Procedural rules of the J.A. Plan, the request and documentation submitted by the Teamsters.

Both the Teamsters and Spantec agreed the hearing was properly constituted, Umpire Weir had the authority to hear the submissions and to publish his decision.

**3. Oral Hearing**

An oral hearing was convened at 11 00 on Wednesday, April 28, 1999 in the Cy Becker room of the Canadian **Pacific** Chateau Airport Hotel, Calgary, AB

Present:

**Representing the Teamsters**

Advocate -Peter R.J. Pittinan, Southern Alberta Building Trades Council

Witnesses -Roy A. Finley, Secretary Treasurer, General Teamsters Local 362  
Dave Bennett, Business Agent, General Teamsters Local 362

### **Representing Spantec**

Advocate – Ron Galey, Western Regional General Superintendent, Spantec

### **Representing the OE**

The OE did not attend.

### **Observer**

Mark McCullough, Labour Relations Manager, Stone & Webster/Fluor Daniel  
Petrochemicals, Canada

*Prior to commencing the hearing both the Teamsters and Spantec agreed to Mr. McCullough being present as an observer.*

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

Spantec's Advocate, Mr. Galey advised he had not received a copy of the Teamsters' submission (a binder divided into 8 divisions) dated February 8, 1999. It is noted, Mr. Galey's February 25, 1999 letter on this matter referred to information which the Umpire received in his copy of the Teamsters submission.

## **4. EVIDENCE**

The transcript of the evidence presented at the hearing is attached as Appendix A.

### **Summary**

The Teamsters contended transportation of men and material is to be performed by teamsters operated vehicles and that this is not happening with Spantec vehicles.

The Teamsters also implied this in their February 8, 1999 application. This can be paraphrased.

### **Umpire Weir failed to properly apply J.A. Plan procedural rule Article IV5(a) pertaining to a Decision of Record dated February 16, 1945.**

The Teamsters in their March 12, 1999 application letter outlined the basis for reconsideration, their concern and enclosed a signed copy of the March 9, 1998 Letter of Understanding.

**4. EVIDENCE (continued)**  
**Summary (continued)**

1. The Teamsters

The Teamsters' Advocate Mr. Pittman, in his opening statement stated he would prove the jurisdiction of the Teamsters with respect to the transportation of men and material was being violated by Spantec.

- Did not specifically address the three grounds for reconsideration as set out in their March 12, 1999 letter.
- Presentation of verbal evidence was mainly on their jurisdiction being violated by the manner Spantec was transporting men and material.
- Presented evidence alleging Spantec's pick up truck(s) was:
  - a hauling material, lumber, and construction material.
  - transporting men
- Stated the dispute is with respect to the boom truck as the agreement of record was not been properly applied.
- Stated they have only one verbal agreement and that is with Fluor on the use of pickup trucks. It allows all trades to use pickup trucks to move their tool boxes and rigging. The agreement is only for intermittent use and tools of the trade were not discussed.
- Witness Bennett testified:
  - Recently while on site he observed Spantec's boom truck coming back from the rail head area transporting structural steel and spools. The driver operated the hoisting equipment and the passenger did the rigging. The driver was not a Teamster.
  - He has also seen this boom truck operated in this manner at other times.

2. Spantec

During cross-examination Spantec's Advocate Mr. Ron Galey:

- challenged Mr. Bennett on his statements pointing out Spantec does not have any spools in the rail head area. Has two boom trucks, one assigned to and operated by the Electricians.
- asked the Teamsters' witness Mr. Finley if the operation by the electricians of one of the boom trucks was proper. Mr. Finley concurred

Spantec submitted no documentation for reconsideration. p

## 5. J.A. PLAN PROCEDURAL RULES

### Article IV: Contractor's Responsibility (states in parts)

Item IV5(a):

*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.*

The J.A. Plan also contains definitions including the following:

Article IT: DEFMTIONS (states in parts)

*"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.*

*"Decisions of Record" - Decisions of Record are those which appear in the publication commonly referred to as the "Green Book" published and approved by the Building and Construction Trades Department, AFL-CIO, (current issue), and are international or national in scope. They are applicable to all trades even though a dispute which resulted in a Decision of Record may originally have involved only two trades.*

*They are not to be confused with job decisions rendered by the Canadian Plan which apply only to the SPECIFIC JOBS and crafts named in the job decisions. However, the Canadian Plan is required to give due consideration to Decisions of Record in arriving at job decisions.*

*Decisions of Record in the "Green Book" do not appear in chronological order are always referred to by dates.*

## 6. DECISIONS OF RECORD

### DECISIONS OF RECORD - BUILDING AND CONSTRUCTION TRADES DEPARTMENT, AFL-CIO

#### DECISION

(Decision rendered by subcommittee 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 subcommittees see pages 138 to 143, inclusive. Of the proceedings of the 34<sup>th</sup> 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, comes within the jurisdiction of the International Union of Operating Engineers.

Wm. L. Hutcheson, Chairman  
R. J. Gray.  
D.W. Tracey

January 29, 1940

The Executive Council  
Building and Construction Trades Department  
American Federation of Labour

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)**

**TEAMSTERS - OPERATING ENGINEERS (Continued)**

President Hutcheson President Tracey and Mr. Gray met with Messre. 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 an 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)

7. FINDINGS

On the basis of all of the Evidence (both written and oral) and the Procedural Rules of the J.A. Plan I find:

1. Spantec has been transporting men and material in their pickup truck(s).
2. The J.A. Plan:  
Recognizes:
  - only Decisions of Record contained in the "Green Book".
  - Decisions of Record pertaining to Teamsters and Operating Engineers in the "Green Book" dated October 27, 1939, January 17, 1938.

Does not recognize:

- the Agreement dated February 16, 1945 which is not in the "Green Book".

3. The Teamsters oral evidence contained anomalies especially with respect to the operation of the boom truck(s) and was not validated and as such was not conclusive.

4. The submissions and oral evidence was inadequate and lacking sufficient information to make an informed decision, hence to expedite I contacted Nova and Mark McCullough and requested information on:

1. The Nova 2000 project.
2. Contractors working on the site
3. Overall site plan
4. Detailed plan of the COGEN site
5. Plan of Spantec's lay down areas
6. Location of Spantec's pickup and drop off points

Information on items was received 1 to 5.

5. A number of days following the April 28, 1999 Hearing the Administrator provided to the parties and myself new evidence by way of a copy of Spantec's May 3, 1990 fax on this matter.

*The information received from Nova, Mark McCullough and Spantec of May 3, 1999 is classified as new evidence.*

6. The Administrator has advised that both the Teamsters and Spantec will allow this new evidence to be considered as presented.

7.

## 8 RULING

1. Spantec is to use Teamster operated vehicles to transport their men.
2. Spantec is to cease and desist in transporting materials in their pickup truck(s) except for intermittent use.
3. Spantec was correct in assigning the operation of the boom truck to the OE.

W.A. Weir, Umpire  
JA Plan/Alberta Construction Industry  
May 08, 1999