

DECISION OF THE UMPIRE

APPLICATION FOR REVIEW OF CONTRACTOR'S
INTENDED WORK ASSIGNMENT

SHELL MEG PROJECT, SCOTFORD

CONTRACTOR. FLUOR CONSTRUCTORS CANADA LTD.

J.A.Plan #9910. September 1999

Disputing Trades

International Union of Operating Engineers, Local 955, Edmonton.

International Brotherhood of Electrical Workers, Local 424, Edmonton.

**Review of Intended Work Assignment –
Use of a Boom Truck for hoisting material and/or components
Shell Meg Project, (Scotford), Fort Saskatchewan, Alberta**

Description of the Work

The description of the work and the reasons for the intended work assignment were provided by Fluor Constructors Canada Ltd. (FCCL) in a letter to the J.A. Plan Alberta Administrator dated September 8, 1999.

The operation of the vehicle known as the “boom truck” is currently split between the Teamster and the Electrician as per agreement between the trades. Consequently, FCCL employs a member of the IBEW to operate this particular vehicle. FCCL requires that this driver carries a certification to operate the “boom hoisting device” as the common practice is that the IBEW uses the hoisting device to load material onto the carry deck of the vehicle and transport this material to a point “adjacent to” point of installation. This material includes cable tray, conduit, cable reels and the like.

The work in dispute is the operation of the “boom hoisting device” to lift material off the carry deck of the truck and place it at elevation on pipe racks or support steel, or adjacent to point of installation, from which point the material is hand carried to point of installation.

Nature of the Protest

The International Union of Operating Engineers (IUOE) protests the use of a “boom truck” by members of the International Brotherhood of Electrical Workers (IBEW) for hoisting materials and /or components. Some examples of the work in dispute, but not limited to, is the hoisting of “bus duct” and “trays and/or bundles of trays.”

The IUOE claims that the IBEW is performing work within the scope of the Operating Engineers.

The IUOE requests a decision by the Umpire as follows:

- a) Affirm that “all hoisting” is the jurisdiction of the Operating Engineers
- b) Rule that the hoisting work presently assigned, in error to the IBEW, be reassigned to the Operating Engineers
- c) Rule that the “Truck Crane”/ “Boom Truck” which Fluor has presently assigned to the IBEW be reassigned to the Operating Engineers

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 Operating Engineers and the response submitted by the Electrical Workers.

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EVIDENCE

Operating Engineers Submission

The IUOE makes reference to Article II and Article VII of the Memorandum of Understanding, and Article II and Article VI (i) of the Procedural Rules of the J.A. Plan of the Alberta Construction Industry. The Umpire takes note of these Articles.

From the pre-job conference on this project, the IUOE refers to Section 11, paragraph D vi. in the material provided by FCCL. This paragraph says that “When the term ‘power equipment’ is used in reference to ‘hoisting equipment’ in this document it will be operated by the operating engineers. Operating Engineers shall maintain power equipment. The agreement between the Operating Engineers and the Teamsters dated June 10, 1969 will be recognized.”

Also in Section L of the same material, “Power Equipment is defined to mean any method other than by hand.”

With a series of brochures, the IUOE shows that a boom truck is power equipment and a hoisting device.

The Umpire’s attention is drawn to page 48 of the Green Book and a paragraph entitled Hoisting and Portable. The jurisdiction of the IUOE over hoisting engines is clearly stated in a dispute with the UA. The jurisdiction is based on Resolution No.124 passed at the A.F.of L. convention held in Norfolk Va. in 1907. A series of disputes between the IUOE and the IBEW are then presented in which the IUOE is awarded “the operation of truck-mounted hydraulic cranes” / “hydraulic booms”/ “hydraulic boom truck”, based on Resolution No. 124. The awards were made by the Impartial Jurisdictional Disputes Board for the Construction Industry.

A Memorandum of Understanding dated March 31, 1970, dealing with the operation of power equipment on industrial or commercial building sites, and signed by the IBEW and the IUOE, is reproduced for the Umpire’s attention. In this memorandum the hoisting of all building materials and equipment is awarded to the IUOE.

Four signed statements observing electrical workers hoisting materials are reported from the site. Also the IUOE claims that statements from Fluor employees, and reference to the hour meter readings, demonstrate that the boom truck is not parked during work hours and therefore is in continuous, not intermittent use. These claims are not documented.

The IUOE gives the nub of the problem in paragraph 5) of their presentation. “Historically an Operating Engineer was assigned to operate the Truck Crane/ Boom Truck for hoisting operations with the IBEW using the truck cranes / boom trucks for transportation of materials and equipment.” The IBEW “...is vigorously claiming our work in an attempt to expand jurisdiction.”

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Electrical Workers Submission

The electrical workers stress local practice in their submission, and point out that the use of the boom truck has been the jurisdiction of the IBEW Local 424 in the Province of Alberta for many years. IBEW personnel are fully qualified to both drive and operate the trucks in question. The IBEW is not trying to expand its jurisdiction.

To substantiate their claim of local area practice, the IBEW provided a series of manpower requests from Electrical Contractors and Multi-Craft Contractors for electrician / boom truck operators (E/BT). They also provided ten assignments in the Alberta jurisdiction in favour of E/BTs. Some of the comments offered by these Contractors with respect to the operation of boom trucks are interesting.

“ this type of boom truck (Pitman, Hiab or National etc.) has been used and operated by the electricians as a tool of the trade in this area for an extended period, thereby constituting an assignment to the IBEW by precedence...”

“... has operated in the above way for the past 21 years.”

“...critical to a project’s productivity and schedule. A boom truck on a project may not be used everyday or for parts of a day, so it is important that the operator is an electrical worker who can be utilized for electrical work during the downtime of the boom truck.”

“We have always employed qualified boom truck operators from Local # 424 of the IBEW.”

“...for the past 15 years.”

Exhibit C is a series of manpower requests to Local # 424 for E/BTs.

Exhibit D is a copy of the Collective Agreement between the Electrical Contractors Association of Alberta and Local # 424 of the IBEW. In it the Employer recognizes the IBEW jurisdiction over all electrical work and vehicles used for the transportation of employees and /or material on the job site.

Exhibit E is the minutes from the Pre-Job Conference Jurisdictional Mark-Up Meeting as prepared by FCCL. In a series of questions and answers, the IBEW interprets the minutes to suggest that:

The boom truck is not to be operated by the Operating Engineers.

Moving equipment or materials such as welding machines can be done with the use of a cherry picker.

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No mention is made of a boom truck when FCCL refers to power hoisting equipment being operated by Operating Engineers.

Boom trucks were not assigned to be operated by the Operating Engineers. Fluor always intended the boom truck to be operated by IBEW personnel.

Finally, a series of letters to and from Contractors indicating agreement between IUOE # 955 and IBEW # 424 with respect to the operation of overhead cranes. “For the Operating Engineers to say that the IBEW does not hoist is simply not true.”

The Operating Engineers evidence entitled “RE: BOOM TRUCKS is refuted by the IBEW. In any case, the Umpire did not consider this item in the IUOE submission as it was not put in context or referenced as to source.

Summary

Through references to pages 47 and 48 of the green book, the IUOE clearly establish their jurisdiction over hoisting of building materials on building and construction work. This jurisdiction is confirmed by three decisions of the Impartial Jurisdictional Disputes Board given between 1971 and 1980.

The IBEW / IUOE Memorandum of Understanding dated March 31, 1970 also confirms the IUOE jurisdiction.

“Operation of power driven equipment used on industrial or commercial building construction sites shall be performed as follows:

A. Hoisting of all building materials and equipment – I.U.O.E.”

The IUOE has proven that a boom truck is power equipment and a hoisting device.

That IBEW # 424 workers are hoisting materials, using power equipment, is confirmed by four signed statements from the job site.

None of the above evidence is refuted by the IBEW.

In this dispute there is a Decision of Record and an applicable agreement between the disputing Crafts governing the case. As the J.A. Plan Procedural Rules give precedence to

such Decisions and Agreements over prevailing practice, I consider the IUOE case has been proven.

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However the evidence presented by the IBEW is compelling and deserves comment. Not only does it prove prevailing practice in the local area, but job efficiency as well. I took some time to present the comments of Electrical and Multi-Craft Contractors on page 3 of this decision , because I believe they are thoughtful and the result of many years of performing the work in the most efficient way. The J.A.Plan also upholds this principle of efficiency when it says in Article VI (i) of the Procedural Rules “...the Umpire shall consider established trade practice, prevailing practice, together with a reasonable acceptance of considerations for efficiency, safety, good management and a desire by all Parties to eliminate excessive allocation of manpower.”

The Collective Agreement between the Electrical contractors Association of Alberta and Local # 424 of the IBEW, gives the IBEW the right to transport its men and materials on the construction site. Evidence was not presented by the IUOE to challenge this right. The same agreement requires that any dispute between the IBEW and another building and construction trade union be settled in accordance with the J.A.Plan of the Alberta Construction Industry.

The IBEW has proven that there is an agreed division of responsibility between the IUOE and the IBEW with respect to the operation of overhead cranes. Both Crafts have performed hoisting.

Ruling

With reference to the three requests presented by the IUOE, I rule as follows:

- a) The hoisting of building materials on building and construction work is the jurisdiction of the Operating Engineers.
- b) Hoisting of material off the carry deck of the boom truck and placing it at elevation on pipe racks or support steel, or adjacent to point of installation, is the work of the Operating Engineers.
- c) The operation of the boom truck remains as assigned with due reference to clause b) above.

The Umpire’s costs are to be paid equally by IUOE #955 and IBEW #424.

G. R. Beatson, Umpire
J.A.Plan / Alberta Construction Industry