

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY

DECISION OF THE UMPIRE

REVIEW OF CONTRACTOR'S WORK ASSIGNMENT

HANDLING / INSTALLATION OF SOLENOID PANEL
NOVA CHEMICALS ETHYLENE 3 – JOFFRE, ALBERTA

CONTRACTOR. FLUOR CONSTRUCTORS CANADA LTD.

J.A.Plan #9914. November, 1999

Disputing Trades

International Brotherhood of Electrical Workers, Local Union 424, Edmonton

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

**Review of Contractor's Work Assignment –
Handling / Installation of Solenoid Panel
Nova Chemicals Ethylene 3, Joffre, Alberta
Fluor Constructors Canada Ltd.**

Description of the Work

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

The work consists of handling and installation of enclosures containing (3) solenoid valves, each solenoid valve with its own instrument number. The enclosures also contain an electrical strip.

The function of the instruments contained in the enclosures is to control open/close mechanisms on valves.

These enclosures have also been described as Emergency Shutdown Boxes.

The enclosures have both electrical and pneumatic connections.

The work was assigned to the United Association by field supervision, notwithstanding FCCL's pre-job conference that states the Labour Relations Department is the only authorized body to make an assignment.

Nature of the Protest

"The contractor has assigned the handling and installation of a solenoid panel to the UA Local 488 which should have been assigned on a composite basis consisting of an equal number of members of the UA and IBEW as per the Agreement of Record between the UA and IBEW dated August 22, 1968."

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 Electrical Workers and the response submitted by the United Association.

Jurisdiction

The UA, under Tab G of their submission, questions the ability of the IBEW to refer this matter to the J.A.Plan, based on the following two points. I will deal with them both at this time.

1. The J.A.Plan is designed to adjudicate differences between the trades and/or contractors on initial assignments only. The matter should have been dealt with earlier, and this inaction on the part of the IBEW precludes any hearing at this extremely late date.

Article III, paragraph 2 (b) of the Procedural Rules of the J.A.Plan states that the Umpire shall decide all questions and matters relating to jurisdiction, including a dispute as to work in progress. I understand that the work was in progress at the time the IBEW filed its application, therefore the IBEW may refer this matter to the J.A.Plan.

2. The IBEW does not meet the criteria of a Participating Union as defined in the definitions section of the Labour Relations Code of Alberta. It therefore should not be permitted to bring a protest of work assignment before the Plan.

This is an interesting point because Article III, paragraph 2 of the Procedural Rules appears to limit those which can bring an application before the Plan to the Alberta Building Trades Council, Registered Employers Organizations, a Participating Contractor or a Participating Union. The IBEW does not meet the criteria of a Participating Union as defined in the Code. However in subsequent Articles, the Procedural Rules refer to “Any Union which protests...” and further, “When the Umpire has received through the Administrator, a protest of work assignment from a Union...” The point being, that reference to a Participating Union is dropped in subsequent Articles of the Rules, which could be interpreted as permitting other Unions to bring an application before the plan.

I prefer to take the expanded view as being the intent of the J.A.Plan, and rule that the IBEW may refer this matter to the Plan.

EVIDENCE

Electrical Workers Submission

The Electrical Workers submission is made up of an explanatory letter and five exhibits.

In the explanatory letter, the IBEW explains that while the work was in progress, it unsuccessfully tried to convince the UA Steward on the job site to install the enclosures on a composite crew basis. When this was not possible, the disagreement was referred to the Labour Relations Department of FCCL. It was not until October 18, 1999 that confirmation was received from the Director of Labour Relations that the assignment would remain with the UA. The IBEW relates these events to explain the delay in making the protest of work assignment.

Exhibit 1.

The Memorandum of Understanding signed by the Presidents of the UA and the IBEW on Panel Boards. It is dated August 22, 1968 and defines panels and cabinets which contain multiple instruments or controls, requiring either or both electrical or pressure connections. When such panels or cabinets require both electrical and pressure instruments, they shall be handled by a composite crew of equal numbers of each craft.

Exhibit 2.

Five pages from the pre-job conference on this project prepared by FCCL.

On page 30, the Instrumentation section assigns as follows.

To the UA, instruments and controls that utilize a piping connection directly to a piping system....

To the IBEW, instruments and controls that utilize an electrical connection or electronic signal....

If instruments and controls utilize both a piping connection and an electrical connection, the UA shall mount the instrument and make the piping connection. The IBEW shall complete the electrical work to make the instrument operable.

Exhibit 3

Three photographs of the work in dispute. FCCL also provided some typical piping and instrument diagrams.

Exhibit 4

Six past assignments of this work by multi-trade contractors made on a composite crew basis to the IBEW and UA.

Exhibit 5

The October 18, 1999 letter from FCCL to the UA and the IBEW confirming the assignment of this work to the UA.

United Association Submission

The United Association submission is made up of an explanatory letter and exhibits set out under tabs A to G. Tab G has been discussed on page 2 of this decision.

The explanatory letter makes the following points.

Instrumentation:

The pre-job conference on this project confirms the historic assignment by FCCL of this work in Alberta between the UA and the IBEW. “The installation of instruments and/or controls that utilize a piping connection directly to a piping system or vessel for the purpose of reacting to the variable characteristics of liquids, gases or solids, shall be the work of the United Association.”

The IBEW did not question the assignment of this work or bring it to the J.A. Plan in a timely manner.

The IBEW has improperly categorized the enclosures in question as “Panels”. The Panel Board Agreement dated August 22, 1968 refers to multiple instruments, which historically have been understood to represent a myriad of instruments which for the most part are either wholly electronic, wholly pneumatic or a combination of both.

The Panel Board Agreement has never been construed to include a weather sealed box or enclosure which houses three identical solenoid valves directly connected to or installed in a piping system, and which are remotely mounted instruments or controls having both electrical and piping connections. It is further pointed out that the instruments are labeled "solenoids", and even if they were purely electronic they would still fall to the UA under the UA / IBEW Agreement dated January 30, 1973.

The letter is critical of the type and manner in which the IBEW evidence was presented.

Tab A

A copy of the October 13, 1999 letter from FCCL to the UA and the IBEW explaining the function of the instruments in dispute and giving 48 hours for the parties to come to some agreement. There is also explanatory drawings and photographs and a copy of the October 18, 1999 letter from FCCL to the UA and the IBEW confirming the assignment of the work to the UA. The UA says of this evidence:

It shows a solenoid valve which is activated by an extremely low voltage maintained electric signal which responds to differential pipe pressures in order that a signal can be sent to the control valve actuator to open or close the flow within the piping system.

Tab B

A copy of the Instrumentation award on this project. (Also provided by the IBEW as Exhibit 2). There is also a letter from Mr. Albert Janz, Site Superintendent of the Instrumentation Department of Fluor Corporation. Mr. Janz says in reference to the solenoid valves:

"This function and make up is therefore identical to the wording and intent of the Fluor Mark-up description as itemized under Instrumentation; item N (ii) of the Mark-up sheet."

The above mark-up clause awards the installation of instruments and/or controls that utilize a piping connection directly to a piping system to the UA.

Tab C

A copy of the IBEW / UA Agreement on Instrumentation dated April 7, 1976. This Agreement covers the installation of individual instruments as opposed to the Panel Board Agreement dated August 22, 1968, which covers panels and cabinets containing multiple instruments. In the 1976 agreement, when instruments require both a piping connection and an electrical connection, they shall be mounted in place and the piping connection made by the UA. The IBEW shall complete the electrical work necessary.

A copy of the Instrumentation Agreement between the UA and the IBEW dated October 3, 1973. Like the 1976 agreement, installation of all instruments and/or controls having piping and/or electrical connections is awarded to the UA, and electrical work to the IBEW.

A copy of a letter from Spantec Constructors Ltd. dated September 20, 1999 awarding the installation of remotely mounted instruments to the UA, based on a decision of the Board of Industrial Relations dated February 14, 1972. The Board said that the instruments must be an integral part of the process system or where the initial impulse is pneumatic. Finally a copy of a letter from Fluor to the UA dated in 1983 confirming that instruments of the type in dispute shall be installed by the UA – sixteen years of consistent assignments of this work to the UA by Fluor.

Tab D

A review of the IBEW evidence, showing why the work in dispute cannot be considered to be a Panel, Panel Board or Solenoid Panel, and does not fall under the Panel Board Agreement of August 22, 1968.

Tab E

A series of assignments and illustrative drawings showing that instruments that have a pneumatic connection, even if they also have an electric or electronic connection, shall be installed by the UA. The assignments were by multi-trade contractors and include solenoids.

Tab F

An excerpt from the Letter of Understanding forming part of the J.A. Plan, stating that the Umpire shall avoid wherever possible a decision that results in excessive allocation of manpower occurring on the job.

FINDINGS

I am not convinced that the August 22, 1968 Panel Agreement between the UA and the IBEW is applicable to this dispute, particularly in light of the subsequent agreements dated October 3, 1973 and April 7, 1976 which refer directly to instruments and/or controls rather than panels or cabinets. In the subsequent agreements, the mounting of instruments and/or controls is awarded to the UA, even if they utilize both a piping and an electrical connection.

The IBEW makes a point of being unaware of the assignment of the work in dispute until it was well underway. FCCL admits that the work was assigned in the field, but the intended assignment was clear at the time of the pre-job conference attended by the IBEW. The wording on page 30 of the minutes of the conference establishes that. The IBEW chose to delay their protest of the assignment until the work was underway for reasons known to themselves.

The decision of the Board of Industrial Relations of Alberta dated February 14, 1972 is significant in awarding instrumentation work, where the initial impulse is pneumatic, to the UA.

It is my opinion that the installation of the disputed work by a composite crew as requested by the IBEW, would result in an excessive allocation of manpower occurring on the job.

Ruling

The award of this work to the United Association is upheld.

The Umpire's costs shall be paid by the IBEW.

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