

JURISDICTIONAL ASSIGNMENT PLAN
of the
ALBERTA CONSTRUCTION INDUSTRY
(J.A. Plan)

DECISION OF THE UMPIRE – File 9915

Review of Contractor's Intended Work Assignment

Joffre Co-Gen Project
Removal/Replacement of Control Valve Position Transmitters

CONTRACTOR

Spantec Constructors Ltd.
(Spantec)

PROTESTING PARTY

International Brotherhood of Electrical Workers, Local Union 424, Edmonton
(IBEW)

RESPONDENT

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

Decision Published
November 25, 1999



1. NATURE OF THE PROTEST

IBEW, protesting party have stated:

"Removal and replacement of control valve position transmitters should have been assigned to Local Union 424 IBEW as per the agreement between the UA and IBEW dated January 5, 1984. All other agreements between UA and IBEW support this work being assigned to IBEW on the basis that this transmitter in no way effects the integrity of the piping system (in this instance the internals of the valve)."

2. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Application submission by IBEW and responses submitted by UA and Spantec.

3. J.A. 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: Union'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 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 a 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 received (from J.A. Plan Administrator Portlock) and reviewed all documentation submitted by IBEW, UA and Spantec.

- Two page fax, dated November 4/99 from JA Plan Administrator Portlock to Board of Trustees and Umpire advising receipt of an Application for Review submitted by the Electrical Workers.

- Two page fax, dated November 15/99 from JA Plan Administrator Portlock complete with submissions from IBEW, UA and Spantec with comment:-
 - Complete application file for IBEW
Response from UA
Contractor's description of the disputed work
Comment - Well presented by all parties
 - Page two of Umpire G.R. Beatson's just published Decision #9914.
Comment - I agree with Umpire Beatson's statement:-
"...that the IBEW may refer this matter to the Plan"
Hence applies to this dispute, i.e. J.A. Plan File #9915.

All documentation has been accepted as Evidence.

Disposition of Submissions

All documentation has been returned to the J.A. Plan Administrator.

EVIDENCE

5. REVIEW OF SUBMISSIONS

5.1 IBEW

- November 4, 1999
 - Application for Review of Contractor's Intended Work Assignment.

- Brief description of the Fisher 4200 Series Control Valve Position Transmitter; past practice and interpretation of January 5, 1984 Agreement between IBEW and UA.

Comment - gives the IBEW interpretation of the Agreement

- Past Practice and Interpretation of January 5, 1984 Agreement between UA and IBEW reference to December 19/89 letter from Ed Messore, Director of Trade Jurisdiction, UA to George Meservier.

Comment - states IBEW position that this is an identical application of the January 5th, 1984 Agreement.

- Three pages of Agreements between IBEW and UA on instrumentation and Controls.
- Agreement dated March 26-27, New York - TRANSMITTER FLOW TURBINE (IN LINE)

"...in line (effects the integrity)...UA.

We conclude that instruments/devices/switches which are electrical and do not effect the integrity of the piping system or vessel is the work of the IBEW. The Transmitter in this application falls into this category."

Comment - The effect of the control and/or its operation on the integrity of the piping system appears to be the basis of this dispute.

- 1. IBEW-UA April 7, 1976 Memorandum of Mutual Understanding intended to cover the installation of individual instruments, singularly and plural Nor is this memorandum intended to affect any other existing memorandum of understanding between the IBEW and the United Association.
- 2. The installation of instruments and/or controls that utilize a piping connection directly to a piping system, or vessel, for the purposes of reacting to the variable characteristics of liquids, gases and solids, shall be the work of the United Association.
- 3. The installation of instruments and/or controls that utilize an electrical connection or electronic signal for the purpose of reacting to the variable characteristics of liquids, gases and solids, shall be the work of the IBEW.
- 4. The installation of instruments and/or controls that utilize both a piping connection and an electrical connection shall be performed in the following sequence:
 - A. The UA shall mount in place the instrument and/or control and complete the piping connection to the piping system, or vessel.
 - B. The IBEW shall complete the electrical work necessary to make the instrument and/or control operation.

- C. If any instrument or control removal is necessary, the sequence shall be reversed for the removal, and re-instituted at the time of the subsequent installation.
5. The fabrication and installation of brackets or supports necessary for the above installation shall be the work of the craft installing the instrument or control.
6. It is agreed that each craft, upon the request of the responsible contractor, shall furnish men to that contractor for the purpose of performing such work as is covered by this agreement. In such cases, the wages, fringe benefits and conditions of employment of each craft shall prevail.

Comment - item 4, 4A, 4B and 5 are applicable to this dispute. Item 1 refers the Umpire to other applicable Memorandum of Agreements between IBEW and UA.

- Two additional pages of Decisions re Instrumentation and related matters.
- January 5, 1984 - Electrical Monitoring Switch (Sprinkler Fitter). References April 7, 1975 Memorandum of Understanding

References:

- a. When electrical monitoring switch required that the valve stem be notched, grooved or drilled, this shall be the work of the UA. The IBEW shall mount the switch to the valve body and complete the electrical work necessary to make the switch operable.
- b. The Installation of electrical monitoring switch which attached directly to the internals of the valve, and is activated by mechanical device reacting to the movement of the valve stem, shall be the work of the UA.
- The IBEW shall complete the electrical work necessary to make the switch operable.
- c. The installation of an electrical monitoring switch which is not activated by a mechanical device reacting to the movement of the valve stem shall be the work of the IBEW.

Comment - no information on the linkage from the valve stem to the switch as per January 5, 1994 Agreement.

- assume IBEW will address

- December 19, 1989 2 page letter from Ed Messoro, UA, Director of Trade Jurisdiction, to George Meservier concerning Jurisdictional Dispute No. EW 24-1089 involving mounting of electrical limit switches at the Champion Forest Products Ltd. Project in Hinton, AB.

- November 2, 1999 letter from Ron Galey, Spantec Constructors Ltd. To UA #488 and IBEW #424 assigning jurisdiction of removal and replacement of Transmitter valves to UA of Plumbers and Pipefitters.

Comment - Spantec state they:- "assigned based on the January 5, 1984 IBEW UA Memorandum of Understanding (M of U). The award is consistent with item b of this M of U. Award is also consistent with the March 26-27, 1973 New York City, NY Transmitter clarification.

- October 3, 1968 Memorandum of Understanding between IBEW and UA concerning Electric Motorized Valves

Comment - Supports UA position

- July 7, 1980 letter regarding dispute William Neilson Ltd., Toronto between IBEW and UA over installation of electrical monitoring switches on sprinkler valves.

Comment - states in part "A. When electrical monitoring switch requires that the valve stem be notched, grooved or drilled, this shall be the work of the UA."

- September 20/99 letter from Spantec Constructors stating they erred in their awarding field award of August 4, 1999 for installation of remotely mounted instruments.

Comment - refers to decisions of February 14, 1972 Shall be the work of the UA.

- February 14, 1972 excerpt from Alberta Labour Act reconsidering its decision of November 1971 regarding jurisdiction of installation of remotely mounted instructors or controls.

Comment - the decisions referred to in previous point.

- December 15, 1980 letter from ICS Western construction Ltd. To U.A. of Plumbers & Pipefitters Local #488 re Type 304 Limit-switches, Forestburg, AB.

Comment - "...Fisher limit - switches Type 340 The work is assigned to UA."

- May 1974 - 4 pages specifications and parts list for Type 304 Electrical Switch and Mounting Parts.

Comment - explains principle of operation, installation and related matters.

- October 31, 1969 Memorandum of Agreement between IBEW and U.A. regarding geographical jurisdictional areas of local unions in British Columbia and the Yukon.

- 3 pages of undated hand written notes and diagram for safety shut off valve.

Comment - very good diagrams showing piping and control valve.

5.2 UA

- November 8, 1999, 3 page letter from Rob Kinsey, UA #488, Business Manager/Financial Secretary to JA Plan Administrator Portlock outlining UA #488's Statement of Position.

Comment - clearly states UA's position that Spantec's assignment is correct. Describes the mechanical linkage and states the raising or lowering of the valve stem to open or close the valve directly affects the integrity of the piping (or process) system.

- November 12, 1999 letter submitting UA #488 evidence
- November 12, 1999, 3 page letter from Rob Kinsey, UA to JA Plan Administrator Portlock outlining UA Statement of Position. Same letter as one dated November 8 above.
- Excerpts from Agreements dated January 5, 1984 concerning installation of electrical monitoring switch.

Comment - hi-lites in part "... the installation of electrical monitor switch which is activated by a mechanical device reacting to the movement of the valve stem ..."

- UA/IBEW Attested Agreement Extracts -
 - June 10-11/80 - valves (electric pneumatic and solenoid); transmitter (absolute pressure); transmitter (density); transmitter (flow impact); transmitter flow turbine (in line) and transmitter (valve and electrical pressure).
- Memorandum of Understanding (M of U) between IBEW and UA concerning Instrumentation dated August 22, 1968.

Comment - Supports UA position. However M of U previous to January 5, 1984 Agreement.

- More Attested Agreement Extracts concerning installation instruments (and/or Controls) - 5 pages in total)
- October 3, 1968 Memorandum of Understanding between IBEW and UA concerning Electric Motorized Valves
- January 26, 1983 2 page letter from Fluor Canada Ltd. (Lawrence G. LeClair, Director Labour Relations, Calgary) to U.A Local #488 outlining instrumentation assignment to UA.

Comment - work assigned to UA

- September 15, 1970 letter from Canadian Bechtel Limited to IBEW Local 424 re assignment of work - Gulf Oil Project in Edmonton, Job 7488.

Comment - work assigned to UA

- October 13, 1989 letter from Grinnell Fire Protection Systems to UA Local union 488 concerning installation of monitor switches on sprinkler systems.
- October 5, 1989 letter from Dipro-Namur International Inc. to U.A. Local Union 488 concerning installation of limit switches.

Comment - work assigned to UA

- One page undated note concerning function and location of field instruments.
- August 25, 1999 2 page letter from Spantec Constructors to U.A. Local Union 488 and IBEW #424 concerning assignment of work-Joffre Co-Gen Project Calibration of Instruments.
- March 15, 1983 Inter Office Memo, Canadian Badger Company Ltd. Between N. Goudriaan and W. Whitter concerning instrumentation installation at Scotford Styrene Project E-7922.

Comment - very well documented as to Assignment between UA and the Electricians in at least five different applications.

- This may serve as a template between the UA and IBEW for a workable Agreement between them.

- June 4, 1970 letter from Dillingham Corporation Canada to U.A. Local 170, Kitimat, BC re Instrumentation.
- Undated handwritten drawing of solenoid operated control valves.

5.3 Spantec Constructors Ltd.

- November 15, 1999 covering letter including their description of the disputed work.

Comment - explains the work involved.

- Undated Description of Work Removal and Replacement of Position Transmitters
- Undated photos 1, 2 and 3 plus handwritten notes on bolts, mechanical devise and transmitter.
- November 2, 1999 fax transmission from Spantec to IBEW #424 concerning Positioner Transmitter at Joffre

- November 2, 1999 letter from Spantec to UA #488 and IBEW #424 stating removal and replacement of Fisher Control Valve Position Transmitters is assigned to IBEW.
- January 5, 1984 article on Electrical Monitoring Switch (sprinkler Fitter).
- March 26-27, 1973 - valves (electric pneumatic and solenoid); transmitter (absolute pressure); transmitter (density); transmitter (flow impact); transmitter flow turbine (in line) and transmitter (valve and electrical pressure). (Also submitted by U.A. Local #488)

6. J.A. PLAN ARTICLE II: 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.

"Decision 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, AFLCIO (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 and are always referred to by dates.

7. J.A. PLAN ARTICLE VI: PROCEDURES TO BE USED BY THE UMPIRE

In making my decision I have followed this procedure.

8. FINDINGS

From the Evidence submitted I find:

- There is an applicable agreement (January 5, 1984) between the IBEW and UA
- The integrity of the system is not limited to the piping but also the fittings and valves.
- Evidence submitted supported Spantec's assignment of this work to the UA.
- Spantec's interpretation of the Agreement is correct.

9. THE RULING

Spantec's assignment is upheld.

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

W.A. Weir, Umpire
J.A. Plan/Alberta Construction Industry
November 25, 1999