

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

RECONSIDERATION – FILE #9919
OF
DECISION OF THE UMPIRE – File #9913

Protest of Contractor's Final Work Assignment
Use of Fork Lift Outside “General Warehouse or Storage Area”

PROJECT
Shell Meg Project Scotford

CONTRACTOR
Fluor Constructors
Calgary, AB

PROTESTING PARTY

International Union of Operating Engineers Local 955
(IUOE)

RESPONDENTS
General Teamsters Local 362
(Teamsters)

and

Fluor Constructors Canada Ltd.
(Fluor)

Decision Published
January 19, 2000

Amendment to item 8, pg 7 of 7 - Jan 27/00 (as underlined)

**Reconsideration of Umpire Weir’s November 08, 1999 Decision
For use of Fork Lifts outside “General Warehouse and designated Storage Area”
Project: Shell Meg 8 Project Scotford**

1. FLUOR’S ASSIGNMENT

Fluor’s assignment of this work at the mark-up meeting reads:

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in the general warehouse or designated storage area shall be the work of the Teamster.

Operation of fork lifts and rough terrain extendable fork lifts (zoom booms) in all other instances shall be the work of the Operating Engineers.

Fluor further states:

Fluor holds to this assignment and does not direct the Teamster to perform work with the fork lifts or zoom booms outside the warehouse or designated storage area or in the “general work area”.

Fluor defines the warehouse to be the building and attached area where material is received and stored.

Fluor defines a designated storage area or designated laydown as an area remote from the main warehouse, used to receive and store material and equipment, and which provides extra storage space and is an area which is used on a permanent or temporary basis.

These areas are “designated” by the Construction Manager in conjunction with the Labour Relations Manager in order to prevent any temporary placement of material or equipment from being called a “designated laydown” area.

2. J.A. PLAN FILE #9913 UMPIRE’S DECISION

Umpire Weir’s Decision which the IUOE have requested this Reconsideration states:

- Fluor's Assignment is upheld.
- Teamsters are to immediately cease and desist operating fork lifts and rough terrain extendable fork lifts (zooms booms) other than in the general warehouse or designated storage area or designated laydown area only as designated by the construction Manager in conjunction with the Labour Relations Manager.
- The umpire's costs are to be paid equally by the Operating Engineers and the Teamsters.

3. RECONSIDERATION REQUEST

The request for reconsideration was brought by the IUOE in their November 15, 1999 Reconsideration Application. An oral hearing was requested.

The grounds for reconsideration were stated as:

- Numerous
- There is no applicable agreement. “The 1969 Agreement was cancelled years ago as per provisions within that agreement”.
- Decisions of record and examples of those decisions are ignored.

4. AUTHORITY

The authority of the Umpire to undertake the reconsideration is based on Article VII of the procedural Rules of the J.A. Plan, the request and documentation submitted by the IUOE.

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

5. ORAL HEARING

An oral hearing was convened at 1000 on Wednesday, December 22, 1999 in the Alberta Arbitration and Mediation Society meeting room, Decore Centre, University of Alberta, Edmonton, AB.

Present:

Representing IUOE

- Paul Bokowski, Business Agent
- Ken Hoy, Job Stewart for the Meg Project and a member of IUOE

Representing Teamsters

- Dave Kemp, Vice President and Business Agent
- Dave Bennett, Business Agent

Representing Fluor

- Fluor was not represented.

6 EVIDENCE

Fluor's fax transmission of December 08, 1999 was sent by the J.A. Plan Administrator to the IUOE, the Teamsters and Umpire Weir. The transmission stated:

In answer to inquiry from Umpire Weir regarding JA Plan file #9919 we provide the following:

Work at the Shell MEG Project is approximately 75% complete.

Two (2) Laydown/Storage areas have been designated by the Construction Manager to date. These include 1 tied to the warehouse and 1 other very large area which borders with the warehouse storage area. There have been other storage areas for laydown of pipe spools, etc. but these have not been "designated" and Teamsters have not had jurisdiction in these.

It is unlikely that more storage areas will be "designated" from now until the end of the project although it is still possible the project may require one or more.

Regards

Hugh Tackaberry

The transcript of the evidence presented at the hearing is attached as Appendix A. The computer disk containing this transcript has been delivered to the J.A. Plan Administrator.

The IUOE reformatted their submission for J.A. Plan file #9913. The IUOE are to be complemented for this document and for the forthright manner in which it was presented. This document has been returned to the J.A. Plan Administrator.

The parties agreed the IUOE document was not new evidence.

Summary of the IUOE written document:

The IUOE state:

- Umpire Weir did not reference the correct unions in item 2 Authority in his November 08, 1999 Decision

Comment – Umpire Weir apologized for the error and will issue a correction.

- If Umpire Weir made this error “how much thought was given to our case”

Comment – This error had no effect on Umpire Weir’s decision

- Item Mk 1 – This January 29, 1940 Decision of Record specifically defines what is the Teamster’s jurisdiction and what is the Operating Engineers’ jurisdiction.

Comment – Remarks noted.

- Item Mk1 continued – Page 25 from Fluor Pre-Job Conference states in item D vi “The Agreement between the OE’s and Teamsters dated June 10, 1969 will be recognized”.

The 69 agreement was cancelled according to the established and agreed upon procedures that were written into the agreement.

The International Union of Operating Engineers general president Frank Hanley’s October 24, 1996 letter served the required 30 day notice (etc.) to Ron Carey, president International Brotherhood of Teamsters that the “69” Agreement shall be terminated on the anniversary date of December 31, 1996.

Comment – Fluor assigned according to the ’69 agreement.

- *The Teamsters representatives at the oral hearing stated*

- *The agreement still exists*
- *Why have the IUOE not made it known this Agreement has been terminated.*
- *Assuming the OE’s F. Hanley’s October 24, 1996 letter was sent to and received by the Teamsters R. Carey then the 69 Agreement was terminated*

If the 69 Agreement was still in place it must be interpreted as per the circumstances and language that prevailed in 1969. The spirit of the agreement is not subject to evolving language or word usage.

Comment – In previous statement IUOE stated the ’69 was cancelled three years ago.

- *During oral hearing Teamsters stated very few storage areas are fenced and never a locked gate.*

- Item Mk 3– Green Book Resolution 124 (pages 47-48) has been the basis of all OE jurisdiction since 1907 and accepted by the Building Trades in 1925.

Comment – This important background information is useful.

- Item Mk 4-13– the OE states – demonstrates Prevailing Practice for a number of these assignments.

Comment – Quotation from J.A. Plan Procedural Rules Article II Definitions

“Prevailing Practice” – Prevailing Practice is the practice of that craft which submits valid evidence indication that its members have performed more of the work in the area where the dispute exists than have members of other crafts. Evidence from contractors which employ all of the trades involved in the dispute will be preferred.

The area, for the purpose of determining the Prevailing practice shall be defined ordinarily to mean the geographical jurisdiction of the Alberta and N.W. T. (District of MacKenzie) Building and Construction Trades Council.

Applying this to the IUOE submission

- *Item Mk 6-1 - PCL undated does not apply – Ontario*
- *Mk 6-2 - PCL May 10, 1982 applies – Prentiss, AB (PCL assigning operation of fork lifts in general warehouse area to Teamsters).*
- *Mk 8 - Bechtel November 10, 1977 applies – Syncrude*
- *Mk 9 - Loram January 17, 1983 applies – Project not named*
- *Mk 10 - International Cooling Tower July 13, 1993 applies – Prentiss, AB*

Item M6-2, 8, 9 and 10 are in keeping with the intent of the terminated 69 Agreement and establish Prevailing Practice.

The Teamsters did not submit valid evidence indicating its members have performed more of the work in dispute than the IUOE. In fact their applicable evidence supports the IUOE.

- Made reference to the Teamsters Submission commenting on a number of matters including the Teamsters operating out of its designated area.

Comment – J.A. Plan Article VIII: Implementation of Decision is available.

7. FINDINGS

From the written and oral evidence submitted I find:

- Fluor has only designated one laydown area, which is adjacent to the designated storage area.
- Fluor is not likely to assign any more storage areas.
- Fluor has not ensured their Assignment has been adhered to.
- The Teamsters have not complied with my November 08, 1999 ruling to immediately cease and desist operating fork lifts and rough terrain extendable fork lifts (zoom booms) other than in the general warehouse, designated storage area and designated laydown area.
- The Teamsters state they are still using the 1969 Agreement.
- Assuming the International Union of Operating Engineers General President's October 24, 1996 letter was transmitted to the International Brotherhood of Teamsters President the "69" Agreement was terminated.
- The IUOE have not communicated that this "69" Agreement is terminated.

8. RULING

- For the duration of this project the Teamsters are to operate fork lifts and rough terrain extendable fork lifts (zoom booms) only in the general warehouse, designated storage area and designated laydown area adjacent to the storage area.
- The Teamsters shall immediately cease and desist operating fork lifts and rough terrain extendable fork lifts (zoom booms) on any other area of the site.
- The Umpire's costs shall be paid equally by the Teamsters and Fluor.
- This decision is for this Project only. (Amendment Jan 27/00 to item underlined)

W.A. Weir, Umpire
J.A. Plan/Alberta Construction Industry
January 19, 2000