

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

DECISION OF THE UMPIRE
J.A. Plan – File #0203
Reconsideration of
Umpire’s Decision for J.A. Plan – File #0202
Which Assigned Stroking of Valves and Jurisdiction of Hand-Held
Signal Generator Power Source to the UA

In Deference to the Contractors Intended Work Assignment of a
Composite UA, IBEW Crew

PROJECT
ATHABASCA OIL SANDS DOWNSTREAM PROJECT (AOSD)
SHELL SCOTFORD PLANT
EAST OF FORT SASKATCHEWAN, ALBERTA

CONTRACTOR
Athabasca Construction Joint Venture (ACJV)
with
ACJV Member Fluor Constructors Canada Ltd. (FLUOR)
making this Assignment for ACJV

PROTESTING PARTY
International Brotherhood of Electrical Workers, Local #424
(IBEW)

RESPONDENT
United Association of Plumbers & Pipefitters, Local #488
(UA)

Decision Published
August 13, 2002

**Reconsideration of Umpire’s Decision
for
J.A. Plan – File #0202
Stroking of Valves and Jurisdiction of Hand-Held Signal Generator Power Source**

1. NATURE OF PROTEST

IBEW, the protesting party, in their June 20, 2002 Application for Reconsideration of the Umpire’s Decision for J.A. Plan File #0202 and Submission are protesting for the reasons of:

“accidental mistakes or “slips” on the part of the Umpire
and/or
substantial error of fact or law”

with reference to

Written and Oral Evidence presented for J.A. Plan File #0202.

2. CONTRACTOR’S DESCRIPTION OF THE DISPUTED WORK

As recorded in J.A. Plan File #0202 Decision.

The description of the work in dispute was provided by Fluor (from Hugh H. Tackaberry, Director, Safety and Labour Relations).

“In response to the request from Umpire Weir regarding a description of the subject work, Fluor Constructors Canada Ltd. submits the following:

1. The dispute involves work on valves operated by pneumatic/electric mechanisms.
2. The work in question is the testing of the operation of the flow controlling mechanisms within the valve body.
3. The work involves the use of both pneumatic and electric connections and impulses.
4. A work assignment using a composite crew would see the UA controlling the pneumatic impulse for the test and the IBEW performing work associated with connecting/disconnecting the signal generator associated with the I to P controller.

We trust that this will suffice as a description of the work and welcome the opportunity to present more expert description of the work and the need for the work at a hearing.”

3. AUTHORITY

The authority of the Umpire is based on the Jurisdictional Assignment Plan of the Alberta Construction Industry, the Reconsideration Application submission by the Protesting Party (IBEW), the submission by the Respondent (UA) and information from Fluor.

4. SUBMISSIONS

The Umpire did not accept the:

- IBEW Submission as it did not meet the J.A. Plan criteria for new evidence.
- UA submission as it replied to the IBEW Submission. The exception their opening comments that did not refer to the IBEW’s submission.

Disposition of Submissions

On instructions from the Administrator, the Umpire will shred all documentation received pertaining to this Decision as the Administrator has the originals of all the documents

5. SITE TOUR, DEMONSTRATION & HEARING

On Friday, July 26, 2002 a site tour of the control room, and the 1-0 (input-output) building in conjunction with a demonstration at the selected valve was conducted followed by the Hearing.

6. EVIDENCE

Only evidence presented to the J.A. Plan – File #0202; the July 26, 2002 site tour, demonstration and evidence presented at the Hearing for J.A. Plan – File #0203 was accepted.

7. SUMMARY

Before stating my Findings, which will lead to my Decision I wish to comment:

- The site tour of the control room, 1-0 (input-output) building was well planned and conducted.
- As stated in my J.A. Plan- File #0202 Decision, Fluor made their assignment in a very inappropriate unorthodox manner. This was the reason I assigned costs to Fluor. At the Hearing Fluor made a well-documented presentation of why they were not

responsible for costs. In questioning they stated they would continue to make this assignment on future projects in a like manner. I do not accept their method, as they stated they have been assigning this work in the same manner for ten years and this is the first time they have issued a written description of the assignment.

- The UA’s Affidavits were important evidence submitted for J.A. Plan - #0202. The UA committed to producing 12 of their members to be examined by the IBEW. Only 3 appeared which along with the lack of co-operation the parties gave to the Facilitator lead to a very incomplete examination of the Affidavits. From the few examined extrapolations were applied to the remaining.
- During the Hearing Fluor’s Mr. Tackaberry stated, going by memory, Fluor’s responsibility to the owner for the work in question.

* Subsequent to the hearing he contacted the Umpire to advise that Fluor is executing this work in accordance with the owner’s requirements.

8. FINDINGS

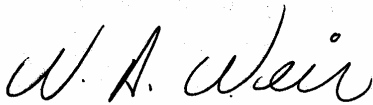
Following consideration of all evidence I find:

- There are no applicable Memorandums of Understanding or Agreements or Decisions of Record or Local Trade Agreements between the UA and the IBEW that are specific to this dispute.
- Fluor did not conduct a proper mark up and again at the hearing implied they will not in the future. They did not properly communicate their assignment until pressed to do so.
- The hand held signal generator power sources are a tool-of-the-trade of instrumentation technician/mechanic.
- IBEW and UA instrumentation technicians/mechanics are qualified and capable of performing the task demonstrated use of the hand held signal generator power source.
- The IBEW’s examination of a few of the UA members who submitted affidavits and the extrapolations of affidavits not examined changed the weight of the evidence in favour of a composite UA-IBEW crew as Fluor, a main line contractor, with a substantial portion of past and present industrial construction work in Alberta, had been assigning for approximately the last ten years

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- Prevailing practice as defined in Article II of the Procedural Rules of the J.A. Plan favours Fluor’s Intended Work Assignment of a composite UA-IBEW crew.
 - Fluor was correct with their Intended Work Assignment.

9. RULING

- Fluor’s assignment is upheld.
- Decision is for this project only.
- Costs are to be paid by the UA.



W.A. Weir, Umpire
J.A. Plan/Alberta Construction Industry
August 13, 2002