

**PLAN FOR THE SETTLEMENT OF JURISDICTIONAL DISPUTES
IN THE CONSTRUCTION INDUSTRY
(CANADA)**

Edmonton Alberta - Jan 6, 2003-01-10

Decision of the Arbitrator

Disputed Work: Scaffold Tending

**Petro Canada Sulphur-In-Gasoline Project
Strathcona County, Alberta**

Contractor - Kellogg, Brown & Root (Canada) Company

DISPUTING TRADES

**Construction & General Workers Union # 92
Edmonton, Alberta**

And

**United Brotherhood of Carpenters & Joiners #1325
Edmonton, Alberta**

Representing Labourers:

**Greg J Harris, International Representative
And
Ken Reid, Business Manager**

Representing Carpenters

**Martyn A Piper, Executive Secretary Treasurer
And
Ted Ash, Representative/organizer**

Representing KBR:

Walter Semkowich, General Superintendent of Labour Relations

Representing CLR Alberta:

Sam Kemble, Labour Relations Representative

The above referred dispute was an appeal of the J.A. Plan of Alberta # 0204 of Dec. 2 2002 to the Canadian plan by Labourers Union # 92 objecting to umpire Beatson's ruling of upholding the assignment of the contractor to the Carpenters of scaffold tending, namely (Groundpersons).

The Labourer were the first union to advance the argument that they had submitted to the umpire. It was an extensive document of which I later perused in detail, and make note of only some of its contents which include; Past practice training, collective agreement, comparing of wages, economic issue, final assignments, final work assignment of June 18/02, and the fact that they were on job doing the work prior to the assignment, eight hour rule etc.

We then heard the Carpenters arguments of presented documents and oral presentation.

I have reviewed the Carpenters response to appeal of J.A. Plan (Alberta) #0204 and have taken into consideration Mr. Pipers position

I have reviewed the Carpenters submission to the J.A. Plan, and note some of its contents which include; introduction, prior decision protest not having substance, includes man hours of work, nondisputed assignments, the carpenter position the Decision of record April 28, 1920 is not applicable to this work. I make note of the evidence on Training, Alberta Carpenters Agreement, Alberta decision, Canadian decision and U.S. decisions.

I have taken into consideration the Carpenters submitted evidence contained in the Jurisdictional Assignment plan of Alberta Text Article IV subsection 5b of page 11 and (c) of page 12 subsection 12 and 13 of page 13 which deals with the eight hour rule and also that the Canadian plan shall be limited only to appeal of decisions issued through the Alberta plan.

Next the contractor presented his argument in conjunction with CLR representative Sam Kemble and I note some of those position such as, no decision or agreement of record applies to this work between these two trades. KBR concludes that both unions have performed their work in the past. KBR takes the position that jurisdiction awarded through a collective agreement is not binding upon a dispute board, and the eight hour rule does not apply.

SUMMARY

In summary I want both unions and the contractor to know that even though I will not offer opinion or make comment on all of your arguments, I have carefully read all material presented, and as this is an appeal of an umpire's decision, I have reviewed your evidence in conjunction with the Umpire's findings to determine if he has perhaps not considered relevant evidence, or if he has correctly assessed the presented evidence and made in my opinion a proper ruling.

As for the eight hour rule being applicable, it is evident from the J.A. plan text that I would not have that authority to make a determination, and also as to whether or not this appeal was proper to be entertained that is up to the discretion of the Administrator.

My authority is basically in rendering a decision as per Article V Section 8 of the Canadian plan, and as this criteria has been changed effective Jan. 1 2003 I will outline it in short a form as is possible.

In rendering my decision I must first determine:

- (A) Whether a previous Agreement of record or applicable agreement, including a disclaimer agreement, between the national or international unions to the dispute governs,
- (B) Only if I find the dispute is not covered by the above, I then consider whether there is a previous Decision of record governing the Case,
- (C) If (b) above is applicable then it shall be applied, unless some other contingencies apply and as they do not in this case I will leave it up to each of you to read section (c) and get an understanding of the exceptions,
- (D) If (c) above is not applicable, I shall then consider trade practice in the industry and prevailing practice in the locality,
- (E) Only if none of the above apply the Arbitrator shall then consider, efficiency, cost or continuity to the well being of the industry.

CONCLUSION

With the above criteria of article 5, section 8 of utmost importance I now consider all arguments of submitted and oral evidence in conjunction with the umpires findings and arrive at my decision. I find there is no evidence in this dispute that is governed by article V section 8's (A), (B), or (C) this is in concurrence with the umpire's findings.

I feel section (d) is applicable, "the arbitrator shall then consider the established trade practice in the industry and prevailing practice in the industry"

The umpire finds that both unions performed scaffold tending in Alberta - I am in concurrence as in my opinion both unions submitted proof of past practice.

DECISION

The basis for my decision is based on the first criteria applicable of article V section 8 which is section 8 (d) and my decision applies only to this job in dispute, and is one of concurrence with the umpire that the assignment of work to United Brotherhood of Carpenters & Joiners # 1325 should properly be upheld.

"SIGNED"

George A.R. Henry
Arbitrator
Plan for the Settlement of
Jurisdictional Disputes in
The Construction Industry
(Canada)