

Cited as:

**Alliance of Motion Picture and Television
Producers v. International Brotherhood of Teamsters,
Local Union 155**

**IN THE MATTER OF AN Arbitration Pursuant to the
Labour Relations Code, R.S.B.C. 1996
AND IN THE MATTER OF A Dispute Pursuant to the
Jurisdictional Resolution Agreement**

Between

**Alliance of Motion Picture and Television
Producers ("AMPTP"), and
International Brotherhood of Teamsters,
Local Union 155 ("Teamsters 155"), and
International Alliance of Theatrical Stage
Employees, Local 891 ("IATSE 891"), and
International Photographers Guild of the Motion
Picture and Television Industry ("IATSE 669")**

[2001] B.C.C.A.A.A. No. 315

Award no. A-197/01

British Columbia
Collective Agreement Arbitration

S. Lanyon, Q.C., Arbitrator
Investigation/Mediation/Adjudication: (Vancouver, B.C.)

June 19, 20, 21, 27; July 10, 23; November 22; December 1 and
October 9, 2001. Vancouver, B.C.

Written Submissions: July 25 and August 9, 2001.

Award: October 10, 2001.

(44 paras.)

(Re: Interpretation of Article 4.1 of the Jurisdictional Resolution Agreement)

Appearances:

Linda Dennis, for Teamsters Local 115.

Kate Young, for IATSE 891.

Casey McCabe, for IATSE 669.

Barry Dong, for AMPTP.

AWARD

INTERIM REPORT

I. Nature of Proceeding

1 An earlier Award, dated September 24, 2001 between these parties, dealt with the interpretation of Article 4.1 of the Jurisdictional Resolution Agreement ("JRA"). That award concluded that factors (a) (consider the practice and experience of the British Columbia Film Industry) (c) (have regard to the real substance of the matters in dispute and not be bound by strict legal interpretation of the issue in dispute;) and (e) (have regard that the film industry need for efficiency in its capacity to provide services at a reasonable cost) were to be given significant weight in the determination of jurisdictional disputes.

2 Both that award and this award deal with two disputes: first, the Teamsters claim that it has exclusive jurisdiction to operate golf carts (this claim arose on the production of Secret Agent Man); and second, the Teamsters claim that it has exclusive jurisdiction to operate forklifts (this claim arose on Get Carter).

3 As stated in the first award, the parties in anticipation of a long evidentiary hearing, agreed to a process of investigation/mediation/adjudication. This fact finding has taken place over some nine days and a further six days of hearing have been scheduled. To date some 30 persons have been interviewed.

4 The original process was to include an initial investigation, an attempt at mediation, and should that mediation prove unsuccessful, then an interim award would be issued setting out some preliminary findings.

5 The difficulty that an interim award presents, as the parties are fully aware, is that this investigation has yielded positions and claims that are diametrically opposed.

6 Interviews were conducted by the parties themselves in my presence. Though each interview was conducted by counsel for the parties I was free to ask questions at any time. The interviews

were reduced to writing by the parties themselves and the notes of those interviews were shared with all the other parties. Typically, the interview notes consist of statements of a single person who states that they performed a variety of work on different productions over the past number of years. Occasionally there is a dispute over one particular production. For example, the two dispute notices which lead to this arbitration (Get Carter and Secret Agent Man) or on a past production - for example the film 24 Hours shot on Vancouver Island (Buckley Bay).

7 The interviews were conducted separately. No other party was present; therefore, there has not been the benefit of cross-examination. Where there is a conflict in the evidence, I am not able to resolve that conflict without a hearing. It is not my intention simply to regurgitate the evidence set out in the notes which the parties already possess.

8 After some consideration, I have decided to set out the issues in dispute and to simply comment on the facts raised in the interviews in light of the policy decision of September 24, 2001.

II. Origin of Dispute

A. Get Carter: Forklifts

9 Wylie Vlahovic had been dispatched for a day call on a five ton truck to this production. He was sitting at the commissioner plant and saw the set decoration people running the forklift to unload a truck. He told them that it was not their jurisdiction. The set decorator, Matt Rollins, indicated that they had not been sent a Teamster driver. Vlahovic who took over the running the forklift, contacted the dispatcher, Mike Evans, and asked that a new Teamster be dispatched. The new Teamster, Larry Tardiff, worked the forklift for the next two days. He moved set decorations items, and industrial material.

B. Secret Agent Man: Golf Carts

10 This production used the tunnels under the post office. It was very difficult to gain access to the tunnels. During pre-production golf carts were used by IATSE 891 members to pull cable into the tunnels. Kevin O'Leary drove such a golf cart. The grips, lighting, electrical, special effects and set decoration departments of IATSE 891 all used golf carts. The Teamster Coordinator provided one golf cart to each department and was initially helpful.

11 Later the Teamsters changed their position and said that only Teamsters could operate golf carts. An initial compromise was reached where IATSE 891 would use their own golf carts for their crew and gear and the Teamsters would use the golf carts to move the talent and other ancillary supplies. However, Teamsters changed their position the following day and stated that IATSE would not be provided with any golf carts.

12 On the second day of production, the Teamsters dispatcher sent five extra drivers to drive the

golf carts. Kevin O'Leary stated that he wanted to load his own equipment onto the site and asked for a golf cart. He states the Teamsters refused stating that it was not IATSE's jurisdiction to operate golf carts.

13 On the third day of the production, the Teamsters had left the golf carts and returned to catering duties. IATSE 891 went back to operating the golf carts. To wrap-up the production, IATSE 891 members used golf carts.

III. A Summary of Interviews

A. Nature of Issues in Dispute

14 The evidence of golf carts expanded to include All Terrain Vehicles (ATV), Gators, Snowmobiles and Bobcats. These vehicles are used primarily to transport people and equipment.

15 The evidence of forklifts expanded to include Man Lifts, Genie Lifts, Condors, Z-Booms, Lighting cranes, Chapman cranes, Blue Chip forklifts, Hyster forklifts, Scissor lifts and Skytracks. These are used primarily for transporting equipment and in the production of films - lighting, cameras and special effects.

16 The Teamsters claim that they have exclusive jurisdiction for the "operation of all equipment ... for any purpose whatsoever." If it has wheels and an engine, the Teamsters say that it is their jurisdiction.

17 However, the other parties state that any and all of this equipment is simply a "tool of the trade."

18 The one area of agreement appears to be that if a vehicle is driven full time then it falls within the Teamsters jurisdiction. Further, if a golf cart is used to transport cast then that also falls within the Teamsters jurisdiction. Conversely, if a vehicle is used in the Construction Department in a studio then it falls within IATSE 891's jurisdiction.

19 The area of dispute therefore is quite broad. It can be characterized as the operation of these vehicles in pre-production, production (filming) and in post-production whether at a studio or on location.

20 The departments that use these various vehicles include the following: Construction, Set Decoration, Special Effects, Greens, Grip, Lighting, and Electrical.

21 The nature of the dispute can be characterized as follows. A Teamster coordinator orders equipment for each department (i.e. Set Decoration). A Teamster driver delivers the materials or the equipment to the site (i.e. set decoration items) - either a studio or a location. These items are unloaded and then are delivered from the drop off point to the location of the filming. They may

then be moved around the location, set or stage. This mobile equipment may be used for a wide variety of purposes; moving material, rigged for lighting or cameras, etc. It is then taken back from the filming to the point of drop off, reloaded on the truck and then delivered to another location or returned to the rental facility. This can be true of items, goods, equipment and vehicles.

22 There is no dispute that the Teamsters drive the vehicles that deliver the material, equipment or vehicles to either the studio or the location. Further there is no dispute that IATSE will rig for instance, the crane with the camera or lighting and operate the lighting or camera.

23 What is in dispute is who loads and unloads the trucks at the delivery site ("first drop"), who moves it from the delivery site to the film location, who moves the equipment at the film location, who delivers the equipment back to the point of delivery, and who loads it back on to the truck. These tasks are in dispute at both the studio and at locations and in the various departments listed above.

B. Teamster Interviews

24 The Teamsters interviewed the following persons; Bruce Scott, Tom Milne, Jack Vlahovic, Rob Steves, Don Briscoe, Red Murphy, Tony Cusamano, Mike Evans, Dave Kennedy, Larry Tartoff, Wylie Vlahovic, Rob Vertuge and Mike Murphy. In summary, these Teamsters state that they deliver equipment and material to any studio or location. Most of their past experience concerned locations which they say are distinct from studios. When they arrive at a location (or studio) they operate the forklift to unload their deliveries. They then move that equipment and material from the drop off point to wherever it is to be used on the location. Once on the location they then move it from scene to scene.

25 Specifically, in regard to golf carts, ATVs, snowmobiles, bobcats, these Teamsters state that they move all cast, crew and equipment, including all the equipment and IATSE crew.

26 In regard to forklifts, the Teamsters interviewed stated that they load and unload their trucks at any location. They do this for all departments listed above, including construction. They have also used forklifts to assist the construction department in the placing of sets and the moving of materials and equipment. They have assisted in the set decorations departments, moving set pieces between sound stages, placing set decoration items and unloading set decoration trucks. In special effects they have operated forklifts to create those special effects on films and also assisted both the grips and electrical departments.

27 The Teamsters further state that they exercise exclusive jurisdiction in California in regard to forklifts. Further they state that there is no loss of efficiency in assigning exclusivity of golf carts and forklifts to the Teamsters. Existing Teamster drivers who are already dispatched to the production, can, when not making deliveries, operate the forklifts. In addition, they have a radio system that allows them to contact any Teamster on site and easily dispatch such Teamsters to operate forklifts or golf carts.

C. IATSE 891

28 IATSE 891 interviewed the following persons: Gavin Craig, John Ford, Joanne Quirk, Rob Maier, Ken Anderson, Kevin O'Leary, Rory Cutler, Frank Haddad, Elmar Theissen, Beth Hanham, Marina Sprungala and Mike Vezina. These IATSE members stated that when equipment is delivered to a site, location or studio, they unload the delivery for all of their departments. Occasionally a Teamster will assist. Many Teamster drivers (especially day call) do not assist.

29 Secondly, the IATSE members move the equipment and or material from the drop off point to the filming location and then make all subsequent moves of that equipment and materials during filming. When the use for that equipment has finished they then return the equipment and materials back to the drop off point and load it back on to the truck. Once again, Teamsters have assisted, but usually under the direction of the Head of a particular department.

30 Specifically, in regard to Golf Carts, ATVs, Gators, Snowmobiles, Bobcats, these vehicles are used by IATSE members as an extension of push carts or dollies. IATSE claims that it has exclusive jurisdiction when any of this equipment is used for movie production. These particular kinds of vehicles are used to assist in moving IATSE crew and equipment (for example, lighting or cables). IATSE members state that there is no distinction to be made between studio and location or between pre-production, production and post-production. They state that the operation of this equipment by Teamsters members (except for the transportation of cast) is unusual and exceptional.

31 IATSE 891 states that Teamsters do not operate forklifts for the Construction Department, the Set Decoration Department, Greens Department, Grips Department, Special Effects Department or Electrical Department or any other IATSE department. The Teamsters operation of these vehicles is once again exceptional or unusual or under the direction of an IATSE Department Head.

32 Special effects drivers can be an exception because they own their own equipment and they are usually a member of both trade unions.

33 The IATSE membership is trained in the operation of all these vehicles both as part of their work experience and also in formal training programs. They state that the practice in the United States, particularly in New York and the U.S. South, is that the forklift is a tool of the trade. To decide otherwise would produce significant inefficiencies.

D. IATSE 669

34 IATSE 669's jurisdiction is specific to cameras. Its concern is the operation of these cameras when a camera is mounted on a vehicle. Two persons were interviewed, Terry Rutherford and John Bartley. In their view, IATSE 669 has exclusive jurisdiction over all matters concerning the operation of a camera; for example, the mounting of a camera on a vehicle such as a golf cart or a forklift. They state that the decision of who operates equipment is ultimately a decision of management; in particular - the Director of Photography, First Assistant Director and the Key Grip.

Their decision is normally based upon core skills, safety and efficiency. What the Teamsters propose is clearly inefficient.

E. AMPTP

35 The Employer interviewed four witnesses: Lou Shore, Brent O'Connor, George Horie and Warren Carr. The Employer representatives stated that in British Columbia golf carts and forklifts have always been a tool of the trade. They further state that in the United States the practice varies from city to city and region to region. They conclude that since both forklifts and golf carts are used periodically on a production it would not be cost effective to assign these vehicles to the exclusive jurisdiction of one union. Finally, there have not been disputes concerning the operation of forklifts or golf carts in the past.

IV

Preliminary Analysis and Comments

36 First, as set out in the policy decision of September 24, 2001, there would be some difficulty in placing the appropriate weight on all the past practice evidence. Repeatedly there are statements by different individuals, who while working on a certain production, operated a certain piece of equipment to perform the specific duties in dispute - loading and unloading vehicles and moving equipment and materials around a studio or location for various departments. Rarely however, is there evidence of a repeated practice from one employer to the next, establishing an express or an implied agreement of all parties as to how the disputed work was to be performed.

37 Second, it is clear from the interviews of all persons, that the Teamsters, who assert exclusive jurisdiction, have not demonstrated that such exclusive jurisdiction exists in the actual practice and experience of the BC Film Industry. What has been shown is that some transportation coordinators, after they order the equipment requested by each of the departments, make every attempt to ensure that a Teamster is placed on all such equipment. Further, some Teamster drivers insist on loading and unloading their trucks. Further, certain owner-operators also attempt to assert jurisdiction over the operation of different equipment. Finally, union officials and officers, as they perceive their duty, insist on Teamsters operating any and all equipment. Moreover, there are instances where Teamsters assist IATSE members and work under the direction of IATSE Department Heads.

38 However, what is more clear from the statements as a whole, is that IATSE members have for a long period of time in British Columbia, used golf carts and all types of forklifts as a tool of their trade. They use this equipment either at the studio or on location. This is true of all equipment and materials used in the production of filming in either the studio or on location.

39 When it simply comes to the loading and unloading of trucks the practice is once again mixed. Certain IATSE or Teamster members insist on unloading or loading their particular truck. For example, the Set Decoration Department insists on unloading set decoration trucks because of the

importance of the attention to detail, the value of goods, the importance of continuity and how certain items fit into production, and how such items should be stowed in the truck.

40 Conversely, certain Teamsters, who view themselves as responsible for the safety of a loaded truck, take a special interest in how that truck is actually loaded.

41 The practice in the United States in regard to golf carts and forklifts varies from region to region and either party can point to examples to support their position.

42 Ultimately the decision is management's to make under their management rights clause. This discretion is constrained by both statutory (Labour Code and Worker's Compensation Act) and arbitral law. In principle those constraints are the skills required and safety. Those are, of course, the restraints accepted by management under its management right's clause. The third factor is of course efficiency.

43 If there is a dispute as to who performs the work, management makes its decision. If there is a disagreement over the decision then the matter is grieved under the Jurisdictional Resolution Agreement. The make whole remedy for any improper assignment of a jurisdiction is monetary (wages). There is an expedited process; however if the matter is delayed, the union and employee will still be made whole. Thus the rule that the union works now and grieves later is applicable to all jurisdictional disputes. Any work stoppage under the name of jurisdiction is subject to discipline as is any other improper conduct.

44 Thus my preliminary analysis and comment in regard to the issue of golf carts (with the exceptions noted) and forklifts, based on the interviews to date, is that they appear to be a tool of the trade.

qp/i/qlmmm