

ONTARIO LABOUR RELATIONS BOARD

3216-09-HS United Brotherhood of Carpenters & Joiners of America, Local 1946, Applicant v. **Ellis-Don Corporation** and Dan Dignard, Inspector, Responding Parties v. International Brotherhood of Electrical Workers, Local 120, Intervenor.

BEFORE: Mark J. Lewis, Vice-Chair.

APPEARANCES: Jesse M. Nyman and Kevin Hoy for the applicant; Andrew Murray, Rick Romkema and Brian Montanaro for Ellis-Don Corporation; Graham Williamson, John Gibson and Daniel Trela for International Brotherhood of Electrical Workers, Local 120; Joe Ferraro for Dan Dignard, and the Ministry of Labour.

DECISION OF THE BOARD: August 9, 2011

1. This is an appeal pursuant to section 61(1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended (the "Act" and/or the "OHSA"), filed by United Brotherhood of Carpenters and Joiners of America, Local 1946 (the "Carpenters"), of the order issued by Inspector Dan Dignard in Field Visit Number 5973556 dated January 21, 2010. Ellis-Don Corporation ("Ellis-Don"), the general contractor for the relevant project, has intervened in support of the Carpenters' appeal. International Brotherhood of Electrical Workers, Local 120 (the "IBEW") has intervened in this matter in support of the Inspector and his order.

2. By way of background, the Board notes that, at the same time as they filed this section 61(1) appeal, the Carpenters also filed an application pursuant to section 61(7) of the Act (OLRB File No. 3215-09-HS) which resulted in the Board issuing a decision, dated March 3, 2010, suspending Inspector Dignard's order (see *Ellis-Don Corp.*, [2010] OLRB Rep. March/April 262).

The Facts

3. The facts relevant for this application were essentially not in dispute and were generally agreed to by all of the parties.

4. As noted above, Ellis-Don was the general contractor for the project in question which involved constructing the (new) North Tower for the Royal Victoria Hospital in London, Ontario. The work which is the subject of Inspector Dignard's order formed a very small part of the total work on this project and involved the mounting of bed locator frames on the walls of certain rooms in the new North Tower. In the March 3rd decision concerning the Carpenters' suspension request, the Board (differently constituted) described this work as follows at pages 266-67:

13. Local 1946 set out in some detail the work its members do in respect of mounting the bed locators on the wall. It appears to me from the parties' submissions there is no material difference among the parties about what is done to install the bed locators. Local 1946 described that work as follows at paragraphs 7 through 10 of schedule A of its application:

7. A bed locator is a pre-manufactured headboard that is affixed to the walls of the rooms. The bed locator includes a preassembled, pre-installed electrical outlet attached to the bed locator's metal frame. The frame is attached to the way by affixing eight (8) screws or plugs at the point where the bed will be located. The frame is then covered with a prefabricated fibreglass panel.
8. There are three sets of wires encased in flexible metal conduit at the location where each bed locator is affixed. The flexible metal conduits are attached to a prefabricated head wall. The conduit was preassembled and pre-installed on the head walls and the head walls were installed by members of the Carpenters without objection for the IBEW or the Ministry. Members of the Carpenters also installed the drywall and cut holes in the dry wall for the flexible metal conduit. Members of the IBEW did pull the flexible metal conduit from the head wall through the holes in the drywall. When the bed locator frame is affixed to the wall, the employee installing the frame will have to place the metal conduit through pre-fabricated holes in the frame.
9. The employee installing the frame does not connect the wiring in the flexible metal conduit to the preassembled, pre-installed outlet on bed locator/headboard's frame. That wiring connection is performed by a member of the IBEW. The fibreglass cover is then placed on the metal frame after the conduit is wired into the bed locator's preassembled, pre-installed electrical outlet.
10. At no time during the affixation of the bed locator is there any current passing through any of the wiring. During the inspection the Inspector was satisfied of this fact.

As discussed in more detail hereinafter, the evidence which was called before me established some very minor differences to the description set out above concerning how the work was performed, and the parties certainly took issue about the exact terminology which should be used to describe certain of the physical functions being carried out, but, generally, the bed locator work (which is the subject of the Order) is as the Board described it in its March 3rd decision.

The Order

5. On January 21, 2010, Inspector Dignard visited the area of the Royal Victoria Hospital project where members of the Carpenters were performing the above noted work. This site visit resulted in him issuing the following order:

A worker shall not carry out work in a scheduled trade unless he or she is authorized to carry out work in that trade under the Trades Qualification and Apprenticeship Act. At the time of the visit work was being done by Carpenters to mount Bed Locators in the hospital rooms. Upon consultation with the workplace parties and review of the Skill Set for Electricians it was determined that the work being done shall be done by Electricians. The order was complied with at the time of the visit.

In the narrative portion of the Order Form, he stated the following, in support of the above set out order:

Complaint about who is installing Bed Locators. Work is being done by Carpenters and Electricians feel that it is electrical work.

The unit being installed is a Bed Locator which upon examination was discovered to be an electrical raceway for power and data wiring.

The work being done by Carpenters is installing the electrical raceway or Bed Locator on the wall and pulling three flexible metal conduits through the back of the raceway.

It has been determined that the work being done is not a Jurisdictional issue or dispute but rather the work is part of the skill set for 309A Electricians as set forth by Ministry of Training Colleges and Universities in document R.R.O. 1990, Regulation 1051 Electrician.

This document states:

Electrician means a person, who,

(a) lays out, assembles, installs, repairs, maintains, connects or tests electrical fixtures, apparatus, control equipment and wiring for systems of alarm, communication, light, heat or power in buildings or other structures.

The Regulations

6. As all of the parties agree, this application involves the *Training Requirements of Certain Skill Sets and Trades Regulation* (O. Reg. 572/99) made under the Act, the *Electrician Regulation* (O. Reg. 1051, R.R.O. 1990) made under the *Trades Qualification and Apprenticeship Act* (the "TQAA"), and, arguably, the *General Carpenter Regulation* (O. Reg. 1056, R.R.O. 1990) also made under the TQAA. The relevant portions of these regulations, respectively, state as follows:

Regulation 572/99

1. In this Regulation,

"scheduled skill set" means a restricted skill set within the meaning of the *Apprenticeship and Certification Act, 1998* that, for the purposes of section 12 of that Act, is included in a trade or other occupation, if the trade or other occupation is listed in Schedule 1;

"scheduled trade" means a certified trade within the meaning of the *Trades Qualification and Apprenticeship Act* that is listed in Schedule 2.

...

3. (1) A worker shall not carry out work in a scheduled trade unless he or she is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
- (2) Every employer who employs a worker in a scheduled trade shall ensure that the worker is authorized to carry out work in that trade under the *Trades Qualification and Apprenticeship Act*.
- (3) For the purposes of this section, a worker is carrying out work in a trade if that work is part of the trade as set out in the regulation made

under the *Trades Qualification and Apprenticeship Act* and referred to in Schedule 2.

Regulation 1051

1. In this Regulation,

“certified trade” means the trade of electrician;

“electrician” means a person who,

- (a) lays out, assembles, installs, repairs, maintains, connects or tests electrical fixtures, apparatus, control equipment and wiring for systems of alarm, communication, light, heat or power in buildings or other structures,
- (b) plans proposed installations from blueprints, sketches or specifications and installs panel boards, switch boxes, pull boxes and other related electrical devices,
- (c) measures, cuts, threads, bends, assembles and installs conduits and other types of electrical conductor enclosures that connect panels, boxes, outlets and other related electrical devices,
- (d) installs brackets, hangers or equipment for supporting electrical equipment,
- (e) installs in or draws electrical conductors through conductor enclosures,
- (f) prepares conductors for splicing of electrical connections, secures conductor connections by soldering or other mechanical means and reinsulates and protects conductor connections, or
- (g) tests electrical equipment for proper function,

but does not include a person who is permanently employed in an industrial plant at a limited purpose occupation in the electrical trade.

2. (1) The certified trade is composed of two branches.

(2) Branch 1 is the trade of a construction and maintenance electrician as defined in clause (a) of the definition of “electrician” in section 1.

(3) Branch 2 is the trade of a domestic and rural electrician who performs the work of an electrician in the construction, erection, repair, remodelling or alteration of houses, multiple dwelling buildings containing six or fewer dwellings, or buildings or structures used for farming, or who performs maintenance to electrical equipment in houses, multiple dwelling buildings containing six or fewer dwellings or farms.

3. The trade of electrician is designated as a certified trade for the purposes of the Act.

Regulation 1056

1. In this Regulation,

“certified trade” means the trade of general carpenter;
“general carpenter” means a person who is experienced in all of the units as defined in Columns 1 and 2 of Schedules 1 and 2;

“unit” means a subject in Column 1 of Schedule 1 consisting of the instruction set opposite the subject in Column 2 of Schedule 1 and a subject in Column 1 of Schedule 2 consisting of the instruction set opposite the subject in Column 2 of Schedule 2.

...

Schedule 2 General Carpenter

5 Finishing (Interior): - Doors. Windows. Horizontal trims. Finished floors. Built-in fixtures. Dado and wainscot treatments. Special hardware.

Decision

7. As noted above, the work which the members of the Carpenters performed involved pulling the electrical conduit, installed earlier by members of the IBEW, through holes in the backs of the bed locator frames before mounting them (without their covers) on the walls. There was a dispute between the parties as to whether Inspector Dignard believed there was a chance that electrical current might be passing through any of the wiring at the time, and, therefore, as to whether his order related, at least in part, to this possibility. Accordingly, evidence was called concerning the state of the electrical wiring on the relevant floors, and in the relevant rooms, where the members of the Carpenters were mounting the bed locator frames.

8. The evidence which was called before me established that Mike Mazak, a carpenter employed by Ellis Don who installed a great many of these frames, was instructed to, and did in fact, check to see if the wires were *live*, before attempting to pull the conduit through the holes in the bed locator frames. To do this he used a small *tester* which he had been provided with by one of the electrical supervisors working on the project. Notwithstanding Mr. Mazak's checks, I am satisfied that Inspector Dignard did not believe there was a realistic possibility that any of the wiring might be live at the time when Mr. Mazak or any of the other carpenters were assigned to install the bed locator frames. The evidence of all of the witnesses made clear that before any of the carpenters began working in any of the rooms they always checked with electrical supervisors to make sure that the electricians had *locked-out* the relevant portions of the electric system and that there was no chance that any electrical current was passing through the wiring in the rooms.

9. This finding is consistent with the order which Inspector Dignard ultimately issued which focussed entirely on the work being performed being electricians' work under the relevant regulations and which contained absolutely no reference to the possibility of the conduit being live. The possibility of live electrical wires protruding from the walls of these hospital rooms would have posed a major safety risk to a great many workers, including the painters and drywall tapers who were working in these rooms at roughly the same time as the carpenters who were mounting the bed locator frames. In these circumstances, I find it impossible to believe that

Inspector Dignard would have completely ignored such a serious risk, and focussed exclusively on the bed locators in his January 21, 2010 order, unless he was entirely satisfied that, prior to any work taking place in these rooms, the electricians had insured that none of the wiring was live.

10. Accordingly, Inspector Dignard's order and, therefore, this application do not involve an assessment of any real hazards to health and safety which were present on this jobsite. Essentially, Inspector Dignard found the performance of the work, described in his order, to be contrary to O.Reg. 572/99 solely as a result of his interpretation of (two of) the regulations set out above. It was this interpretation which led him to issue his order, as opposed to any specific and direct safety hazards which he observed on January 21, 2010, when he visited the site.

11. My comments concerning the basis upon which Inspector Dignard came to issue his order are in no way intended to minimise the concerns which he identified and dealt with therein. Rather, this analysis provides the context in which the order must be assessed for the purposes of this appeal. Here, Inspector Dignard did not issue any orders to Ellis-Don because of the manner in which Mr. Mazak or any of the other carpenters were mounting the bed locator frames. Rather, he issued his order simply because those men were performing that task at all, without being licensed electricians. In his view, the combination of Regulation 1051 and Regulation 572/99 resulted in the finding that the work in question was being performed in violation of the regulations, and therefore his order requiring electricians to perform the work was appropriate.

12. Quite simply, under the applicable regulations only individuals who meet the qualifications established for the electrician trade can *safely* perform the work of electricians. Under section 1 of Regulation 1051, such work includes the assembling, installing and connecting of electrical fixtures, along with installing and drawing electrical conductors through conductor enclosures. Therefore, if mounting the bed locator frames is in fact such work, as Inspector Dignard ultimately concluded was the case, then it is electricians' work which they alone can *safely* perform. Conversely, if mounting the bed locators is the installation of built-in fixtures, as the carpenters assert, then it is not electricians' work but is rather work which carpenters can, and regularly do, carry out.

13. As all of the parties noted in their arguments, many of the cases which it has decided concerning the intersection of regulations under the OHSA and the TQAA have required the Board to engage in a somewhat detailed analysis of the principles of statutory interpretation. This case, however, does not necessarily require such an approach. This is because, as its principal and simplest position, the Carpenters assert that, as a matter of fact, the bed locator frames are not electrical fixtures or conductor enclosures. Therefore, they conclude that merely mounting these frames on the walls is not work which comes within the definition in section 1 of Regulation 1051 and is therefore not work which must be performed by electricians pursuant to section 3 of Regulation 572/99.

14. The Carpenters describe the bed locators as headboards for the hospital beds and therefore as being built-in fixtures under the applicable portions of Regulation 1056. However, and as asserted by the IBEW, these are certainly not bed headboards as that term is traditionally understood. These bed locators do not form part of the structure of the beds themselves and are not even attached to the beds. In many ways the entire point of these bed locators is that they are not part of the beds but rather are objects which remain physically attached to the walls of the rooms, at specifically designed points, while the beds are moved either from room to room or within the rooms.

15. The mere fact that the bed locators are not (traditional) headboards does not, however, mean that they are, in and of themselves, electrical fixtures and/or conductor enclosures. In this respect the guide produced by Amico Corporation, the manufacturer of the particular products installed at the Royal Victoria Hospital, is particularly illustrative. It describes its product as being a *bed locator system* which is made-up of various components which include the frame (which is mounted to the wall), the enclosure (which is the cover and, when attached to the frame, functions as a headboard) and various electrical and communication devices and electrical raceways (which are contained within the frame). As Amico's guide makes clear, each particular system is designed in accordance with the needs of the particular client concerned and in accordance with *job specific shop, and as built, drawings*. With respect to the internal components of these bed locator systems, the guide states:

Each bed locator system has shall [sic] hold up to four (4) electrical/communication devices on each side of the unit. It shall contain electrical raceways to enclose electrical wiring for each type of power (critical, normal & low voltage/communication).

16. This particular portion of the guide, concerning what each bed locator system may *hold*, is critical in determining exactly what the frames which the carpenters were mounting on the walls actually are. Specifically, these frames are simply one component of an overall system which also includes, within it, electrical fixtures, apparatus and conductor enclosures but the frames are not electrical fixtures, apparatus and conductors enclosures in and of themselves. Further, the particular internal electrical components of the bed locator systems, are, in certain ways irrelevant to their primary function. As the Carpenters pointed out in their final submissions, if all that was required in these circumstances was electrical outlets/communication devices at specific points in the hospital rooms it would be much easier and cheaper to build these straight into the walls of the rooms rather than making them part of the bed locator systems. The primary reason why bed locator systems are used at all is, as the name suggests, to provide the precise location for the beds (which are on wheels and are frequently moved between and within rooms), through the use of the fixed headboards, so that they can be easily and accurately lined-up under the head walls, which themselves contain various electrical and medical gas outlets and the communications systems, mounted on the walls above each bed's desired location. Accordingly, based on the evidence which was presented before me, the bed locator frames which the carpenters were installing are not electrical fixtures, apparatus and conductor enclosures, but are rather built-in fixtures.

17. Obviously, and as is made clear by the presence of UL (Underwriters Laboratories) labels and seals, there are electrical fixtures and electrical raceways contained within each overall (bed locator) system. All work directly involved with running the conduit through those raceways and connecting those fixtures, is quite clearly the work of electricians. However, the carpenters did not perform any of that work. At most, their only involvement with the electricians' work concerned pulling the conduit (which was protruding from the walls) through the holes in the frames. They did this solely so that they could perform their own work, mounting the frames to the walls. Thereafter, the Carpenters did not run the conduit through the raceways or make any of the electrical connections. Accordingly, such work is no more electricians' work than is the cutting of holes in the drywall and pulling (enclosed) conduit through those holes, which is work which carpenters do regularly, and without objection. This clear distinction between work associated with the mounting of the frames and work related to connecting the enclosed electrical fixtures is also reflected in the Amico guide, which contemplates, and establishes different requirements for, *installing contractors*, responsible for mounting the

frames and *electrical contractors*, responsible for wiring the electrical fixtures contained within the frames.

18. As such, the mounting of the bed locator frames which was performed at the Royal Victoria Hospital project is not electrical work within the meaning of section 1 of Regulation 1051, and, such work is not work which must be performed by electricians pursuant to section 3 of Regulation 572/99. I therefore find that the order issued by Inspector Dignard concerning the performance of that work was inappropriate.

19. Accordingly, the Board allows this appeal and, pursuant to section 61(4) of the Act, rescinds Inspector Dignard's order dated January 21, 2010.

"Mark J. Lewis"

for the Board