

IN THE MATTER OF AN ARBITRATION BETWEEN:

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 & LABOURERS'
INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183

("the Unions")

and

EARTH BORING COMPANY LIMITED

("the Employer")

and

GREATER TORONTO SEWER AND WATERMAIN CONTRACTORS ASSOCIATION

("GTSWCA" or "the
Intervenor")

Appearances for the Unions:

Steven Sagle, Counsel Local 793
Mike Scott, Local 793
Andrew Black, Associate Counsel Local 183
Declan Kiernon, Local 183

Appearances for the Employer and the Intervenor:

Richard J. Charney, Counsel
Richelle Pollard, Co-Counsel
Gene Woodbridge, CEO Earth Boring Company Limited
John Currey, Operations Manager, Earth Boring Company Limited
Giovanni Cautillo, Executive Director GTWSCA

A hearing in this matter was held at Toronto, Ontario on December 6, 2018.

THIRD INTERIM AWARD

1. This interim award addresses production issues that have arisen in connection with the direction provided by previous interim awards dated June 28 and October 5, 2018.

2. Briefly stated, the Unions have continuing concerns that the documentation delivered to them by the Employer is not fully responsive to the terms of those interim awards; however, the Employer maintains that it has documented and produced the data in its possession and has also explained its understanding of issues to be confronted in attempting to derive additional data from the Exaktime supplier.

3. In an effort to resolve the pre-hearing production issues before the next scheduled hearing date, the parties are to meet at the GTSWCA offices on January 14, 2019. The Employer will demonstrate to the Unions the operation of the technology and respond to their questions regarding the use, capabilities and parameters of Exaktime as it is utilized by the Employer, including, to the extent requested and feasible, any optional functionality of the technology that the Employer has declined to acquire or implement.

4. The Unions intend to engage one or more individuals to advise them about the technology and its use by the Employer. The Unions expect to rely on such individual(s) to assist them in formulating questions and understanding the significance and implications of information presented by the Employer. The Unions are to notify the Employer of the name(s) and affiliation(s) of any individual(s) they intend to have with them for the demonstration.

5. It is understood that the demonstration will be conducted so as to afford the Unions an opportunity to observe how or the extent to which the technology enables the Employer to monitor activities of its employees in the field. That is, during their meeting with the Employer on January 14th the Unions will be able to observe the functionality or output of the technology that would be available to the Employer at that time as opposed to historical data for the period addressed in the previous interim awards. To that end, the demonstration is to be conducted, in part, to include the Unions' being allowed to have contact with and direct one or more employees to observe them (or the results of their response to direction) via the Exaktime application.

6. To the extent that any additional data is required in response to the second bullet point in paragraph 26 of the interim award dated June 28, 2018, the Employer is not obliged to produce those data for all of its then employees, but shall produce the data for four employees, two to be identified by Local 183 and two to be identified by Local 793. If the Employer wishes to produce such data for more than four employees it shall be at liberty to do so.

7. If any of the parties encounters a difficulty that interferes or might interfere with the arrangements for the demonstration on January 14, 2019, that should be communicated immediately and steps taken to ensure that the parties are ready to proceed as scheduled on February 20, 2019.

8. The parties may contact me to resolve any issues arising in the implementation of this interim award or to attempt to determine any other preliminary matter on a pre-hearing basis.

Decision released this 7th day of December 2018.

A handwritten signature in black ink, appearing to be 'DR', with a long horizontal stroke extending to the right.

Derek L. Rogers
Arbitrator