

Indexed as: BCSSAB 7 (1) 2014

IN THE MATTER OF THE SAFETY STANDARDS ACT  
SBC 2003, Chapter 39

AND IN THE MATTER OF an appeal to the  
British Columbia Safety Standards Appeal Board

BETWEEN:            **EMPLOYEE OF A PULP/PAPER COMPANY**            APPELLANT

AND:                **BRITISH COLUMBIA SAFETY AUTHORITY**            RESPONDENT

**REASONS FOR DECISION**

**Introduction**

[1] The Appellant is an employee of a Pulp – Specialty Paper in British Columbia. He wishes to qualify as a 4<sup>th</sup> Class Power Engineer and brings this appeal against the British Columbia Safety Authority (the “Respondent”) with respect to his desire to rewrite the 4<sup>th</sup> Class Power Engineering Exam Paper Part B (the “Exam”) after failing the exam on three previous attempts. The Respondent states that it is policy within the British Columbia Safety Authority that when candidates fail to pass an examination on three successive attempts that the candidate is not permitted to re-write the examination for a fourth attempt without first completing an up-grade course. The Appellant seeks an exemption from the application of this policy and wishes to re-write the examination without taking an upgrade course.

## **Issues**

[2] The only issue before the Board in this Appeal is whether the Appellant ought to be permitted to write the Exam for a fourth time without taking an upgrade course.

### **Position of the Appellant**

[3] As stated above, the Appellant submits that he ought to be permitted to re-take the Exam for a fourth time without completing an upgrade course. In support of his position, the Appellant provided the Board with a written statement. The Appellant states that he is currently working at a Pulp – Specialty Paper and is learning and understanding more about what a power engineer does and the responsibilities involved through this work experience. He states that he has a reading disability and finds that actually seeing the work unfold in front of him on the job site provides him with a better understanding of the concepts and how the equipment works than simply reading the material in a textbook. The Appellant states that he believes that he will gain the additional knowledge required to pass the Exam from his work experience.

[4] In support of his position, the Appellant notes that his exam mark has gone up from 55% on his first attempt to 59% on this third attempt. He states that if he is permitted to re-take the Exam a fourth time as requested that he will do the following to prepare:

- a) re-read the course material;
- b) do the online course exams;
- c) review his notes;
- d) go through the computer based training at work;
- e) have co-workers that have volunteered to mentor him help him understand concepts;
- f) watch You-tube videos for areas like refrigeration that isn't found at his place of work; and

g) go back and ask his instructors to help with any areas that he struggles with.

[5] In further support of his position, the Appellant has also submitted a one page typed note from a 2<sup>nd</sup> Class Power Engineer, (the “Letter of Reference”) to the BC Safety Authority in which he offers his support toward the Appellant’s request to re-challenge the Exam. In the Letter of Reference, the 2<sup>nd</sup> Class Power Engineer notes that the Appellant is a conscientious and diligent worker and has demonstrated a willingness and eagerness to learn about boilers, generation and power engineering.

### **Position of the Respondent**

[6] The Respondent opposes the Appellant’s appeal and states that all aspects of the examination process at issue in this appeal are reasonable and there is no basis for disturbing the Appellant’s result.

[7] In particular, the Respondent states that:

- a) the process whereby the Exam is created is a thorough and appropriate process;
- b) the content of the Exam is appropriate;
- c) the course materials used by the Appellant fairly represent the syllabus of the Exam; and
- d) it is reasonable to require candidates to complete an upgrade course prior to a fourth attempt at passing the examination.

[8] In support of this position, the Respondent has submitted two affidavits to the Board. The first is the Affidavit of the Provincial Safety Manager, sworn June 20, 2014 (the “PMS Affidavit”). The second is the Affidavit of the Power Engineering Instructor, sworn June 20, 2014 (the “Instructor Affidavit”).

[9] Both the Respondent’s submissions and evidence provide detailed material regarding the examination process, content of the Exam and course

materials. I will not set this material out in detail in these reasons for decision as the Appellant has not challenged the suitability of the Exam process. As set out above, the only issue before the Board in this Appeal is whether the Appellant ought to be permitted to write the Exam for a fourth time without taking an upgrade course.

[10] With respect to the requirement that the Appellant take an upgrade course, the Respondent states that after three successive failures of the Exam that the only reasonable inference is that the Appellant requires further knowledge of the subject area. The Respondent further states that successful completion of the Exam is part of assuring that candidates have the requisite knowledge to operate safety sensitive equipment properly.

[11] The Respondent states that it relies on section 3(2) of the *Safety Standards General Regulation* ( the “SSGR”) for authority to require completion of an upgrade course prior to making a 4<sup>th</sup> attempt to pass the Exam. Section 3 of the SSGR reads as follows:

**Re-examination after failure to pass an examination**

- 3** (1) If an individual, on their initial attempt, fails to pass any required examination for a certificate of qualification, the individual may not take the examination again until 30 days after the previous examination.
- (2) If an individual fails to pass an examination for a certificate of qualification on the second or any subsequent attempt, a provincial safety manager may stipulate terms or conditions in respect of the length of time that must elapse before the individual may take the examination again.

[12] The Respondent admits that section 3(2) is somewhat ambiguous as it refers expressly to “length of time”, but states that on a purposive reading section 3(2) must be interpreted to include the ability to set terms and conditions on subsequent attempts to write the Exam.

[13] In this regard the Respondent submits that section 3(2) of the SSGR must be interpreted in accordance with section 8 of the *Interpretation Act*, which states as follows:

**Enactment remedial**

8. Every enactment must be construed as being remedial, and must be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

[14] Accordingly, the Respondent states that simply prohibiting candidates from re-writing the Exam for a specified period does nothing to increase the candidates' knowledge and ability to operate equipment safely. Further, the Respondent states that making candidates wait an extended period for subsequent examination attempts, without doing anything to promote an increase in their knowledge, could be seen as arbitrary and punitive and would contradict the basic premise of the legislation, which is to promote safety through performance of regulated activity by highly skilled and qualified individuals.

[15] In addition to section 3(2) of the SSGR, the Respondent submits that section 27 of the *Safety Standards Act* (the "Act") also applies in that it permits the Safety Manager to impose terms or conditions on a "permission", a term that is defined as a permission "authorized by this Act." Section 27 of the Act reads as follows:

**Issue of permissions**

27. (1) If required under this Act, a person must obtain a permission to undertake regulated work or use a regulated product.

(2) If a person applies for a permit, certificate or other permission and a safety manager or safety officer refuses to issue it, or issues it with terms or conditions attached to it that are not requested or agreed to by the applicant, the safety manager or safety officer who deals with the application must inform the applicant and, if the applicant requests written notice, give the applicant written notice of that decision.

(3) A permission issued under subsection (1) is subject to terms and conditions provided for under the regulations or attached to the permission by a safety manager or safety officer....

[16] The Respondent states that eligibility to write the Exam is a permission under the Act and that section 27 permits the Safety Manager to provide conditions for writing the Exam.

### **Analysis**

[17] A review of the Appeal Record indicates that the Appellant has passed the required course of training and it is now Part B of the Exam that is causing the Appellant difficulty with respect to obtaining qualification as a 4<sup>th</sup> Class Power Engineer. He has failed the Exam three times and wishes to write the Exam a fourth time.

[18] The requirements for qualification as a 4<sup>th</sup> Class Power Engineer are set out in the *Safety Standards General Regulation*, B.C. Reg. 105/2004 (the "SSGR"). Section 2 of the SSGR states:

#### **Requirements for certificate of qualification**

- 2** An applicant for a certificate of qualification must pay any required fees and, subject to the regulations respecting the particular discipline,
  - (a) provide proof, acceptable to a provincial safety manager, of the applicant's relevant training and work experience, and
  - (b) pass any required examination for that certificate.

[19] Section 19 of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, B.C. Reg. 104/2004 (the "Power Engineer Regulation") sets out further detail with respect to what is required to apply for a fourth class power engineer's certificate:

## **Application for fourth class power engineer's certificate of qualification**

**19** (1) An applicant for a fourth class power engineer's certificate of qualification must

(a) be the holder of a third class marine engineer (motor) certificate of competency, or

(b) have completed a fourth class power engineering course approved by the provincial safety manager or be the holder of an engineering degree approved by the provincial safety manager and have been employed

(i) for a period of not less than 6 months as a power engineer in a fifth class plant in a position requiring a fifth class power engineer's certificate of qualification,

(ii) for a period of not less than 6 months as a power engineer trainee in

(A) a power plant that exceeds 10 m<sup>2</sup> of boiler capacity,

(B) a steam heating plant that exceeds 30 m<sup>2</sup> of boiler capacity,

(C) a fluid heating plant or low pressure thermal fluid plant that exceeds 150 m<sup>2</sup> of boiler capacity, or

(D) a low temperature low pressure fluid plant that exceeds 300 m<sup>2</sup> of boiler capacity, or

(iii) for a period of at least 18 months acquiring experience acceptable to a provincial safety manager in the operation, design, construction, repair or maintenance of equipment to which this regulation applies, and have successfully completed a fourth class power engineering course that has been

approved by a provincial safety manager or provide proof of having an equivalent technical educational background that is approved by a provincial safety manager.

(2) and (3) Repealed. [B.C. Reg. 134/2009, s. 24 (f).]

(4) Despite subsection (1) but subject to section 7 (2) and (3), a fourth class power engineer's certificate of qualification may be issued to a person who holds a diploma issued after completing a one year full time day program in fourth class power engineering that has been approved by a provincial safety manager.

[20] As set out earlier in this decision, Section 3(2) of the SSGR establishes that certain restrictions may be placed on candidates that have failed to pass the required examinations. I note that the legislation only permits the Safety Manager to stipulate terms or conditions respecting the length of time that must pass before a candidate may retake an examination. There is no mention of other sorts of conditions. In this regard, the Respondent has submitted that section 27 of the Act permits the Safety Manager to put conditions on permissions granted under the Act. After reviewing section 27 of the Act I cannot agree that this section of legislation permits the Safety Manager to put extra conditions on eligibility to write the Exam. Section 2 of the GSR and section 19 of the Power Engineer Regulation set out the requirements that must be in place to be eligible to write the exam. Section 3(2) of the GSR places further time limitations on when a candidate may write the Exam in circumstances where they have previously failed the Exam. A candidate sitting to write the Exam is not applying for a certificate. They are completing one of the requirements needed to apply for the certificate and must meet the criteria outlined in the legislation.

[21] A review of the form of Application for Examination that the Appellant had to fill out and submit to the Safety Authority states as follows:



....

6. If an examination candidate fails to pass an examination on their 1<sup>st</sup> attempt, the candidate may not take the examination again until 30 days after the previous examination.
7. If an examination candidate fails to pass an examination on their 2<sup>nd</sup> attempt, the candidate may not take the examination again until 60 days after the previous examination.
8. If an examination candidate fails to pass an examination on their 3<sup>rd</sup> or subsequent attempts, the candidate may not take that particular examination again for a period of 6 months, and shall provide proof of having acquired acceptable upgrading or re-training to the Provincial Safety Manager for that particular examination. Please refer to our website for information on approved courses.

[22] This summary outlines the Safety Authority's policy regarding the retaking of the Exam as submitted by counsel for the Respondent. However, as stated above, the legislation only permits temporal conditions and accordingly, I find that such a policy is outside of the Safety Manager's power to create.

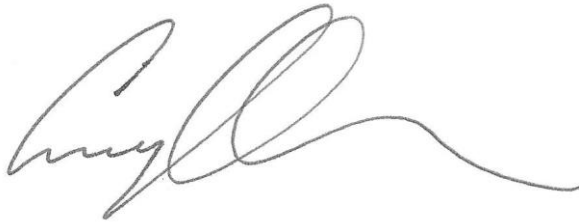
[23] The Respondent has submitted that other conditions must be permitted in order to ensure public safety is protected. However I find that, as illustrated by the Appellant, candidates can make good use of the six month prohibition on re-writing the Exam and upgrade their knowledge on their own volition without taking an upgrade course. The evidence before the Board shows an Appellant that earnestly wants to know the material on the Exam and is setting out to do so in a way that suits his personal learning style and his own learning disabilities.

## **Conclusion**

[24] For the reasons set out above, I find that the Appellant ought to be accommodated with respect to his request to write the Exam a fourth time

without completing an upgrade course. However, he must wait the stipulated 6 months set out in the Safety Authority's policy before writing the Exam again.

Signed:

A handwritten signature in black ink, appearing to read 'Emily C. Drown', with a long horizontal flourish extending to the right.

Emily C. Drown