

Date Issued: July 22, 2021
Appeal No. SSAB 43-2021

Indexed as: BCSSAB 43 (1) 2021

**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:

A Security Systems Company

Appellant

AND:

British Columbia Safety Authority

Respondent

Safety Standards Appeal Board:	Jeffrey Hand
Representing the Appellant:	Dane Reavie
Representing Technical Safety BC:	Audrey Yang

REASONS FOR DECISION

INTRODUCTION

[1] The Appellant brings this appeal in respect of Discipline Order 2021-0002, dated February 23, issued by the Safety Manager (the "Discipline Order"), which required the Appellant, amongst other things, to submit to a Regulatory Compliance Audit of all regulated work done in the past two years.

[2] The Appellant says that the Discipline Order is too onerous and is punitive in nature and should be set aside or alternatively replaced with a monetary penalty in the amount of \$5000.

[3] The Respondent says that the Discipline Order was properly issued and necessary to ensure compliance by the Appellant and ought not to be set aside.

FACTS

[4] The Appellant is an electrical contractor specializing in the installation of low-voltage electrical systems such as security and alarm systems.

[5] In 2011 the Respondent issued a Compliance Order 2011 – 0119 dated August 24, 2011 (“Compliance order”) to the Appellant after a Safety Officer employed by the Respondent determined that the Appellant had performed regulated electrical work without the necessary installation permit. The Compliance Order required the Appellant to stop performing regulated electrical work unless that work was authorized under the necessary installation permit obtained prior to performing the work.

[6] In 2013 the Respondent determined that the Appellant had again performed work without the necessary permit. A monetary penalty in the amount of \$500 was issued for this failure to comply with the Compliance Order.

[7] On May 13, 2019 the Respondent found that the Appellant had performed work at a property in Harrison Hot Springs without the necessary permit and in August 2019 work was done at a property in Chilliwack without the necessary electrical permit.

[8] Following these incidents in 2019 the Safety Manager issued a letter dated March 10, 2020 to the Appellant advising the Safety Manager was considering taking additional enforcement action in the form of a discipline order. The Appellant was invited to provide any comments he might have prior to the Safety Manager making a final determination on whether discipline order would be issued, including the terms that might comprise such an order. The Appellant responded the same day and stated:

-the Appellant did not disagree that he had performed work without first obtaining the necessary permits.

-that the failure to obtain permits was due to last-minute requests by contractors to perform work and due to the Appellant being very busy.

-the Appellant was taking steps to implement better permit procedures within the company and to designate a person to ensure that permits were obtained in all instances and prior to work being performed.

-the Appellant requested that no additional enforcement be taken

[9] On March 31 2020 the Respondent temporarily suspended all enforcement activity due to the COVID 19 pandemic and the Appellant was accordingly notified that his response to the Safety Manager would be considered at a later point in time.

[10] On February 23, 2021 the Safety Manager issued the Discipline Order. Its specific terms required the Appellant to:

1) submit to a regulatory compliance audit conducted by Technical Safety BC, which would review all of the Appellant's regulated work performed for a two-year period;

2) Institute an approved process within the Company for obtaining all necessary permits in the future

3) submit quarterly reports to the Respondent for a one-year period following completion of the audit providing information on all work done in the reporting period

4) within 30 days of completing the audit ensure that inspection requests had been submitted for all permitted work

5) the terms of the Order would be reviewed after the one-year quarterly reporting period and possibly extended or amended

[11] On March 22, 2021, the Appellant filed a notice of appeal seeking to set aside the Discipline Order.

[12] This appeal proceeded by way of written submissions which closed on June 30, 2021.

ANALYSIS

[13] The *Safety Standards Act* establishes the powers of the Safety Manager in respect of discipline orders

42 (1)A provincial safety manager may, in writing, on their own initiative or if requested by a safety officer or local safety manager, issue a discipline order to any person performing regulated work who

(c)fails to comply with a compliance order,

[14] Accordingly, a discipline order can be imposed where there has been noncompliance with a compliance order, such as occurred in this instance.

[15] The *Act* also establishes the scope of matters that may be included in the discipline order:

A discipline order under subsection (1) may impose any sanction that the provincial safety manager considers necessary in the circumstances, including any of the following orders:

- (a)an order suspending or revoking the licence of a licensed contractor or revoking any permission granted to any person;
- (b)an order changing the terms or conditions of, or attaching additional terms or conditions to, the certificate of qualification of an individual or the licence of a licensed contractor;
- (c)an order requiring that any person performing regulated work act only under supervision or as directed in the order.

[16] The Respondent submits that the request for an audit of the Appellant's records is warranted because there are at least three previous instances of the Appellant not obtaining the necessary permits prior to performing regulated work that have occurred since the Compliance Order was issued in 2011. The Safety Manager says that this is sufficient grounds to be concerned that there may be other instances where work has been performed without a permit and that the only way of determining this is to perform an audit.

[17] The second requirement of the discipline order, that is the need to implement procedures that might lessen the likelihood of future work being performed without a permit, is said to be necessary in order to assess the effectiveness of the steps taken by the Appellant

[18] The requirement for quarterly reporting for a period of one year following completion of the audit is said to be justified to ensure that going forward the Appellant is continuing to comply with the *Act*.

[19] The fourth requirement requires the Appellant to ensure that requests for inspection are submitted to the Respondent for every instance of regulated work being performed. The Safety Manager says this is a requirement under section 19 of the *Electrical Safety Regulation*.

[20] The Respondent says that requiring the Appellant to perform the tasks set out in the Discipline Order constitutes the attachment of conditions to the Appellant's license and that this is specifically authorized under section 42(3) of the *Act*.

[21] The Appellant submits that complying with the Discipline Order will result in financial hardship to the company because the audit and reporting requirements will require so much time and resources that the Appellant will have to divert efforts to complying with the Discipline Order that would otherwise be available to perform work. They say this will result in employees being laid off.

[22] The Appellant submits that it should be sufficient that they implement an improved system for ensuring that all necessary permits are obtained prior to performing regulated work. They say they have done so by hiring a dedicated person for this task.

[23] The Appellant submits that the other aspects of the order are unnecessary and should be set aside as too onerous. In the alternative, the Appellant is prepared to accept a monetary penalty in the amount of \$5000 in lieu of the Disciplinary Order.

[24] I am satisfied that the history revealed in the Appeal Record demonstrates the Appellant continued to perform regulated work without the necessary permits after having received the Compliance Order in 2011 and that the Appellant knew of the requirements for permits. I find that the Safety Manager was authorized in these circumstances to issue the Discipline Order because of the Appellant's failure to comply with the Compliance Order.

[25] I turn then to the precise terms of the Discipline Order. The Respondent submits that the Safety Manager has discretion to issue the order. While that is so, even discretionary decisions of the Safety manager are still subject to review by the Board.

[26] I do not accept, as a general proposition, the Appellant's assertion that allowing the Respondent to perform an audit of the Appellant's records, or the requirement to implement systems to ensure that permits are obtained going forward, will result in undue financial

hardship. The Appellant has not demonstrated how it is that the company will be financially unable to comply with these obligations. These are, in the Board's view, reasonable requests that ought to be financially accommodated by any individual or company seeking to perform regulated work in the province. It is no answer to say that there is a cost to complying with the applicable legislation.

[27] I am satisfied that it is appropriate to require the Appellant to undergo a compliance audit for a two-year period for all work performed by the appellant between July 2019 to July 2021.

[28] That said, enforcement actions also need to be proportionate to the conduct the enforcement is seeking to address, including the extent of noncompliance and the extent to which there are safety concerns associated with the transgressions.

[29] The Compliance Order was issued nearly 10 years ago. While there is no expiry date of the Compliance Order, the passage of time is a relevant consideration and here there is evidence that over that 10-year period the Respondent's ordinary oversight role has uncovered three instances where the Appellant failed to obtain the necessary permits. In none of those instances has the Respondent identified significant safety concerns with the actual work performed by the Appellant.

[30] I am not satisfied that the Respondent has demonstrated sufficient reason to compel the Appellant to provide an additional year of review and oversight, which is the effect of requiring quarterly reporting for a 12-month period following completion of the audit. As noted above, there is no evidence that any of the work performed by the Appellant is unsafe. The quarterly reporting requirement is disproportionate to the non-compliances that have occurred in the past decade. Should the compliance audit reveal additional compliance issues, the Discipline Order already provides for its amendment or extension.

[31] The requirement that the Appellant request inspections for all work done pursuant to permits during the two-year period covered by the audit does not, in the Board's view, require the Appellant to do anything beyond what they are already required to do under the Regulation. The audit will surely reveal whether any inspection requests were missed during the aforementioned two-year period.

[32] Lastly, the Appellant's request to substitute a \$5000 monetary penalty for the Discipline Order is denied. Firstly, it is not typically the Board's practice to substitute one form of enforcement for another. Secondly the Board accepts that the circumstances of this case are an appropriate one for the order that has been issued.

SUMMARY

[33] The Discipline Order will be amended to delete the requirement for 12 months of quarterly reporting following completion of the regulatory audit. In all other respects the appeal is dismissed.

A handwritten signature in black ink, appearing to be 'J. M. P.', written in a cursive style.