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**IN THE MATTER OF THE SAFETY STANDARDS ACT
SBS 2003, Chapter 39**

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

BETWEEN:

An Electrical Contractor

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR FINAL DECISION

**Jurisdiction of the Board to hear an appeal filed after the 30 day appeal period
Prescribed by Section 24 of the Administrative Tribunals Act, SBC 2004 c.45**

Board Member:

Keith Saddlemyer, Chair

Introduction

[1] This appeal concerns an appeal of a Compliance order issued by the BC Safety Authority (the Respondent) under the *Safety Standards Act*, SBC 2003, c.39 (the Act).

Preliminary Issue to be decided

[2] The question of the Board's jurisdiction to hear the appeal arose because the Notice of Appeal was filed late, pursuant to section 24 of the *Administrative Tribunals Act*, SBC 2004 c.45 and the Board's Rules of Practice and Procedure, which require an appeal to be filed within 30 days of the decision being appealed.

Background

[3] Compliance Order No 559 was issued to the Appellant on October 2, 2008. On October 3rd, the Appellant wrote to the Provincial Safety Manager requesting a reconsideration of the Compliance Order under section 49 of the Act.

[4] On November 17, 2008, the Provincial Safety Manager wrote to the Appellant, advising that the Compliance Order was being upheld.

[5] On May 6, 2009, the Respondent imposed Monetary Penalty Notice No. 2009 – 007 on the Appellant. The Notice stated that the Monetary Penalty was being issued for failure to comply with Compliance Order No. 559.

[6] On June 11, 2009, the Appellant appealed Compliance Order No 559 by filing a Notice of Appeal with the Board.

Appellant's position

[7] The Appellant is a sole practicing electrician with an extremely busy work schedule.

[8] Due to his busy schedule, unfamiliarity with computers and a serious family crisis, it is likely that he did not receive important e-mails from the Respondent in a timely manner.

[9] As a result of a number of verbal discussions and telephone conversations with safety officers employed by the Respondent, which have been inaccurately recalled by the safety officers, he believed that Compliance Order 559 had been revoked by the Respondent. He realized that the Compliance order was in force only when he received the Monetary Penalty Notice.

Respondent's position

[10] The Provincial Safety Manager's decision letter of November 17, 2008 upheld the Compliance Order 559 in its entirety.

[11] The senior safety officer (electrical technology) followed up with the Appellant several times and verbally granted him extensions to comply with the Compliance Order.

[12] On December 2, 2008 the Appellant sent an e-mail to the senior safety officer, advising that he was assembling documentation which the Compliance Order required him to provide to the Respondent.

[13] On January 26, 2009 the senior safety officer sent an email to the Appellant advising that a recommendation for a monetary penalty had been forwarded to the provincial safety manager due to non-compliance with the Compliance Order.

[14] On January 30, 2009 the Appellant sent an e-mail to the senior safety officer advising of his intention to provide the information required by the Compliance Order.

[15] On February 2, 2009, the senior safety officer sent an e-mail to the Appellant advising that the documentation required by the Compliance Order had not been received and that the Respondent's review of the recommended monetary penalty was scheduled to begin that day.

[16] The Appellant was aware of the process for requesting a safety manager's review of the decision and did so within 30 days of the issuance of the Compliance Order.

[17] The provincial safety manager's decision letter of November 17, 2008 clearly informed the Appellant of his right to appeal within 30 days.

[18] The appeal of the Compliance Order was prompted by the issuance of a monetary penalty. If the Appellant intended to appeal the Compliance Order he would have appealed the provincial safety manager's decision letter of November 17, 2008.

The law

[19] Appeals under section 51 of the Act must be filed within 30 days of the decision being appealed in accordance with section 24 of the *Administrative Tribunals Act*. Pursuant to section 24(2) of the *Administrative Tribunals Act*, the Board may extend the time to file a notice of appeal if satisfied that special circumstances exist.

Decision

[20] The Board considers that the 30 day appeal period specified by the *Administrative Tribunals Act* is intended to provide direction and that, when considering whether or not to grant an extension, the Board must take into account the purpose of the *Safety Standards Act* from which it obtains its jurisdiction. This jurisdiction is derived from section 52 of the *Safety Standards Act* which states that when hearing appeals the Board must consider the maintenance and enhancement of public safety.

[21] The paramountcy of public safety means that, in order to ensure that compliance orders are complied with within a reasonable time, the Board can reasonably extend the 30 day time period only in extenuating circumstances, such as when a person is prevented from filing an appeal within the specified period by circumstances beyond his or her control.

[22] In this case, the 30-day period following the provincial safety manager's decision of November 17, 2008 was the allowable time to appeal Compliance Order No. 559. However, almost six months passed between the November 17th decision and the Notice of Appeal filed on June 11, 2009.

[23] Based on the information provided by the parties, the Appellant appears to have had the knowledge and opportunity to file an appeal during the 30 day appeal period in spite of his busy work schedule and the Board is not persuaded that the appeal was filed late due to circumstances beyond the Appellant's control.

[24] The correspondence between the parties which was filed by the Respondent does not support the Appellant's argument that he was informed by safety officers that the Respondent did not intend to enforce the Compliance Order. The provincial safety manager's November 17th decision letter and several e-mails exchanged by the Appellant and the senior safety officer (electrical) clearly indicate the Respondent's intention to enforce the Compliance Order.

[25] On the basis of the information provided by the parties the Board is satisfied that there is no reason to extend the time period for appealing the provincial safety manager's November 17, 2008 decision to cover the period of nearly six months which the Appellant is requesting.

[26] On the basis of the reasons stated above the board is satisfied that it does not have jurisdiction in this matter and the application to appeal is denied.

SIGNED:



by the registrar for:

Keith Saddlemyer, Chair