

Indexed as: BCSSAB 20 (1) 2016

**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: AN INDIVIDUAL **APPELLANT**

AND: BRITISH COLUMBIA SAFETY AUTHORITY **RESPONDENT**

Chair of Board: Emily C. Drown

Vice-Chair: Jeffrey A. Hand

Member: Tim Haaf

Reasons For Decision

Introduction

[1] This is an appeal of a Decision of the Safety Manager, dated October 21, 2016 denying the Appellant's request to challenge the written exam for certification as a Class A Elevating Device Mechanic.

[2] The Appellant holds a Master's Degree in Civil Engineering from the University of Technology, Rzeszow, Poland. He also holds a National Vocational Qualification ("NVQ"), Level 3 Diploma granted by the Lift & Escalator Industry Association in London, United Kingdom. The Appellant worked for approximately eight years as an Elevator Mechanic in the United Kingdom before moving to Canada in 2016.

[3] The Appellant is currently an employee of an Elevator Service and is enrolled in the Mechanic in Training (MIT) program administered by the BC Safety Authority for the accreditation of Elevating Device Mechanics. The Appellant accumulated approximately 14,000 hours of work experience as an Elevator Mechanic while working in the United Kingdom.

[4] The Appellant submits that the training he has received in the United Kingdom, leading to the Level 3 Diploma issued by the Lift & Escalator Industry Association constitutes training equivalent to that which would be obtained in British Columbia and that this training, combined with his practical work experience, should entitle him to challenge the written exam for a Class A Elevating Device Mechanic Certificate without the need for him to retrain in British Columbia.

[5] The Safety Authority says the Appellant's training does not constitute an acceptable equivalent for certification purposes.

Relevant Legislation

[6] Section 4.3(1)(a) of the Elevating Device Safety Regulation states:

4.4(1) an applicant for a Certified Elevating Device Mechanic Certificate of Qualification must include with the application proof, acceptable to a Provincial Safety Manager, that the applicant has successfully completed all of the following, as applicable:

- (a) an Elevating Device Mechanics Training Program, or equivalent technical education, acceptable to a Provincial Safety Manager;
- (b) for a Class A, C, or H Certificate of Qualification, the Mechanic in Training Program administered by the British Columbia Safety Authority;
- (c) for a Class MR Certificate of Qualification, 40 hours of education that, in the opinion of the Provincial Safety Manager, is relevant to the repair and maintenance of elevating devices; and

- (d) the required amount of experience doing regulated work within the scope of the Certificate of Qualification being applied for, that amount being,
1. for a Class A Certificate of Qualification, 8,000 hours.
 2. an applicant for a Certificate of Qualification as a Certified Elevating Device Mechanic must pass all examinations, if any, required by a Provincial Safety Manager in no more than three attempts. (emphasis added)

[7] Section 4.3 of the Regulations establish two pathways for individuals to obtain a Certificate of Qualification as a Class A Elevating Device Mechanic. The first is by completing an Elevating Device Mechanics Training Program, or equivalent technical education acceptable to the Provincial Safety Manager along with 8,000 hours of experience doing regulated work. This is known as the Granted Path.

[8] The second pathway is completing the Mechanic in Training Program administered by the Safety Authority and accumulating 8,000 of experience doing regulated work. This is known as the MIT Path. For the purpose of this appeal we are concerned with the Granted Pathway because the Appellant is taking the position that his training outside of Canada is an equivalent technical education.

[9] It is useful to pause here and note that the Regulations previously contained a provision that allowed individuals in the Appellant's circumstances to seek certification based solely on their documented experience working as an Elevating Device Mechanic and permitted the Safety Manager to waive the requirement for specific training. Such applicants would only be required to write the Class A examination. However, that provision, which was a transitional provision when new certification pathways were established, ended on June 30, 2014.

Analysis

[10] The Appellant seeks to set aside the Safety Manager's Decision not to accept the Appellant's technical training as equivalent technical education for the purposes of Section 4.3(1) of the Regulation. There is no issue concerning the Appellant's

experience as an Elevating Device Mechanic. Clearly, the Appellant has significant experience well beyond the 8,000 hour requirement set out in the Regulation.

[11] The Appellant has submitted to the Safety Manager, and as part of the materials on this appeal, records from the training he received overseas. The Acting Safety Manager reviewed the submitted material and is of the opinion there are certain required elements that are missing from the Appellant's training history which will be discussed in further detail below.

[12] Before doing so, it is necessary to deal with the submission made by counsel for the Safety Authority concerning the standard of review to be applied on this appeal.

[13] As set out above, the Regulations clearly establish what is required for the Granted Pathway towards Class A Certification. The Regulations also give the Safety Manager discretion to determine whether, in his view, the Appellant's training is equivalent technical training necessary for accreditation for an Elevating Device Mechanic. That determination requires a comparison of the course curriculum for the training taken by the Appellant compared to the skill set necessary for safely performing elevating device maintenance and repair. Such a determination requires the application of the expertise of the Safety Manager utilizing his expertise and experience in the performance of regulated work.

[14] The Board finds that the appropriate standard of review to be applied to this appeal is reasonableness as the Decision of the Safety Manager falls within the discretion clearly delegated to him under the legislation and it is a decision which requires the application of the experience and expertise of the Safety Manager. The Safety Manager's decision, provided it has been reached following a bonafide and reasonable analysis in accordance with the legislation, is one on which this Board is prepared to provide some deference. Accordingly, we must turn to consider the evidence before us concerning the manner in which the Safety Manager's Decision was reached and on what evidence it was based.

[15] The Safety Manager deposes in his Affidavit dated February 14, 2017, that he completed a Gap Analysis intended to compare the information the Appellant submitted concerning this technical training to that which would normally be expected from individuals who had completed the Mechanic in Training Pathway. The Safety Manager

says he was not looking for identical requirements but rather those that were sufficiently comparable in his view.

[16] On the information initially submitted by the Appellant, the Safety Manger could not determine what the Appellant's comparable training consisted of but following the submission of additional material from the Appellant enclosing, amongst other things, the Appellant's Master Degree Program Outline, Lift Course descriptions and employee reference letters, a further Gap Analysis was performed. The Safety Manger concluded that the Appellant lacked evidence of training of General Area Competencies in the following areas:

1. installation/construction, maintenance/repair/service of:
 - (a) escalators/moving walkways;
 - (b) wind tower lifts
2. perform seismic upgrading
3. use Acts, Regulations and Codes
4. describe the application of lifts for persons with physical disabilities
5. describe the application of other specialty lifts
6. maintain public safety
7. apply requirements for mandatory maintenance
8. evacuate trapped passengers
9. maintain hoistways
10. maintain machine rooms or control spaces
11. maintain car enclosures
12. maintain elevating device cabs, carriages and platform cabs
13. re-rope elevators
14. service braking systems
15. repair machines, motors or generators
16. repair hydraulic systems

17. repair door systems

[17] The Appellant agrees that he does not have training relating to Items 1 and 2 above. He says that the work he is doing at Richmond Elevator is unlikely to ever involve work on these sorts of devices. However, that is not a basis in the Board's view, to exempt the Appellant from acquiring these competencies when they are part of the expected curriculum for the training of British Columbia Elevating Device Mechanics.

[18] On the evidence submitted on this appeal it is not entirely clear whether the Safety Manager has determined that the Appellant lacks training in all of the items set out in Items 3 - 17 above. The Appellant maintains that he has submitted evidence of training in these specific areas. We are unable to conclude on the evidence submitted whether that is so, but it is unnecessary for the Board to do so in order to dispose of this appeal. On Items 1 and 2 there is no disagreement between the Safety Authority and the Appellant that he has no training in those specific items. In the Safety Manager's opinion these items are a necessary element of obtaining his Class A Certification and paragraph 10 of the Safety Manager's Affidavit is instructive on this point:

"The training, skills and responsibilities of [the Appellant] received outside of British Columbia are different from the training, skills, and responsibilities of the Elevating Device Mechanics Training Program, or equivalent technical education, within British Columbia. I was not satisfied that they are comparably equivalent to the extent that the [Appellant] meets the requirements for safely performing regulated work in elevating in British Columbia."

[19] The Safety Manager's determination that the Appellant did not have the equivalent technical training to meet the criteria for a Class A Certificate reached after considering all of the material submitted by the Appellant. The Board concludes this was a reasonable determination and one well within the discretion delegated to the Safety Manager under the Regulations. The legislation does not permit the Safety Manager to exempt the Appellant from the need for training in any of the expected areas of general competency. Neither does the current Regulation allow the Appellant to challenge the exam in the absence of holding all of these competencies.

[20] That is not to say that the Appellant is not a highly experienced Elevating Device Mechanic. The evidence clearly discloses that he is; however, the transitional provisions

that might have allowed the Appellant to challenge the Class A exam were no longer in force by the time the applicant arrived in Canada. The Board must interpret the legislation as it is drafted and we conclude that the Safety Manager's determination in this instance was reasonable.

[21] Accordingly, the appeal is dismissed.

Signed;

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