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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:

A 4TH Class Power Engineer

Appellant

AND:

BC Safety Authority

Respondent

REASONS FOR FINAL DECISION
Jurisdiction of the Board to Consider an Appeal
Challenging the Application of Sections 2 and 3 of the
Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation

Board Member:

Keith Saddlemyer, Chair

Introduction

[1] This appeal concerns the Appellant's challenge to the application of Sections 2 and 3 of the Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation under the *Safety Standards Act*, SBC 2003, c.39 (the Act) by the BC Safety Authority (the Respondent).

Preliminary Issue to be decided

[2] Does the Safety Standards Appeal Board have jurisdiction under the Act to hear the appeal?

Background

[3] The Appellant holds a fourth class power engineer certificate of qualification to operate portable boilers which, due to amendments to the regulations under the Act, will require third class certification.

[4] The changes to the regulations resulted from a labour mobility agreement recently entered into by British Columbia with Alberta and other provinces and territories to ensure harmonization and minimize labour mobility difficulties.

[5] These changes led to new definitions for heating plants which, in turn, affected the qualifications of power engineers under their existing certificates. In particular, in order to operate boilers reclassified as third class plants an operator will require a third class certification.

Appellant's position

[6] The Appellant refers to recent changes to the *Gas Safety Regulation* under the Act, which also result from the labour mobility agreement, allowing a provincial safety manager to "grandparent" existing class "B" gas fitters to perform work to the same level as before the change and argues that 4th class power engineers should receive the same consideration and be similarly grandparented.

[7] The Appellant further argues that the Safety Authority has an advisory role with respect to changes to the regulations and requirements of certificates of qualification which influences operational decisions and, as such, the decision not to grandparent the Appellant's qualifications, or leave them unchanged by the amended regulation, is subject to the formal appeal mechanism provided by the Act.

Respondent's position

[8] The Board does not have jurisdiction to hear the appeal because the challenge is to a regulation enacted by the Province.

[9] It does not involve a decision by a safety officer or safety manager that could be appealed to the Board.

[10] The Board's jurisdiction to hear appeals is contained in the Act and is limited to certain decisions by safety officers and safety managers as set out in the Act.

The law

[11] The Board is established under section 43 of the Act.

[12] The Act specifically sets out the powers of safety officers, safety managers and provincial safety managers in sections 16, 17 and 18 respectively.

[13] Wherever the Act recognizes a right of appeal it does so in reference to a decision made by either a safety officer or a safety manager which they have power to make, in particular, decisions set out under sections 23 to 51 of the Act.

[14] The Act does not confer any general right of appeal to the Board beyond the above.

[15] The provincial safety manager did not have authority to make the decision requested by the Appellant because, unlike the amendments to the Gas Safety Regulation, the new Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation does not empower a provincial safety manager to grandparent the Appellant's qualifications or to leave the Appellant's qualifications unaffected by the amended regulation.

Decision

[16] 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