

Index as: BCSSAB 29 (1) 2017

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: Technical Safety BC RESPONDENT

REASONS FOR DECISION

Introduction

[1] This appeal concerns monetary penalty number MP-2017-0041 issued on November 24, 2017 (the “Monetary Penalty”) by a Provincial Safety Manger of Technical Safety BC (the “Respondent”) against an Individual (the “Appellant”). The Monetary Penalty was issued against the Appellant in the amount of \$16,000.00 for the Appellant’s failure to ensure that a qualified person operated regulated boiler equipment located at a Property in Abbotsford, BC (the “Property”) in accordance with section 45 of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, BC Reg 104/2004 (the “Regulation”).

[2] The issue that must be determined is whether the Monetary Penalty ought to be upheld, dismissed or varied.

Background

[3] At an appeal management conference in this matter held on January 29, 2018, the Board ordered that the appeal would proceed via written submissions and gave the Appellant

until February 13, 2018 to file any evidence or written submissions in support of its claim with the Board. The Respondent was given a further fourteen days to do the same. The Appellant did not file any further evidence or written submissions. The Respondent filed detailed written submissions in support of its position that the Monetary Penalty be upheld.

The Monetary Penalty

Analysis

[4] There is no dispute that, an unqualified individual, was permitted by the Appellant to operate regulated equipment contrary to the Regulation. A review of the Appeal Record filed in this matter indicates that the unqualified individual was found operating a regulated boiler during an inspection of the regulated equipment at the Property by safety officers employed by the Respondent on March 21, 2017. It is undisputed that the unqualified individual did not have the requisite qualifications to operate the boiler in question. A review of the Appeal Record further indicates that the Appellant believed that he could continue to allow the unqualified individual to operate the boiler provided that he was in the process of obtaining an interim certificate of qualification to operate the regulated equipment. The Respondent disputes this and states in its submissions that the Appellant knew that only qualified individuals could operate regulated equipment. In support of this assertion the Respondent notes that the Appellant was personally warned in 2016 by a provincial safety officer that a boiler can only be operated by an individual with the appropriate qualification when a similar transgression was noted at a company at which the Appellant was a Director. Further, the Respondent notes that this requirement is clearly set out in the Certificate of Inspection and states that the Certificate of Inspection issued in the matter at hand clearly indicates that there would not be any time extensions granted with the need to comply with safety legislation and the requirement to have only a qualified individual operating the regulated equipment.

[5] A review of the Appeal Record indicates that although the Boiler is presently being operated by a properly qualified individual and has been since July 17, 2017, that the Appellant did permit the Boiler to be operated by an unqualified individual for almost four months before correcting the non-compliance. It is undisputed that the Appellant permitted the unqualified individual to operate the boiler from the date of the inspection to July 13, 2017, some three and a half months later. Further, I find that the Appellant knew, or ought to have known about the requirement to not let unqualified individuals operate regulated equipment. While the unqualified individual may have enrolled in a course to obtain the required qualifications, I find

the Appellant's belief that the unqualified individual would be permitted to operate the equipment before becoming fully certified unreasonable and a clear disregard for public and workplace safety.

[6] Sections 11(2), 45 and 67 of the Regulation require that a power engineer with the appropriate class certificate of qualification be present at all times in the immediate vicinity of the plant premises while a plant is in operation. Further, section 28(6) of the *Safety Standards Act*, S.B.C. 2003, c. 39 (the "Act") stipulates that individuals holding operating permits must ensure that unqualified individuals do not undertake regulated work.

[7] The Act and *Monetary Penalties Regulation*, B.C. Reg 129/2004 permits a Provincial Safety Manager to issue a Monetary Penalty of up to \$100,000.00 for failure to ensure that regulated equipment is operated by only qualified individuals. Given that the Act gives the Provincial Safety Manager discretion to issue penalties up to \$100,000.00, the Provincial Safety Manager was well within his discretion to issue this penalty.

[8] I find that the Appellant knew, or ought to have known, that the boiler in question was not to be operated by unqualified individuals and permitted the boiler to be operated by the unqualified individual in any event. Accordingly, I find the Monetary Penalty appropriately issued to the Appellant and uphold the same.

Conclusion

[9] For the reasons set out above, this Appeal is dismissed.



Emily C. Drown
Chair, Safety Standards Appeal Board