

Date issued: November 17, 2015
File: SSAB 17-2015

Indexed as: BCSSAB 17 (1) 2015

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 Power Plant Engineer** APPELLANT

AND: **BC SAFETY AUTHORITY** RESPONDENT

REASONS FOR DECISION

Introduction

[1] This is an appeal of a decision of the Boilers and Pressure Vessels Provincial Safety Manager (the “Safety Manager”) dated September 10, 2015 (the “Decision”). The Appellant in this appeal is a Power Plant Worker (the “Appellant”) and the Respondent is the British Columbia Safety Authority (the “Respondent”). In the Decision, the Safety Manager denied the Appellant’s application to obtain a 3rd Class Power Engineering Certificate of Qualification. The Safety Manager stated that the Appellant did not meet the requirements for writing the examination for the certificate of qualification as working as a Shift Engineer in a 4th Class Power Plant did not constitute valid firing as required by the applicable legislation. The Appellant disagrees with this assessment and seeks to have the Board order that his firing time satisfies the legislated firing requirements for obtaining a 3rd Class Power Engineering Certificate and accordingly that he may take the certification test for such qualification.

Issue

[2] The sole issue to be determined by the Board is whether the Appellant’s firing time at the Lilydale Plant located at 1910 Kingway Avenue, Port Coquitlam,

British Columbia (the “Plant”) satisfies the legislated requirements for obtaining a 3rd Class Power Engineering Certificate of Qualification and accordingly, whether the Appellant ought to be permitted by the Respondent to take the certification test necessary for obtaining such qualification.

Position of the Appellant

[3] The Appellant states that the Safety Manager erred when he denied the Appellant’s application for certification as a 3rd Class Power Engineer. The Appellant relies on Directive No. D-BP-2014-01 issued by the Safety Manager on behalf of the Respondent on January 30, 2014 (the “Directive”). In this regard, the Appellant states that the Directive stipulates that section 17(1)(b)(i) and (ii) of the Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation (the “Regulation”) requires 12 months as a power engineer in a position requiring a fourth class power engineer’s certificate of qualification in a power plant that is a fourth class plant, third class plant, second class plant or first class plant or 24 months as a chief engineer, shift engineer, or assistant shift engineer of a fourth class heating plant in order to qualify for certification. The Appellant notes that “heating plant” is defined in the legislation as a “boiler, other than a low-temperature, low-pressure boiler, in which water or an aqueous solution may be heated to a pressure not exceeding 1 100 pa or a temperature not exceeding 121 C.” The Appellant submits that the firing time he obtained at the Plant ought to qualify him for certification as a 3rd Class Power Engineer as the Plant is a fourth class plant that requires all its boiler and refrigeration operators to have at least a 4th Class Power Engineer’s certificate and he has worked for 42 months as a graveyard Shift Engineer at the Plant. Accordingly, the Appellant requests that the Board order that his firing time be approved as qualifying for the 3rd Class Power Engineer certification and that he be permitted to take the examination for the 3rd Class Power Engineering Certificate of Qualification.

[4] In further support of his position, the Appellant supplied the Board and Respondent with the names of two individuals that he claims were issued third class certificates based on firing time at the Plant. He states that if these individuals were granted certification based on their firing time at the Plant that he ought to be too.

Position of the Respondent

[5] The Respondent states that the Safety Manager did not err when he issued the Decision and requests that the Appellant's Appeal be dismissed with liberty to seek costs. In support of this position the Respondent states that the Appellant has not met the criteria for a third class power engineer certification as set out in section 17 of the Regulation. In this regard the Respondent submits that the Appellant does not meet the requirements of section 17(1)(b)(i) of the Regulation as the position held by the Appellant at the Plant does not require a fourth class power engineer's certificate. Further, the Respondent submits that the Appellant does not meet the requirements of section 17(1)(b)(ii) of the Regulation as the Plant is not a fourth class plant as defined by section 2(1) of the Regulation due to the fact that the Plant has only 100m² of boiler capacity.

[6] With respect to the Appellant's assertion that others received their third class certification based on firing time at the Plant, the Respondent states that it may have certified one of the two individuals referred to by the Appellant by using firing time at the Plant, but is still investigating the allegation. In any event, the Respondent states that if it previously accepted experience as a shift engineer at the Plant as valid qualifying experience towards a third class certificate of qualification that acceptance was an error and would not provide any basis for approving the Appellant's application. In this regard, the Respondent states that neither it nor the Board have jurisdiction to approve the Appellant's experience on such grounds and that to do so would be contrary to the explicit requirements set out by the legislature in the Regulations.

Analysis

[7] The requirements for qualification as a 3th Class Power Engineer are set out in the *Safety Standards General Regulation*, B.C. Reg. 105/2004 (the “SSGR”). Section 2 of the SSGR states:

Requirements for certificate of qualification

- 2 An applicant for a certificate of qualification must pay any required fees and, subject to the regulations respecting the particular discipline,
 - (a) provide proof, acceptable to a provincial safety manager, of the applicant's relevant training and work experience, and
 - (b) pass any required examination for that certificate.

[8] Section 17 of the *Power Engineers, Boiler, Pressure Vessel and Refrigeration Safety Regulation*, B.C. Reg. 104/2004 (the “Power Engineer Regulation”) sets out further detail with respect to what is required to apply for a third class power engineer’s certificate. The relevant portion is as follows (emphasis added):

Application for third class power engineer's certificate of qualification

17 (1) An applicant for a third class power engineer's certificate of qualification must

- (a) hold a second class marine engineer (motor) certificate of competency, or
- (b) hold a fourth class power engineer's certificate of qualification or a standardized fourth class power engineer's certificate of qualification and have been employed, while in possession of a fourth class power engineer's certificate of qualification, for a period of not less than
 - (i) 12 months as a power engineer in a position requiring a fourth class power engineer's certificate of qualification in a power plant that is

fourth class plant, third class plant, second class plant or first class plant;

(ii) 24 months as a chief engineer, shift engineer or assistant shift engineer of a fourth class heating plant, or

(iii) 36 months as a chief engineer of a fourth class plant other than a power plant or a heating plant.

[9] The Appellant submits that he meets the requirements set out in both section 17(1)(b)(i) and 17(1)(b)(ii), namely that he a) has worked for 12 months as a power engineer in a position requiring a fourth class power engineer's certificate of qualification in a power plant that is a fourth class, third class, second class or first class plant and b) has worked for 24 months as a shift engineer of a fourth class heating plant. The Respondent disagrees and states that the legislative requirements have not been met.

[10] There is no dispute that the Appellant holds a fourth class power engineer's certificate of qualification. The Board must determine whether the legislative requirements set out in subsections (i) and (ii) of section 17 of the Regulation have been met. As noted by the Respondent, section 24 of the Regulations stipulates that being a shift engineer at a fourth class plant only requires a fifth class power engineer's certificate:

What a fifth class power engineer may do

24 A fifth class power engineer's certificate of qualification entitles the holder to be

(a) a chief engineer of fifth class plant, or

(b) a shift engineer of a fourth class plant.

[11] Accordingly, the Appellant's work as a shift engineer at the Plant does not meet the requirements of section 17(1)(b)(i) of the Regulation as only a fifth class

power engineer's certificate of qualification is required to be a shift engineer at the Plant.

[12] Unfortunately for the Appellant, the legislation also makes it clear that the Appellant does not meet the requirements of section 17(1)(b)(ii) of the Regulation either. To meet the requirements set out in section 17(1)(b)(ii) of the Regulation, the Appellant would have to be a chief engineer, shift engineer or assistant shift engineer of a fourth class heating plant. The Appellant submitted that he qualifies as the Plant is a heating plant as defined by the Regulation. While there is no question that the Plant is a heating plant, it is not a fourth class heating plant as defined by the Regulations. In this regard, section 2(1) of the Regulation defines "fourth class plant" as follows (emphasis added):

"fourth class plant" means

- (a) a power plant that exceeds 50 m² of boiler capacity but does not exceed 100 m² of boiler capacity,
- (b) a heating plant that exceeds 300 m² of boiler capacity,
- (c) a low pressure thermal fluid plant that exceeds 500 m² of boiler capacity but does not exceed 1 500 m² of boiler capacity,
- (d) a low temperature low pressure fluid plant that exceeds 1 000 m² of boiler capacity, or
- (e) an unfired plant that exceeds 500 m² of boiler capacity but does not exceed 1 000 m² of boiler capacity....

[13] To qualify as a fourth class heating plant, the Plant would have to exceed 300m² of boiler capacity. The Plant in question has only 100m² of boiler capacity and therefore does not meet the definition of a fourth class heating plant.

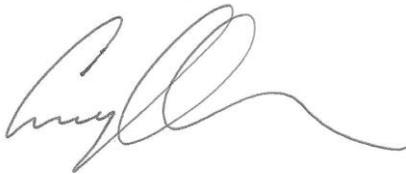
[14] With respect to the Appellant's assertion that the Respondent has accepted the firing time of other individuals working as shift engineers at the Plant in order to qualify for third class power engineer's certificates of qualification, I accept the Respondent's submission that neither it nor the Board

has jurisdiction to vary the legislative requirements. Accordingly, regardless of whether the Respondent may have done so before, if it did grant such certificates it did so in error and neither the Board nor the Respondent has the jurisdiction to permit a variance of the applicable legislative requirements. Accordingly, the Appeal must be dismissed.

Conclusion

[15] The Appeal is dismissed.

Signed:

A handwritten signature in black ink, appearing to read 'Emily C. Drown', written in a cursive style.

Emily C. Drown
Chair, Safety Standards Appeal Board