



COUNCIL ORDER No. 0015464

BEFORE THE PRESSURE EQUIPMENT SUB- COUNCIL

On May 4, 2016

IN THE MATTER OF the *Safety Codes Act*, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Cancellation of the Pressure Equipment Certificate of Competency dated February 25, 2016 issued by the Administrator of Certification (**Respondent**) against a Safety Codes Officer (**Appellant**).

UPON REVIEWING the Cancellation of the Certificate of Competency **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Cancellation of the Certification of Competency is **CONFIRMED**.

Issue:

1. The Appeal concerns the cancellation of the Appellant's Certificate of Competency. The focus of the appeal is the qualifications requirement of the Safety Codes Council (Council) policy on pressure equipment safety codes officer certification.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

2. The Appeal Panel heard from the Appellant. Accompanying the Appellant was an individual who acted in a supporting role only and did not testify.
3. The Appeal Panel heard from the Respondent, with the Council.
4. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the hearing panel, and that the Council in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
5. The Chair then explained the process to be followed in hearing this appeal, and referred to a list of the written material before the panel, consisting of the documents listed below in The Record, paragraph 7 as items a) to f). The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.

6. As the hearing proceeded, five new documents were introduced, identified as Respondent Exhibits 1 – 5, listed below in The Record, paragraph 7 as items g) to k).

The Record:

7. The Appeal Panel considered, or had available for reference, the following documentation:
 - a) The Notice of Appeal dated August 25, 2015 (pages 1 to 3)
 - b) Acknowledgement Letter Dated September 1, 2015 (page 4)
 - c) Appeal Hearing Brief Preparation Guide (page 5)
 - d) Written Notice of Appeal (pages 6 to 7)
 - e) Brief of the Appellant (page 15 to 22)
 - f) Brief of the Respondent (page 100 to 141)
 - g) Exhibit 1 Respondent – June 27, 2002 Cover Letter
 - h) Exhibit 2 Respondent – June 27, 2002 Certificate of Competency
 - i) Exhibit 3 Respondent - June 27, 2002 Designation of Powers
 - j) Exhibit 4 Respondent – October 9, 1997 Cover Letter
 - k) Exhibit 5 Respondent – July 29, 1996 Revised Designation of Powers

Provisions of the *Safety Codes Act*:

8. The *Safety Codes Act* (S-1, RSA 2000), as amended provides, *inter alia*:

Part 3 Standards

Certificate issues

42(3) An Administrator may suspend or cancel a certificate of competency if the Administrator, on reasonable and probable grounds, is of the opinion that

- a) the person no longer complies with the requirements of this Act for a certificate of competency, or
- b) the person does not comply with this Act when acting pursuant to the certificate of competency.

Provisions of Safety Codes Council Policies:

9. Council Policy 4.20 – Certification Levels – Pressure Equipment provides, *inter alia*:

Policy

A Safety Codes Officer Certificate of Competency in the discipline of Pressure Equipment shall be provided in accordance with the following outline:

1. **Entry Qualifications:**

- a) a Bachelor's degree in a related engineering discipline;
a First or Second Class Power Engineer's Certificate of Competency; or
a two year technical diploma in a related discipline;
- b) a National Board Commission; and
- c) be performing jurisdictional functions.

3. Technical Requirements include demonstrated understanding and application of:

- d) The role of American Society of Mechanical Engineers (ASME), the National Board of Boiler & Pressure Vessels Inspectors (NBBI), and the jurisdiction;

10. Council Policy 4.100 – General Requirements - Certification provides, *inter alia*:

Policy

Establishing Certificates of Competency

- 2. The requirements for obtaining, maintaining and renewing a safety codes officer certificate of competency shall be established in Council policy.

Renewing Certificates of Competency

- 14. A safety codes officer certification in the pressure equipment technical discipline shall not expire or require renewal.

11. Council Policy 7.20 – Scope – Designation of Powers provides, *inter alia*:

Background

Prior to a person administering the *Safety Codes Act* or regulations pursuant to the Act, the person (Safety Codes Officer or any other person) must be authorized to administer the *Safety Codes Act*. This authority is in respect to the individual's level or class of competency, the individual's employer's scope of accreditation, and the authority parameters as determined by the discipline's Technical Council. It is an authority jointly applied for by the individual and the individual's employer.

Policy

- 2. A Safety Codes Officer or any other person shall require Designation of Powers to administer the *Safety Codes Act* or any portion of the Act or regulations made pursuant to the Act.

- 4. Designation of Powers shall be issued in accordance with the following tables:

Pressure Equipment Discipline

*Note: #1 Designation of Powers is only designated to persons employed by an authority having jurisdiction. The province has delegated the Alberta Boilers Safety Association to administer the Act on behalf of the province listed.

Position of the Parties

Appellant

From the Appellant's submissions and testimony the Appellants' position may be summarized as follows:

12. The Appellant worked for 20 years as both a field inspector and a safety codes officer (SCO).
13. The employer does not have a union or any other organization to represent workers. If an employee has concerns there is no other recourse except through legal action which the Appellant does not want to pursue.
14. The Appellant worked for 25 years with another company, 17 of which were as chief engineer at their plant. For nine years the Appellant served as President of the employee's organization.
15. For nine years the Appellant acted as an advisor to Power Engineers at an Institute of Technology.
16. The Appellant went to Russia for a short time before being hired by his most current employer as a field inspector.
17. He completed all the requirements necessary to work as a field inspector.
18. To be a shop inspector, individuals require National Board Commission (which the appellant does not have). This is not required to be a field inspector.
19. During 17 years as a field inspector, the appellant inspected pressure vessels in both government and educational institutions, including both initial inspection and following repairs.
20. Also during this time, the Appellant supervised Power Engineer exams, the QC Program and Welder testing.
21. Beginning two years ago, the Appellant's duties were restricted because he did not have National Board Commission.
22. Beginning last year he was restricted from doing initial inspections as well.
23. Throughout this time the Appellant has had a Certificate of Competency as a SCO and this is the basis of his argument that his employer is improperly using "the American Code - National Board" to override his Certificate of Competency under the *Alberta Safety Codes Act*."

24. When his supervisor learned he didn't have National Board Commission, he was told he could no longer perform certain duties. He could not understand why, since he had been doing the job for 17 years and suddenly this was an issue.
25. He has been accused of incompetence and recognizes this is an issue for another venue but wished to draw the Panel Members attention to certain details in his written submission which speak to this.
26. He has been working for several years without success to have Power Engineer 1st and 2nd Class qualifications recognized as equivalent to National Board qualifications.
27. The Appellant was recognized in 2012 as Southern Alberta Power Engineer of the Year.
28. He has contributed articles to the his employer's newsletter including:
 - a) Ways to Prevent Tube End Failures of Fire-Tube Boiler – Case Study, and
 - b) Life Cycle of a Boiler or Pressure Vessel
29. He was recognized and thanked for high level of service at a University.
30. To now be told he is not competent concerns him.
31. In response to questions from the Appeal Panel, the Appellant confirmed the following:
 - a) He successfully completed all the testing requirements outlined in Information Bulletin. #9 (May 11, 1998) which were, at the time, the certification requirements to become a Pressure Equipment SCO under the *Safety Codes Act*.
 - b) During a discussion with the National Board Commission manager, the manager purportedly remarked that "Power Engineer is more comprehensive than National Board Certification."
 - c) He did write the exam for National Board Commission but was not successful, which was alright as he only wanted to be a field inspector and National Board Commission was only required for shop inspection.
 - d) He was a SCO performing field inspections for many years without National Board Commission.
 - e) When he made some suggestions regarding repair of a large pressure vessel he was accused of interfering with the repair. He was told he had no right to say anything.
32. The issue is more political than technical with the National Board Commission overriding his qualification as a SCO, the result being the Council has "taken his stamp away."

Respondent

From the Respondent's submissions and testimony, the Respondent's position may be summarized as follows:

33. The Council received a letter dated February 22, 2016, from the Administrator, Province of Alberta Pressure Equipment Safety Chief Inspector, confirming the Appellant was "no longer in the employ of the Pressure Equipment Safety Authority."
34. Council policy 4.20-Certification Levels – Pressure Equipment determines no SCO can have a Certificate of Competency in the pressure equipment discipline without being employed by the Pressure Equipment Safety Authority ("be performing jurisdictional functions").
35. The circumstances of the Appellant's termination from the Pressure Equipment Safety Authority are not something the Administrator of Certification can consider when applying this policy.
36. As such, the Administrator cancelled the Appellant's Certificate of Competency and Designation of Powers, as per the Notices of Cancellation issued February 25, 2016.
37. At the request of the Appeal Panel, the Administrator of Certification obtained and presented several documents which clarified the history of the Appellant's Certification and Designation as a SCO.
38. In response to questions from the Appeal Panel, the Respondent confirmed:
 - a) The Certificate of Competency and Designation of Powers documents serve no purpose outside an individual's employment with the Pressure Equipment Safety Authority.
 - b) While the Appellant was "in good standing" all those years, it is up to the employer, not the Council, to determine what tasks a SCO can perform while in their employ. The knowledge requirements of a shop versus a field inspector are not determined by the Council.

Reasons for Decision (Findings of Fact and Law):

The Appeal Panel makes the following findings:

39. The issue before the Appeal Panel is the decision of the Administrator of Certification to cancel the Appellant's Certificate of Competency and Designation of Powers issued on June 27, 2002.
40. The *Safety Codes Act* allows the Administrator of Certification to suspend or cancel previously issued Certificates of Competency and Designation of Powers under certain circumstances.

41. The June 27, 2002 letter sent to the Appellant upon renewal of his Certificate of Competency and update of Designation of Powers stated, "Please inform us if you leave the employ of the jurisdictional authority, as your Certificate of Competency and Designation of Powers Certificate will no longer be valid and must be cancelled." This is accordance with Council policy and practice.
42. Council policy requires that an individual must be performing jurisdictional functions to remain certified as a SCO. The Pressure Equipment Safety Authority is the authority having jurisdiction in Alberta.
43. The Certificate of Competency issued by the Council in June 2002 states, "Valid while the holder is in the regular employ of the jurisdictional authority."
44. The actions that led up to the Appellant's termination are not within the jurisdiction of the Appeal Tribunal and the Council.
45. That the Appellant's duties may have been restricted due to his not having National Board Commission is likewise outside the jurisdiction of the Appeal Tribunal and the Council.

Dated at Edmonton, Alberta this 17 day of May 2016

Chair, Pressure Equipment Sub-Council Appeal Panel