



- *Certificate of Qualification* to be employed at a Licensed Inspection Facility, to conduct inspections according to the *Motor Vehicle Act*, *Motor Vehicle Act Regulations* and *Inspection Standards Regulations* on all aspects of vehicles with the class/endorsement of:
  - 1 - Motor Vehicles with a licensed GVW of 5,500 kg or less
  - 2 - Motor Vehicles with a licensed GVW of more than 5,500 kg
  - 3 – Trailers
  - 4 – Buses
  - 5 – School Buses
  - 6 – Motorcycles
  - A – Air brakes
  - P- Pressure fuel systems.
- Course Certification – Commercial Vehicle Wheel Service Course

[4] From 1982 to 1989 the Appellant was employed as a mechanic by Pacific Associate Stores ("Pacific"), and has been employed as a transportation mechanic with the Abbotsford School District No. 34 ("SD34") from September 1989 to the present.

[5] In August 2013, the Appellant decided to apply to ITA for a Certificate of Qualification as a Commercial Transport Vehicle Mechanic ("CTVM CoQ"). There are two routes to obtaining a CTVM CoQ: the apprenticeship pathway and the challenge pathway. Because of his extensive experience as a mechanic, the Appellant chose the challenge pathway.

[6] There are two criteria for achieving a CTVM CoQ through the challenge pathway. First, applicants must satisfy ITA that they have at least 8,910 hours of trade related work experience comprising 70% of the job tasks of the trade. Second, they must achieve a mark of at least 70% on the CTVM Interprovincial Red Seal Exam. The work experience component is a pre-requisite for writing the exam. Thus ITA must approve an applicant's application, including the required work experience, before the applicant will be permitted to sit for the exam.

[7] ITA provides two types of forms to document work experience. One of these forms is subtitled "Employer Declaration of Work Experience", and the other is "Statutory Declaration of Work Experience". ITA's policy is that challenge applications by employed applicants include a completed "Employer Declaration of Work Experience", and self-employed applicants are permitted to use the "Statutory Declaration of Work Experience".

[8] However, the Appellant was unable to obtain an "Employer Declaration of Work Experience" verifying 8,910 hours of trade related work experience in 70% of the job tasks of the trade. Pacific was no longer in business and the Appellant's supervisor during his employment there had passed away. SD34, the Appellant's employer since 1989, declined to complete the "Employer Declaration of Work Experience".

[9] ITA considered the Appellant's circumstances to be exceptional and accepted his sworn "Statutory Declaration of Work Experience", dated September 25, 2013, in determining that he had the requisite work experience for eligibility to challenge the examination for the CTVM trade. ITA also imposed as further requirements that the Appellant provide additional references from individuals who have directly supervised the Appellant's work and could confirm that he has completed the requisite tasks in the CTVM trade.

[10] In October and November 2013, ITA contacted SD34 to inquire about the Appellant's challenge application. The Appellant's current direct supervisor at SD34 advised that, although he supported employees seeking certification he could not sign off on the Employer Declaration because he had been the Appellant's supervisor for only a few months. The SD34 supervisor also advised ITA that he did not want to be involved in asking the two CTVM certified mechanics that worked in the same garage as the Appellant to review the Statutory Declaration. ITA also contacted the SD34 human resources director, who informed ITA that she could not complete the Employer Declaration because SD34 does not track the type of work that the Appellant has done. The HR Director declined to provide written confirmation that SD34 was unable to provide the verification, stating that she did not want to get involved.

[11] On November 19, 2013, following an investigation of the additional information and references that the Appellant provided, the ITA approved the application to challenge the CTVM examination. The Appellant wrote the CTVM Interprovincial Red Seal Exam on November 27, 2013. He passed the Exam and ITA issued his CTVM CoQ on or around December 12, 2013.

[12] Shortly after learning that the Appellant had been awarded the CTVM CoQ, the Appellant's direct supervisor at SD34 contacted ITA to complain that ITA had not done its due diligence in verifying the experience that the Appellant claimed.

[13] On January 10, 2014, ITA responded that: "We have reviewed all the documentation provided to us by [the Appellant] in support of his Truck and Transport Mechanic challenge application and concluded that he was eligible to write the exam. Please note, in certain circumstances when there are no records from employers, ITA has other means of verifying work experience in the required scope of trade." The SD34 supervisor expressed dissatisfaction with ITA's response and requested that ITA provide "a second review and written response by a higher authority."

[14] On February 18, 2014 ITA wrote to the Appellant informing him that, effective immediately, his CTVM CoQ was suspended based on the ITA's investigation of the SD34 complaint that the Appellant was ineligible to write the certification examination.

[15] As provided in section 11(1) of the Act, the Appellant requested a reconsideration of the February 18, 2014 ITA decision. ITA decided to uphold the February 18, 2013 suspension of the Appellant's CTVM CoQ, and so informed the Appellant by letter dated April 2, 2014. Upon receipt of the reconsideration decision the Appellant filed his appeal with this Board.

[16] This appeal is in the nature of a re-hearing of the issues determined on the reconsideration. Section 11(7) of the Act empowers the Board to make findings of fact and to exercise discretion. Under sections 34(3) and (4) of the *Administrative Tribunals Act* ("ATA"), the Board is empowered to issue an order compelling the attendance of witness and documents, and section 38 of the ATA gives the parties the right to call, examine and cross-examine witnesses. Thus the Board's decision on this appeal is based on the evidence in the appeal record as well as the oral and documentary evidence presented at this hearing.

## **ISSUES**

[17] The sole issue on this appeal is whether the Appellant met the eligibility requirements to challenge the CTVM examination. That is, does he have a minimum of 8910 hours of CTVM trade related work experience comprising 70% of the job tasks of that trade.

## **APPELLANT'S POSITION**

[18] The Appellant says that he has achieved well in excess of the required CTMV work hours at the required job tasks in the course of his 24 years of employment at SD34 and his prior 7 years of employment at Pacific.

[19] The Appellant estimates that he accrued approximately 10,500 hours of relevant work experience while employed by Pacific from 1982 to 1989. He worked on both automotive and commercial vehicles and says that his employment duties included all areas listed on the CTVM employer declaration form.

[20] The Appellant says that he was hired by SD34 in September 1989 as a Transportation Mechanic to work on the district's whole fleet. At that time he was the only mechanic licensed and certified to work on the SD34 propane-converted buses. Accordingly, he had to inspect these buses and sign off on inspections for the district's permits. In addition, he did the majority of engine and transmission work on buses in the years 1989 to 1999.

[21] The Appellant was absent from his work at SD34 due to injury and illness for periods of time totaling approximately three years, but maintains he has approximately 21 years of active work experience on a full time basis as a Transportation Mechanic for the district. He says that between 1989 and approximately 2003, he worked on both buses and other fleet vehicles in approximately equal amounts. Since 2003 he has worked on buses approximately 10-15 hours a week.

[22] SD34 categorizes its vehicles as "yellow fleet" and "white fleet". "Yellow fleet" refers only to school buses, and "white fleet" means all other vehicles. Since 2003, the majority of the Appellant's work has been on the "white fleet" vehicles.

[23] The Appellant maintains that all "white fleet" vehicles are commercial vehicles, according to the definition in the *Motor Vehicle Act*. Further, the SD34 "white fleet" includes dump trailers, dump trucks, walk-in vans and many types of vehicles that are "commercial vehicles" under the more restrictive federal

Commercial Vehicle Drivers Hours of Service Regulations definition that ITA considers applicable to the CTMV trade.

[24] The Appellant maintains that, regardless of his current job title, during his time with SD34 he has significant experience as a mechanic on various "commercial vehicles", including experience maintaining and repairing school buses, and working on commercial vehicles such as plow trucks, buses, commercial trailers, commercial dump trucks and delivery vans. Further, during his employment with SD34, he received numerous letters that detail (and in some cases congratulate him for) his mechanical work on buses.

[25] The Appellant submits that during his employment with SD34, he has surpassed the 8,910 hour threshold of experience multiple times over and has employment experience in all areas required in the CTVM declaration.

### **RESPONDENT'S POSITION**

[26] ITA's position is that it has a duty to ensure that persons certified for a trade have met the appropriate certification standards, and that ITA followed the proper procedure in suspending the Appellant's CTVM certification based on the information available to ITA at the time of the decision.

[27] ITA considered the Appellant's situation to be unique in that SD34, the Appellant's employer for some 25 years, indicated to ITA that they did not have enough information to complete an Employer Declaration regarding the Appellant's work assignments and work hours due to staff turnover and lack of employment records. ITA therefore allowed the Appellant to verify his relevant work hours and scope of work by Statutory Declaration and multiple supporting documents. Based on this information supplied by the Appellant, ITA approved the Appellant's writing the CoQ examination without meeting the requirement of an Employer Declaration.

[28] Shortly after the Appellant received his CTVM certification from ITA, SD34 filed a complaint with the ITA. SD34 essentially reversed the position it had taken a few months earlier, and now claimed to have information that during the Appellant's employment with SD34 he did not perform anywhere near the required number of work hours or scope of work on commercial vehicles to be eligible to write the CTVM examination.

[29] ITA says that it conducted a thorough review of all the information provided to them prior and subsequent to the suspension of the Appellant's certification, including meeting with the HR Director and Maintenance Manager of SD34, and interviewing certain past SD34 employees whose contact information was provided by SD34. According to the SD34 employees that ITA interviewed, the Appellant worked primarily on the "white fleet", and worked only minimally on commercial vehicles. Through these interviews, ITA was unable to conclude that the Appellant performed a significant amount of work on commercial vehicles for a part of his employment at SD34. Further, ITA received no evidence to verify the Appellant's claim that he did the majority of engine and transmission work on SD34 buses in the years 1989 to 1999.

[30] ITA also interviewed the Appellant's prior employer at Pacific who had completed an Employer Declaration on March 6, 2014 verifying that the Appellant had met the CTVM examination eligibility requirements during his employment at Pacific. During the telephone interview with ITA, the Pacific employer stated that the Appellant had worked in the commercial vehicle department at Pacific, but his memory was somewhat faded regarding events from over 25 years ago. Further, the Appellant's immediate supervisor at Pacific was deceased and the employer could only estimate how much time the Appellant spent repairing commercial vehicles versus non-commercial vehicles.

[31] ITA says that certification of an individual who has not completed the apprenticeship program of their trade is conditional on two criteria being met. The first requirement is for certification challengers to provide verifiable documentation of the required number of work hours performing specified work task by way of Employer or Statutory Declaration. The second requirements is for the challenger to write the certification examination and achieve a mark of 70% or higher on the exam. Both of these requirements must be met. A pass mark on the examination alone does not meet the certification requirement.

[32] ITA submits that in the CTVM trade the appropriate definition for "commercial vehicle" is the following:

"commercial vehicle" means a vehicle that

(a) is operated by a motor carrier and propelled otherwise than by muscular power; and

(b) is a truck, tractor, trailer or any combination of them that has a gross vehicle weight in excess of 4500 kg or a bus that is designed and constructed to have a designated seating capacity of more than 10 persons, including the driver.

(Commercial Vehicle Drivers Hours of Service Regulations, SOR/2005-313)

[33] ITA submits that the Appellant has the burden of providing verifiable evidence of having completed the required number of hours of work on commercial vehicles, and he had failed to meet that burden at the time that ITA suspended his CTVM certificate.

## **DISCUSSION**

[34] The Appellant has the burden of proving, on a balance of probabilities, that when he challenged the CTVM examination he had a minimum of 8910 hours of CTVM trade related work experience comprising 70% of the job tasks of that trade.

[35] The Appellant's evidence included his own oral testimony, and the oral testimony of three current or former employees of SD34, Mr. Deane Harold, Mr. Alan Adam, and Mr. Murray Wease. ITA's evidence included the oral testimony of Mr. Gary Herman, Interim CEO of ITA, and Ms. Judy Harris, ITA Manager of Policy and Research. The Panel found all witnesses to be credible.

[36] The Appellant was certified as an Automotive Repair Mechanic on June 20, 1980. He said that at that time there was no separate trade certification for commercial transport mechanic, and he understood his certification to be a qualification for working on vehicles up to 100,000 pounds. Mr. Adam is also a certified Automotive Repair Mechanic, and he testified that he held the same understanding about his qualifications as the Appellant.

[37] Mr. Adam was hired by SD34 as a shop mechanic in 1992. He worked in the mechanics shop alongside the Appellant from 1993, when the Appellant returned from sick leave, until Mr. Adam went on long term disability about two years ago. Mr. Adam testified that both he and the Appellant worked on the whole SD34 fleet until around 1999-2000 when the then SD34 Transportation Manager created the "yellow fleet" and "white fleet" division within the shop. Mr. Adam said that he worked on school buses for 40-50% of the time before the "yellow fleet" / "white fleet" division, and after the division his time working on buses tapered off. However, he continued to work on buses. Mr. Adam said that both he and the Appellant did much the same type of work, except that the Appellant would probably have worked a bit more than 45-50% on buses because he had more front end experience and was more of an "electronic guru". Even after the "yellow fleet" / "white fleet" separation, a portion of their work was on buses, although they worked primarily on "white fleet" vehicles. With regard to the type of work that he and the Appellant did on buses, Mr. Adam said that they did engine work, head gaskets, transmission repair, brakes – "if it's broken we fix it". With regard the Appellant's scope of work on commercial vehicles, Mr. Adam was referred to the eight categories on the Statutory Declaration of Work Experience completed by the Appellant. Mr. Adam testified that the Appellant would have considerable experience working on buses in all of these areas.

[38] Mr. Harold attended the hearing under a Board Order compelling his attendance. He worked part time for SD 34 from 1990 to around 2000-2001. He did school bus training, which included air brakes and mechanical modules as well as driving. He testified that he made weekly visits to the SD34 mechanical shop and spent around three hours there each visit. He routinely observed the Appellant working on buses and other commercial vehicles, such as dump trucks. He saw the Appellant doing the same type of work as the other mechanics and provided examples – repair and replace engines, changing suspensions, working on transmissions, wheel bearings, exhausts. Mr. Harold stated that the Appellant was integral to SD34's change in the bus fleet from propane to diesel, which included conversions and replacements.

[39] Mr. Wease was employed at SD34 from 1981 to 2013 and his custodial duties included grounds-keeping and operating such machinery as hydraulic mowers and dump trucks. His interaction with the Appellant was around machines that the Appellant repaired and Mr. Wease operated. In the early 1990s, Mr. Wease attended the shop approximately once a week and he recalled having to pull the Appellant away from working on buses to repair Mr. Wease's equipment.

[40] The Appellant testified that when he was hired by SD34 he was responsible for keeping the buses operating. He worked on engines, brakes, clutches, body work, propane conversions, and he had to sign off on inspections. Until around

2001-2002, he worked at least 50% of the time on buses. Since around 2002 the portion of work time he spends on buses is around 10-15 hours a week. The remainder of the time he works on the "white fleet". He estimated that he works approximately 2 hours a day on "white fleet" vehicles that meet the ITA's definition of "commercial vehicle".

[41] The Appellant testified that he was on sick leave for 1 ½ to 2 years in 1991-1993, and again for just over a year in 2003. He had no other lengthy sick leave periods.

[42] The Appellant worked as a mechanic for Pacific for seven years before his employment at SD34. He testified that he worked 20-25 hours a week on commercial vehicles, such as larger delivery vans and buses, during that employment. Although the Appellant's employer at Pacific could not verify 8,910 hours of work on commercial vehicles, he did inform ITA that the Appellant worked on commercial vehicle repair.

[43] ITA did not call any witnesses to refute the Appellant's evidence. In their testimony Mr. Herman and Ms. Harris expressed concern that the Appellant's employer of 25 years had questioned his hours of work related to the CTVM trade. On the other hand, they also expressed concern that SD34 originally told ITA that they had no information to give ITA about the type of work the Appellant had done during his employment at SD34, yet after the Appellant passed the examination SD34 insisted that the Appellant did not have the hours of CTVM related work experience that he claimed.

[44] The Appeal Record includes correspondence between ITA and SD34 employees, ITA notes of telephone interviews with some of the Transportation Managers and Transportation Foremen employed at SD34 during the Appellant's employment, and ITA notes from a March 6, 2014 meeting with Mr. Herman, Ms. Harris, the Human Resources Director and the current Transportation Manager at SD34. SD34 did not provide any business records or other documentation relating to the type of work that the Appellant had done during his employment, other than an inventory of "white fleet" vehicles.

[45] Ms. Harris was able to contact only three of the eight Transportation Managers and Transportation Foremen that SD34 identified as the Appellant's past supervisors. Ms. Harris was unable to get in touch with SD34 employees who had directly supervised the Appellant during the period from 1992 to 1999.

[46] The Transportation Manager from 1989 to 1992 told Ms. Harris that the Appellant worked mainly on maintenance vehicles and did not do much work on buses, and that he had lengthy absences from work. Notes from an earlier ITA interview with this Transportation Manager report that the Appellant started working on buses after his first year at SD34, but not more than 50% of the time. The Appellant testified that he was on sick leave for 1 ½ to 2 years from 1991, so this Transportation Manager supervised the Appellant for two years. Further, a document titled "Transportation Month End Report: September 1990" signed by this Transportation Foreman is highly complimentary of the Appellant's work on improving the steering and ride quality of a bus.



[47] The Transportation Manager from 2000-2003 told Ms. Harris that the Appellant was the shop foreman during those years and therefore did less hands-on work than the other mechanics. The work that the Appellant did was primarily on the light vehicles in the white fleet. The Appellant did only a small amount of work on buses, which had air brakes. This Transportation Manager could not remember the Appellant working on air brakes. However, the documentary evidence includes a form dated December 3, 2001 that appears to be signed by this Transportation Manager and indicates that the Appellant has 10+ years of experience in the repair of air brake systems while in the employ of SD34.

[48] The Appellant's Foreman from 2006 to 2013 told Ms. Harris that the Appellant was assigned work on the "white fleet" and worked minimally on the "yellow fleet". The Appellant testified that this Foreman has not worked as a mechanic since the Appellant was hired to replace him in 1989. After the Appellant was hired, this Foreman became a driver and later a dispatcher before becoming Dispatch Foreman in 2000 and combined Dispatch and Trades Foreman in 2006.

[49] ITA's evidence includes a single page document titled "S.D. #34 "White Fleet" Inventory. Only seven of the vehicles listed are indicated as meeting the ITA definition of "commercial vehicle". Both the Appellant and Mr. Adam testified that this is an incomplete inventory of SD34 "white fleet" vehicles.

[50] Information in the correspondence and interview notes is less reliable than the in person testimony of witnesses at the hearing who were subject to cross-examination. Where the information provided to Ms. Harris in the telephone interviews contradicts the oral testimony of Mr. Adam, the Panel finds the testimony of Mr. Adam to have greater reliability. There are no inconsistencies between Mr. Adam's testimony and the documentary evidence.

[51] Under cross examination, Ms. Harris was asked if she had observed any difference between the Appellant's sworn evidence at the hearing and the Statutory Declaration that he provided the ITA. Ms. Harris answered "No", and added that the evidence at the hearing added validity and strengthened the information that the Appellant had provided ITA previously.

[52] In addition to the oral testimony, evidence at the hearing included three binders of documents (including the Appeal Record), marked as exhibits. Although only a few of these documents have been referred to in the discussion above, the Panel has considered and weighed all of the documentary and oral evidence relevant to the issue on this appeal.

## **DECISION**

[53] The Panel is satisfied, based on the totality of the evidence, that it is more likely than not that the Appellant has completed a minimum of 8910 hours of mechanical work on buses and other "commercial vehicles" as defined in the federal Commercial Vehicle Drivers Hours of Service Regulations during his more than three decades of employment as a mechanic, including 7 years of employment at Pacific and his employment at SD34 since 1989. The Panel further finds that it is more likely than not that the Appellant has met the scope of work requirement for eligibility to challenge the CTVM examination.

[54] The Appellant has met the burden of proving, on a balance of probabilities, that he had the requisite hours of work and scope of work in the CTVM trade when he wrote the CTVM Interprovincial Red Seal Examination on November 27, 2013. Since the Appellant achieved a pass mark on the Examination, he qualifies for certification as a CTVM.

[55] The appeal is allowed.

[56] In an interim decision issued on April 22, 2014, this Board stayed, with conditions, ITA's suspension of the Appellant's CTVM Certificate of Qualification pending a decision on the merits of the appeal. The Board orders that ITA shall issue the Appellant a CTVM Certificate of Qualification without conditions.

"Paula Barnsley"

Paula Barnsley, Chair  
Industry Training Appeal Board

"Gordon Armour"

Gordon Armour, Member  
Industry Training Appeal Board

"Martha Dow"

Martha Dow, Member  
Industry Training Appeal Board

September 9, 2014