

IN THE MATTER OF AN APPEAL BY STEPHEN YAW AGYEMANG
O/A WILLIAM AUTO VENTURES
PURSUANT TO SECTION 179(1) OF THE *FAIR TRADING ACT*,
BEING CHAPTER F-2 OF THE REVISED STATUTES OF ALBERTA, 2000

AND

IN THE MATTER OF THE DECISION
TO REFUSE AN AUTOMOTIVE BUSINESS LICENCE
UNDER THE *FAIR TRADING ACT*
ON AUGUST 3, 2012

DECISION OF THE APPEAL BOARD

Introduction

[1] On January 28, 2013 the Appeal Board heard the appeal of Stephen Yaw Agyemang (“Stephen Agyemang”) o/a William Auto Ventures (“William Auto”). This was an appeal of the August 3, 2012 decision of the Director of Fair Trading (as delegated) (the “Director”) not to issue an automotive business license for vehicle repairs to Stephen Agyemang. At all relevant times the Director was also the Executive Director of the Alberta Motor Vehicle Industry Council (“AMVIC”).

Background

[2] On January 24, 2011 the Director issued to Stephen Agyemang an Automotive Business License and an Automotive Salesperson Registration in the Province of Alberta. The Automotive Business License did not license Mr. Agyemang or William Auto to provide the service of automotive repairs.

[3] On May 6, 2011, pursuant to the provisions of the *Apprenticeship and Industry Training Act*, R.S.A. c. A-42 (the “AIT”) a Compliance Order was issued to Mr. Agyemang by Ken Wong, an officer for Alberta Apprenticeship and Industry Training. The Compliance Order reads as follows:

You were working in the Alberta Compulsory Certification Trade of Automotive Service Technician without being a registered apprentice, certified technician, nor otherwise authorized to work in the trade.

[4] The Compliance Order states that Mr. Agyemang was in contravention of s. 21(3) of the *AIT*. He was directed to comply with the provisions of the *AIT* by May 27, 2011 at 4:00 p.m.

[5] On September 26, 2011 the Director, under the provisions of the *FTA*, issued a decision to suspend the automotive business license of Stephen Agyemang o/a William Auto, in part because William Auto did not have a licensed certified technician on staff for automotive repairs.

[6] On January 16, 2012 Mr. Agyemang submitted an application for an automotive business license to AMVIC. The description of services on the application form indicates that the license being applied for was for Vehicle Sales (wholesale) and Repairs (Garage) at William Auto.

[7] On August 3, 2012 the Director provided a letter to Stephen Agyemang o/a William Auto containing his decision, pursuant to the provisions of the *FTA*, not to issue an automotive business license for vehicle repairs to William Auto. Seven separate reasons were given for this decision, including the following:

1. Mr. Stephen Agyemang is not a certified journeyman technician in the Province of Alberta ...;
2. Mr. Stephen Agyemang has been directed by the Government of Alberta Industry Compliance Officer acting under part 5 of the Apprenticeship and Industry Trade Act to stop working on vehicles as he is not qualified to do such work in the Province of Alberta. The complexity and related technology of automobiles continues to increase each year and there is a clear need for only qualified technicians to be working in the industry. It is apparent that Mr. Agyemang has continued to do technician work resulting in the stop work order and the lack of an AMVIC Business license. Mr. Agyemang has clearly shown that he will work around Industry regulations rather than comply with them.
....
4. It has been indicated that a certified technician (Mr. Baltej Jay Singh Bal) has been hired to work at Mr. Stephen Agyemang's place of business. However you [Mr. Agyemang] did acknowledge that he is not working for you at this time as you are without an AMVIC license. You were not certain if Mr. Bal is also the designated technician for a number of repair businesses and this causes AMVIC concern as to the quality of work and supervision being performed at the place of business
...
7. I feel it is not in the public interest for Mr. Stephen Agyemang operating as William Auto Ventures to be licensed in the Province of Alberta.

[8] A right of appeal of this decision is provided for in s. 179 of the *FTA*. Mr. Agyemang exercised that right of appeal on August 18, 2012.

Position of the Parties

Stephen Agyemang

[9] Mr. Agyemang was trained in automotive repairs by his father in Africa. In the past he has worked as an automobile mechanic in Ghana, Africa. It does not appear to be disputed by him that he is not presently, under Alberta law, a registered apprentice or a person certified as an automotive service technician (an "AST"). However, he seeks a licence that would include the ability to perform automotive repairs at William Auto. The lack of an automotive business license for vehicle repairs has meant that he cannot operate the business of William Auto and he says that this has caused him great financial hardship.

The Director

[10] It is the position of the Director that William Auto has been performing repairs on automobiles without being licensed to do so. The Director's position is that a business license for automobile repairs cannot be issued until Mr. Agyemang can either establish that he has been certified as an AST, or until he can verify that repair work is being only performed at William Auto by a certified AST.

[11] The Director explains that AMVIC has no intent to hinder the business of William Auto or cause hardship to Mr. Agyemang. The Director states that AMVIC would like to see Mr. Agyemang be able to become qualified to perform automobile repairs. However, the Director's position is that Mr. Agyemang must be properly qualified as an AST in order for a license for vehicle repairs to be issued.

[12] The Director explains that the primary purpose of requiring that those who perform vehicle repairs be qualified to do so is public safety considerations and the public interest. The complexity and related technology of automobiles continues to increase each year, which stipulates that only those who have been properly qualified and licensed are permitted to perform automotive repair work for the public. The public safety concern is particularly strong with respect to automotive repairs performed on vehicles that have been written off.

Jurisdiction of the Appeal Board

[13] This appeal deals with the Director's decision not to issue a business licence to Stephen Agyemang o/a William Auto. Pursuant to s. 179(6) of the *FTA* the Appeal Board may confirm, vary or quash the decision or order that is being appealed.

Relevant Legislative Provisions - Licensing

[14] The following are the relevant legislative provisions dealing with licensing in this case:

Governing Statute –the FTA

[15] The relevant provisions of the *FTA* are as follows:

Licence required – designated businesses

104(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

...

Refusal, suspension, cancellation, terms

127 The Director may refuse to issue or renew a license, may cancel or suspend a licence and may impose terms and conditions on a license for the following reasons:

(a) the applicant or licensee does not or no longer meets the requirements of this Act and the regulations with respect to the class of licence applied for or held;

(b) the applicant or licensee or any of its officers or employees

...

(v.1) fails to comply with any other legislation that may be applicable;

...

(c) in the opinion of the Director, it is in the public interest to do so.

Governing Regulations – the FTA

[16] Pursuant to s. 1 of the *Designation of Trades and Businesses Regulation*, Alta. Reg. 178/1999 automotive businesses are designated as businesses that engage in certain activities, including installing parts or equipment in vehicles or repairing and servicing vehicles. Classes of licenses for automotive businesses are provided for in s. 3 of the *Automotive Business Regulation* Alta. Reg. 192/1999. One class of licence is specified to be an automotive repair licence (s. 3(1)(d)). A person who holds an automotive repair

licence is authorized to carry on the activities of repairing vehicles, servicing vehicles, recycling and dismantling vehicles, and installing parts or equipment in vehicles (s. 3(5)).

[17] Section 4(1)(a) of the *Automotive Business Regulation, supra*, permits the Director to refuse to issue a licence to an applicant where the applicant is unable to satisfy the Director that the applicant is complying with the laws that apply to the automotive business proposed to be operated under the license, or where the applicant has contravened the codes of conduct applicable to the automotive business to be operated under the licence. General codes of conduct are provided for in s. 12 of the *Automotive Business Regulation*. Section 12(o) requires that every business operator comply with any legislation that may apply to the repairing of vehicles.

Relevant Legislation Provisions - Certification

Governing Statute – the AIT

[18] The relevant provisions of the *AIT* are as follows:

Compulsory certification trades

21(1) The Lieutenant Governor in Council

- (a) may by regulation designate an occupation as a compulsory certification trade, and
 - (b) shall provide for an apprenticeship program in that designated trade
- (2) The Minister may grant a trade certificate in a compulsory certification trade to a person who has
- (a) successfully completed the apprenticeship program in that trade, or
 - (b) successfully met any other requirements established, approved or otherwise recognized by the Board
- (3) A person shall not work in a compulsory certification trade unless that person
- (a) holds a trade certificate in that trade,
 - (b) has filed an application under this Act to participate in the apprenticeship program in that trade and that application is subsisting,
 - (c) is an apprentice in the apprenticeship program in that trade,
 - (d) repealed RSA 2000, c5(Supp) s. 13,

(e) is a student in a student work training program in that trade,

(e.1) is permitted under a regulation made under s. 33(2)(e) to work in that trade, subject to any terms, conditions or requirements provided for under that regulation, or

(f) is authorized under section 23 to work or to perform one or more tasks, activities or functions in that trade.

...

[19] Sections 21(3)(e.1) and (f) as well as s. 22.1 of the *AIT* provides for certain circumstances whereby an individual may be permitted to work in a compulsory certification trade without holding a trade certification. However, it appears that in all of these circumstances the approval of the Alberta Apprenticeship and Industry Training Board and/or the government Minister responsible for the *AIT* is required.

Governing Regulations – the AIT

[20] Pursuant to s. 1.2 (l) of the *Designation of Compulsory Certification Trades Regulation* Alta. Reg. 224/2004, the trade of motor mechanic (now known as automotive service technician (AST)) is a compulsory certification trade under s. 21 of the *AIT*. The undertakings that constitute that compulsory trade as are set out at s. 2(1) of the *Automotive Service Technician Trade Regulation*, Alta. Reg. 224/2004 are the diagnosis of problems with and the repair of motor vehicles, including all vehicle systems and related components.

Evidence at Appeal Hearing

[21] At the appeal hearing the Director called four witnesses. No witnesses were called on behalf of William Auto. Mr. Agyemang questioned some of the Director's witnesses. He did not give any direct evidence himself but did provide some closing submissions, which took the form of a discussion between the Appeal Board, the Director and himself.

Director's Witnesses

Ken Wong

[22] Mr. Wong is the individual who issued the Compliance Order described above. He is a designated officer under s. 1(j) of the *AIT*. He was therefore authorized to carry out inspections pursuant to s. 5 of the *AIT*, which provides that an officer under the *AIT* may enter premises to ensure that the *AIT* is being complied with. As it relates to this matter, With respect to William Auto Mr. Wong was therefore authorized to make inquiries as to the "employment, qualification, training, or instruction" of persons

[23] Mr. Wong attended at William Auto on December 20, 2010. He found at least two vehicles inside the premises of William Auto in various stages of repair. One vehicle was on the lift with the tires taken off for undercarriage access. There were many parts around the shop. All of this suggested to Mr. Wong that someone at William Auto was carrying on the work of an AST. Mr. Wong did not witness Mr. Agyemang performing any repair work on a vehicle but he formed the impression that Mr. Agyemang was in fact doing that work. Mr. Wong spoke to Mr. Agyemang and he admitted that he was performing repair work on vehicles for other people. Mr. Wong informed him that he could only do that type of work if he obtained the appropriate trade certificate under the *AIT*. Mr. Wong also advised Mr. Agyemang that he could hire someone else to do the repair work, as long as that person was properly certified.

[24] Mr. Wong conducted a follow-up visit on May 6, 2011. At that time Mr. Agyemang produced a yellow card that had been issued to him by the Alberta Government (Appeal Hearing Exhibit 2). The card identified Mr. Agyemang as having a subsisting application for certification/recognition of certification in the trade of automotive service technician. This card expired on January 31, 2008. Mr. Wong explained that because Mr. Agyemang had been unable to pass the qualification examination in January of 2008 that his qualification status had expired. The card did not provide him with any form of certification that would allow him to perform the work of an AST. Mr. Wong therefore took the card from Mr. Agyemang. Mr. Wong says that Mr. Agyemang again admitted that he was working on vehicles and replacing motors. Because this was a task within a compulsory trade Mr. Wong therefore issued and served the May 6, 2011 Compliance Order.

[25] In reference to Mr. Agyemang's failure to pass the qualification examination, Mr. Wong explained that this examination is part of the Qualification Certificate Program – Work Experience. Experienced tradespeople can have their work experience, skills and knowledge assessed against the standards for certification in an Alberta designated trade. For individuals who are eligible, certification may be obtained by passing a written qualifying examination and by providing an Employer Declaration Letter (an "ELD"). In Mr. Agyemang's case the ELD needs to be from a certified automotive services technician who can attest to Mr. Agyemang's competency. Mr. Agyemang has attempted to pursue this route but has been unable to pass the qualifying examination. (His May 11, 2011 Qualification Certificate Application form indicates that he would require a translator for his examination and presumably that was provided to him during the examination).

[26] In pursuit of this route to certification Mr. Agyemang has provided two ELD's to Mr. Wong. The first ELD was said to be unacceptable because it was signed by an individual for whom there was no record of certification as an automotive services technician. The second ELD that was received by Apprenticeship and Industry Training was also determined to be unacceptable. Vishwa Naidu as Manager/Owner of A-Apollo Transmission Ltd signed this second ELD wherein he states that he was a supervising journeyman for Mr. Agyemang and that he was satisfied that Mr. Agyemang was functioning at the journeyman level in the trade of automotive service. The letter

concludes by stating that Mr. Agyemang carried out his work at a very skilled level as expected from an Alberta certified journeyman in the Automotive Service Industry. Mr. Wong advised that during a follow-up by Apprenticeship and Industry Training to verify the letter, Mr. Naidu advised that Mr. Agyemang had worked for him previously, but did not work for him at the present time. He also advised that he could not take any future liability for Mr. Agyemang's work. Mr. Wong indicated that this latter statement made the ELD from Mr. Naidu unacceptable. However the Appeal Board notes that nowhere in the Qualification Certification Program – Work Experience Information and Instructions document is there any requirement that an individual who signs an ELD must state that they are prepared to take future liability for an applicant's work. It would seem to be most unlikely that any individual who signed an ELD would be willing to commit to that type of future liability. The Appeal Board finds the reason given for rejecting the second ELD submitted by Mr. Agyemang to be questionable and not in accordance with Alberta Apprenticeship and Industry Training's own materials.

Gary Kaluta

[27] Mr. Kaluta is an investigator with AMVIC. He testified that he attended at William Auto during the year 2008. At that time Mr. Agyemang told him he was not performing repair work but was disassembling vehicles and selling the parts overseas. Mr. Kaluta was doubtful about this claim as he felt that the state of the vehicles that he saw at William Auto demonstrated that the vehicles were actually being repaired and not just dismantled for parts. Mr. Kaluta asked Mr. Agyemang to provide documents to verify the sale of parts overseas. He also requested the names of the individuals involved in the shipping or purchasing of these parts. Neither of these requests was responded to. Mr. Kaluta's investigation revealed that Fountain Tire had performed 27 wheel alignments for William Auto. Mr. Kaluta felt that this demonstrated that vehicle repairs were being performed at William Auto, as it did not make sense that wheel alignments would be done on vehicles that were being dismantled and sold for parts. Although it was Mr. Kaluta's subsequent understanding that Mr. Agyemang was employing a certified AST at William Auto, Mr. Kaluta never met anyone who was a certified AST on any of his visits to William Auto. It was therefore his impression that Mr. Agyemang was performing vehicle repairs at William Auto without having a license to do so.

Darren Conrod

[28] Mr. Conrod is an investigator with AMVIC. He testified about two consumer complaints (2008 and 2011) made with respect to vehicles that had been repaired at William Auto. Mr. Conrod gave no evidence that the repair work at issue had been performed by Mr. Agyemang or had been performed by anyone at William Auto who was not a licenced AST. Accordingly, the Appeal Board finds that Mr. Conrod's evidence was not relevant to the matter before it.

Jan Broer

[29] Mr. Broer is an investigator with AMVIC. In February of 2012 he attended at William Auto at which time Mr. Agyemang advised him that he had a certified AST on staff, but was informed that the individual was not there at the time. Mr. Broer says attended at William Auto on 4 occasions in 2012 at no time was a certified AST present. Mr. Broer produced four invoices, some of which show that William Auto was engaged in vehicle repair work for the public.

[30] None of the evidence of any of the Director's witnesses was seriously challenged by Mr. Agyemang at the Appeal Hearing.

[31] Mr. Conrod and Mr. Broer gave evidence about police investigations into activities at William Auto. There was no evidence of any convictions with respect to activities at William Auto and in any event all of the evidence given in this regard was either firsthand or secondhand hearsay. The Appeal Board gives no weight to this evidence. The Appeal Board further notes that the Director's August 3, 2012 letter to Mr. Agyemang setting out his reasons for not issuing a business licence for vehicle repairs contains no reference to police investigations or criminal activities at William Auto.

Decision

[31] Pursuant to the *FTA* and its applicable regulations, business operators who wish to perform automotive repairs are required to comply with relevant legislation that applies to automotive repairs. A business license may be refused when an applicant cannot satisfy the Director that the applicant is complying with the laws applicable to the automotive business.

[32] In this case the law applicable to Mr. Agyemang is the *AIT* and its regulations. Under that legislation the trade of AST is a compulsory certification trade. As a result, Mr. Agyemang cannot personally work in that trade unless he meets the requirements of s. 21(3) of the *AIT*, or unless he satisfies the requirements of the Qualification Certificate Program – Work Experience. Mr. Agyemang has not met either of these requirements.

[33] With respect to the Qualification Certificate Program examination the Appeal Board notes from the documents provided to it that Mr. Agyemang may have difficulties with English, particularly with respect to the reading and writing of English. The Appeal Board strongly suggests that in any future written examinations that Mr. Agyemang be provided with an interpreter, should he request one.

[34] Even if Mr. Agyemang remains personally unable to work as a certified AST, his business could be licenced to perform automotive repairs if he employs a certified AST to do those automotive repairs. However, the evidence of Ken Wong and Jan Broer indicates that it is questionable whether William Auto has, at all relevant times, been employing a certified AST to do all of the automotive repair work for public customers at William Auto. Mr. Agyemang gave no evidence to contradict the evidence Ken Wong

and Jan Broer on this issue. Furthermore, Mr. Agyemang gave no indication at the Appeal Hearing that he has any arrangements in place to employ a certified AST in the future.

[35] The Appeal Board therefore affirms the decision of the Director not to issue a business license for vehicle repairs to Stephen Agyemang o/a William Auto. Mr. Agyemang has not demonstrated that he is complying with the laws applicable to the business of automotive repairs and accordingly the Appeal Board concludes that the Director is entitled, at this time, to refuse to issue a business license for automotive repairs to Mr. Agyemang. Given the nature of the work of an AST it would not be in the public interest that a business license for automotive repairs be issued to someone who cannot demonstrate that automotive repair work is being performed by a certified AST.

[36] Although the Director's refusal to issue a business license for automotive repairs may present business difficulties for Mr. Agyemang, he does have options available to him. AMVIC and Alberta Apprenticeship and Industry Training are in the best position to counsel Mr. Agyemang on his options, but as confirmed by the Director at the Appeal Hearing, if Mr. Agyemang remains unable to avail himself of the Qualification Certificate Program – Work Experience he can take an apprenticeship program and obtain his certification in that manner. If Mr. Agyemang does not wish to pursue that option then he can hire a qualified AST to work at William Auto, as long as that employment relationship satisfies AMVIC that all automotive repair work for the public is only being performed at William Auto by a qualified AST. As agreed by the Director at the Appeal Hearing Mr. Agyemang is entitled to apply for a licence for vehicle repairs if he is able to meet the above conditions.

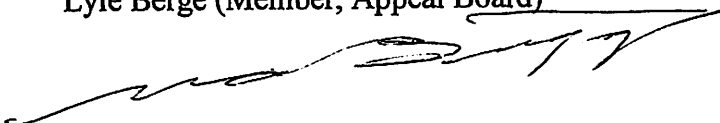
Disposition

[37] The Director's decision of August 3 2012 not to issue a business licence for vehicle repairs to Stephen Agyemang o/a William Auto is affirmed. As indicated above, Mr. Agyemang is not precluded in the future from applying for a business licence for vehicle repairs should he meet the required conditions for obtaining that licence.


Appeal heard on January 28, 2013, decision dated February 27, 2013.



Lyle Berge (Member, Appeal Board)



Al Briggs (Member, Appeal Board)



Louise Redmond (Chair, Appeal Board)