

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD
OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 2001-4045
OSHA INSPECTION NO. 304689177
CSHO ID NO. W4875

v.

REYNOLDS & SONS CONSTRUCTION
COMPANY,

ORDER

RESPONDENT.

THIS MATTER was heard by the undersigned on January 16, 2002 in Charlotte, North Carolina. The complainant was represented by Ralf F. Haskell, special deputy attorney general. The respondent was not represented by counsel but appeared through its president, Bobby Reynolds.

After hearing and receiving the evidence and the arguments of the representatives of the parties, the undersigned makes the following

FINDINGS OF FACT

1. The complainant is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the Act).
2. The respondent is a corporation operating as a general contractor and is located in Charlotte, North Carolina. It employs nine (9) persons.
3. On July 12, 2001, Howard L. Walters, an officer with the consultative services branch of the North Carolina Department of Labor, was traveling on U.S. Highway 21 in Cornelius, North Carolina enroute to an inspection.
4. As he drove by, Mr. Walters observed a construction site adjacent to the road. He observed three men on the roof of a partially constructed building carrying OSB sheathing, with no apparent fall protection visible.
5. Mr. Walters stopped and conducted an inspection of the jobsite pursuant to complainant's special emphasis program for construction safety for Mecklenburg County.

6. One of the three men on the roof was Todd Huntley, president of Huntco Construction Company. Huntco was the framing and trusses subcontractor for this construction project. Its contract also required Huntco to install OSB sheathing and tar paper on the roof deck. The other two men were Huntco employees.

7. Mr. Huntley identified the respondent as the general contractor on this project, which was a complex of three buildings to be used as offices for doctors and dentists. One building was approximately 98 % complete and a second had just commenced construction. The third building was the one on which the three Huntco employees were working. The project had started on January 3, 2001 and was scheduled for completion in December, 2001. The address of the project is 9615 Caldwell Commons Circle, Cornelius, North Carolina.

8. Respondent's superintendent for the project was Richard Rushing, who was on site in the mostly completed building when Mr. Walters arrived. His cousin, Pete Rushing, was also a superintendent for the respondent and was on site assisting Richard Rushing. Pete Rushing was observing the Huntco employees working on the roof when Mr. Walters came to the site.

9. The Huntco employees were using a rough terrain forklift to place the 4' x 8' OSB boards on the roof edge. They then carried the boards to the position for installation. The Huntco employees had been working on this roof for about two weeks.

10. The Huntco employees were wearing soft, standard athletic shoes with no reinforcement for the toes. They were carrying OSB boards weighing up to 40 pounds and power tools such as automatic nailers weighing up to 40 pounds. These shoes did not meet the requirements of 29 CFR 1926.95(a) or 1926.96 concerning foot protection.

11. There existed the possibility that employees would drop the OSB board or power equipment on their toes and feet. The substantially probable resulting injury would be toe fractures or severe lacerations.

12. Richard Rushing acknowledged to Mr. Walters that he had seen the Huntco employees working while wearing the athletic shoes.

13. Later, Bobby Reynolds told Mr. Walters that he believed that Huntco by contract was solely responsible for its employees' safety and that respondent was not responsible for the safety of Huntco employees. He also stated to Mr. Walters that the respondent had conducted no training of Huntco employees and had not required Huntco to produce any written safety programs.

14. Todd Huntley advised Mr. Walters that it had no written safety programs.

15. The height of the lowest edge of the eave on the building on which the Huntco workers were working was 13 feet, 6 inches above the ground. The peak of the roof was 28 feet above the ground.

16. There was no guardrail around the roof perimeter or along the leading edge of the work. There was no safety net on this building. None of the Huntco employees was wearing personal fall arrest equipment.

17. Neither the respondent nor Huntco had a fall protection plan in place on this project.

18. There existed the possibility that employees could fall off the roof, since no fall protection was in place. The substantially probable resulting injury would be serious fractures or death.

19. Huntco had not used any fall protection equipment on the project. The respondent through daily observation of Huntco employees working was aware that no fall protection equipment was being used. The Huntco employees commenced work each day without the use of fall protection.

20. By its contract with Huntco, respondent had the right to require Huntco to use safety equipment. Neither the respondent nor Huntco conducted training of the Huntco employees for fall protection. There were no written procedures or manuals for fall protection at the jobsite.

21. The respondent made no inquiry into Huntco's safety program, which was essentially nonexistent. The respondent did not request any Huntco records on safety training. Had respondent made such inquiry or request, it would have learned that Huntco had no safety program.

22. At the hearing, the respondent produced written safety programs, including fall protection, which it claimed were in place and utilized at the time of Mr. Walters' inspection. In the original proposed penalty calculations by Mr. Walters, the respondent was not given the 10% credit for written safety programs allowed by the Field Operations Manual.

23. The undersigned finds that the written safety programs produced by the respondent at the hearing qualify it for the extra 10% credit.

24. The penalties were calculated by Mr. Walters pursuant to the Field Operations Manual.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The respondent is subject to the provisions of the Act.
3. As the general contractor on site on this construction project, the respondent knew or should have known of the safety violations by the employees of Huntco. The respondent had the right by contract to control the work of the Huntco employees and stop their work if they were not working in compliance with the provisions of the Act.
4. Since the Huntco workers violated the cited provisions of the Act, the respondent likewise violated those provisions.
5. The violation of the provisions of the Act were properly characterized by complainant as serious or nonserious as indicated.

Based on the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** as follows:

1. Citation 1, Item 1 is affirmed as a serious violation of 29 CFR 1926.28(a) with a penalty of \$125.00.
2. Citation 1, Item 2a is affirmed as serious violation of 29 CFR 1926.501 (b)(2)(1) with a penalty of \$175.00.
3. Citation 1, Item 2b is affirmed as a serious violation of 29 CFR 1926.502 (a)(2) with a penalty grouped with that of Citation 1, Item 2a.
4. Citation 1, Items 3 is affirmed as a serious violation of 29 CFR 1926.503 (a)(2) with a penalty of \$175.00.

5. Citation 2, Item 1 is affirmed as a serious violation of 29 CFR 1926.503(b)(1) with no penalty.

6. The penalty amount of \$475.00 shall be paid within fourteen (14) days of the filing date of this Order.

7. All violations not previously abated shall be immediately abated.

This 31st day of January, 2002.

RICHARD M. KOCH
HEARING EXAMINER