

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

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 2001-4070
OSHA INSPECTION NO. 304260318
CSHO ID NO. V8964

v.

HANOVER IRON WORKS INC.

ORDER

RESPONDENT.

APPEARANCES

Complainant:

Daniel D. Addison

Assistant Attorney General

North Carolina Department of Justice

Respondent:

Richard M. Morgan

STEVENS MCGHEE MORGAN LENNON & TOLL PLLC

Attorneys for Respondent

BEFORE

Hearing Examiner: Monique M. Peebles

THIS CAUSE came on for hearing and was heard before the undersigned Monique M. Peebles, Administrative Law Judge for the Safety and Health Review Board of North Carolina, on March 15, 2002, at the Safety and Health Review Board, 217 West Jones Street in Raleigh, North Carolina.

The Complainant was represented by Mr. Danny Addison, Assistant Attorney General. The Respondent was represented by attorney Richard M. Morgan of Stevens, McGhee, Morgan, Lennon & Toll, PLLC. Present for the hearing for the Department of Labor, OSHA Division, were Linda S. Kimbell, Assistant Attorney General and Paul Vogel, Safety Compliance Officer. Present at the hearing for the respondent were Horace T. King, III (hereinafter "Tommy King"), president of Hanover Iron Works and Ricky Hill, Respondent's job site foreman and roofing supervisor.

Respondent moved the court for a continuing objection to the compliance officer's testimony to the extent it was hearsay. Without objection, the motion was allowed.

The Respondent presented no evidence and waived his opening close.

After reviewing the record file, hearing the evidence presented at the hearing, with due consideration of the arguments and contentions of all parties, and reviewing relevant legal authority, the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

FINDINGS OF FACT

1. Complainant, the North Carolina Department of Labor, by and through its Commissioner, is an agency of the State of North Carolina charged with inspection for, compliance with, and enforcement of the provisions of N.C. Gen. Stat. §§ 95-126 et. seq., the Occupational Safety and Health Act of North Carolina (the "Act").
2. This case was initiated by Notice of Contest received by the Complainant, Commissioner of Labor of the State of North Carolina, on or about November 8, 2001, contesting a citation issued on September 19, 2001, to Respondent, Hanover Iron Works, Inc. (hereinafter "Respondent" or "Hanover Iron Works").
3. Respondent, a North Carolina Corporation, duly organized and existing under the laws of the State of North Carolina with its principal office located at 1851 Dawson Street, Wilmington, NC is subject to the provision of the Act (N.C. Gen. Stat. § 95-128) and is an employer within the meaning of N.C. Gen. Stat. § 95-127 (10). Respondent employs about 50 employees.
4. The undersigned has jurisdiction over the case (N.C. Gen. Stat. § 95-135).
5. On June 7, 2001, Safety Compliance Officer Paul Vogel, (hereinafter "SCO Vogel") with the North Carolina Department of Labor, inspected a work site located at 5321 Oleander Drive, Wilmington, North Carolina, (World of Floors) as a result of a fatality of one of respondent's employees having occurred at the site on June 6,

2001. World of Floors is a flooring retail outlet and respondent was in the process of repairing and replacing their roof system.

6. When SCO Vogel arrived at the site, he presented his credentials and spoke to Tommy King. Vogel explained the purpose, nature and scope of his inspection. He was given permission to investigate and inspect the work site by Mr. King.

7. During the inspection, SCO Vogel interviewed King and Foreman Ricky Hill, obtained written statements, took photographs and measurements, received a sketch of the work being done at the work site and produced a report.

8. A closing conference was conducted at Hanover Iron Works.

9. On September 19, 2001, as a result of the inspection, Complainant issued a Citation to Respondent for violations of the Act as follows:

Citation 1 Item 1a: Serious

Citation 1, Item 1a alleges a serious violation of 29 C.F.R. 1926.501(a)(2): "The employer did not determine that the walking/working surface on which its employees were to work had the strength and structural integrity to support employees safely."

a) jobsite, - evaluation of the old roof did not address the structural integrity of the roof upon which the employees were standing on or about June 6, 2001.

The proposed penalty for this violation was \$1,050.00.

Citation 1 Item 1b: Serious

Citation 1, Item 1b alleges a serious violation of 29 C.F.R. 1926.501(b)(2): "Each employee who is constructing a leading edge 6 feet(1.8m) or more above a lower level was not protected from falling by the use of a guard rail system, safety net system, or personal fall arrest system:

a) jobsite, employees constructing a leading edge, and under the supervision of the job site supervisor were not required to wear fall protection while conducting leading edge operations.

This item was grouped with Citation 1, Item 1a with no proposed penalty.

Citation 1 Item 1c: Serious

Citation 1, Item 1c alleges a serious violation of 29 C.F.R. 1926.501(b) (2) (ii): "Each employee who is constructing a leading edge 6 feet (1.8m) or more above a lower level where leading edges are under construction, but who is not engaged in the leading edge work, were not protected from falling by a guard rail system, safety net system, or personal fall arrest system:

a) jobsite, - employees on the roof but not conducting the leading edge were not required to wear fall protection while accessing the roof.

This item was grouped with Citation 1, Item 1a with no proposed penalty.

Citation 1 Item 1d: Serious

Citation 1, Item 1d alleges a serious violation of 29 C.F.R.1926.503(c)(3): "Retraining was not provided when inadequacies in affected employees' knowledge or use of fall protection systems or equipment indicated that the employee has not retained a requisite understanding or skill:

a) jobsite, - employees dis-engaging their fall protection devices were not provided with re-training when the inadequacies were noted.

This item was grouped with Citation 1, Item 1a with no proposed penalty.

Citation 1, Item 1a : 29 CFR 1926.501 (a)(2)

(Walking/working surface strength and structural integrity)

10. The project required Hanover employees to remove the existing 3 feet wide panels on the roof and replace them with new 2 feet wide panels. SCO Vogel testified that the peak of the roof was 18 feet above the ground and the edge of the roof where the ladder was 15 feet above the ground. Foremen Hill testified that the peak of the roof was about 15 feet above the ground and the edge of the roof was about 12-14 feet above the ground. There was a paved parking lot on the left side of building. The length of the building was 150 feet.

11. Before beginning the project on Monday, June 4, 2001, Foreman Ricky Hill inspected the roof at World of Floors to see if there were any areas that posed a

danger to the workers and painted those spots with red paint as "danger areas". No additional inspections were done prior to the accident on June 6, 2001.

12. On June 6, 2001, three employees, Charles Watson, Cristiano Jimenez and the foreman, Ricky Hill were working on the roof. According to a written statement by Tommy King (Complainant Exhibit #2), they replaced about 6 panels in the morning and took a break. When they returned to the roof, one of the employees, Jimenez, began taking up existing panels and installing new ones. When Jimenez leaned over to pull up a loose panel, the existing panel he was standing on tore and ripped about 6 inches.

13. According to the written statement of Foreman Ricky Hill, taken 2 days after the accident, (Complainant Exhibit # 1), they took a 10 minute break and then returned to the roof and proceeded to their prospective work areas. Jimenez reached down to slide the roof panel back when the old panel he was standing on ripped. His foot penetrated the old panel throwing him off balance. He lost his balance and fell to the ground.

14. The evidence showed that all three employees (Cristiano Jimenez, Charles Watson and Ricky Hill) had fall protection equipment on June 6, 2001.

15. After returning to work from "break" Jimenez was not tied off.

16. SCO Vogel testified that the panel Jimenez was standing on at the time of the accident had a rip on the edge of it, however he conceded that he did not know whether the rip or crack pre-existed the fall. Foreman Ricky Hill did not see a crack in the panel during his inspection of the roof.

17. SCO Vogel testified that an on-going determination of the structural strength and integrity of the roof was necessary due to this type of work involving the movement of underlying panel and replacement of new panel.

18. A crack would impose a serious hazard and cause an employee's balance to be thrown off.

19. The roof upon which respondent's employees were working is considered a walking working surface.

20. Failure to determine whether the roof was safe on the date of the accident, after the removal and replacement of panels began, created the possibility of an accident such as a fall and there existed the substantial probability that death from head trauma or serious injury could result as a consequence of the employee being exposed to a fall from 18 feet to a hard surface.

21. A reasonable prudent employer would have known that due to the nature of the work involved in removing and replacing panels on a roof, on-going inspections of the roof were necessary to ensure the safety of their employees who were working a roof 18 feet above a hard surface.

22. SCO Vogel found the severity to be high, the probability to be medium and assessed a Gravity based penalty of \$3,500.

23. SCO Vogel applied a 50% reduction for respondent's size, 20% for good faith and proposed a penalty in the amount of \$1,050. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

24. The hazard could have been avoided by conducting on-going inspections of the roof and the use of personal protective equipment would have eliminated the hazard.

Citation 1 Item 1b : 29 C.F.R.1926.501(b)(2)

(No Fall Protection during Leading Edge Operation)

25. All three employees had fall protection equipment and it was properly installed. Fall protection equipment had been worn prior to the "break" on June 6, 2001.

26. Foreman Ricky Hill testified that Jimenez disengaged his fall gear while on the roof before walking across to the ladder to take a break. The accident occurred a minute or two after they returned from break while Jimenez was removing an old panel. Hill testified Jimenez had not re-engaged his fall gear.

27. The evidence showed that every time a panel was removed, a leading edge was exposed.

28. Employees working on the roof without being tied off presented the possibility of an accident from a fall hazard.

29. Three of respondent's employees were exposed to this hazard.

30. There existed the substantial probability that death from head trauma could occur by being exposed to a fall from 18 feet to a hard surface.

31. The respondent knew or should have known of the hazard where the respondent's job site supervisor, Ricky Hill knew that the employees were not tied off before beginning work on the roof.

32. The respondent could have avoided the accident by ensuring that the employees, while working, maintain tie off at all times and the use of personal protective equipment would have eliminated the hazard.

33. This item was properly grouped with Citation 1, Item 1a and no penalty was imposed.

Citation 1 Item 1c : 1926.501(b)(2)(ii)

No Fall Protection While Leading Edge Under Construction

34. Ricky Hill and Charles Watson were assisting Cristiano Jimenez on the roof while he was engaged in removing and replacing panels. Both employees disengaged their fall gear before they reached the ladder to take their break and neither employee re-engaged in their fall gear before beginning work after the break.

35. There existed the possibility of an accident from a fall hazard while employees working on the roof while a leading edge was under construction, could fall off the roof, and since they were not engaged in fall protection equipment there existed the substantial probability that death from head trauma could occur by being exposed to a fall from 18 feet to a hard surface.

36. Two of respondent's employees were exposed to this hazard.

37. The respondent knew or should have known of the hazard where the respondent's supervisor, Ricky Hill personally observed that the employees on the roof were not engaged in their fall protection equipment at all times while working on the roof.

38. Maintaining the use of personal protective equipment at all times while working on the roof would have eliminated the hazard.

39. This item was properly grouped with Citation 1, Item 1a and no penalty was imposed.

Citation 1 Item 1d : 29 CFR 1926.503(c)(3)

(Failure to Retrain)

40. Employees of Respondent had been instructed on use of safety equipment. Foreman Hill testified that his field superintendent told him and the employees to keep ropes on until you get to the ladder.

41. Foreman Hill testified that the employees tied knots in the rope to shorten it. The knot-tied rope was then not long enough to reach the edge of the roof where the ladder was. Without the knots, the rope was long enough to reach the ladder and employees could remain engaged in the fall protection gear until they reached the ladder.

42. Hill testified that it "becomes habit after awhile" to disengage before getting to the ladder.

43. It was clear from the evidence that the employees had not retained the requisite knowledge and understanding for proper usage of fall protection.

44. Failing to retrain the respondent's employees, including the foreman, who were engaged in replacing a roofing system, created the possibility of an accident from a fall hazard, the substantial probable result of which would be death by head trauma or serious physical harm.

45. The respondent knew or should have known of the hazard where the respondent's supervisor, Ricky Hill himself routinely did not wear fall protection equipment at all times while working on the roof and he personally observed other employees working on the roof without fall protection equipment.

46. The use of personal protective equipment would have eliminated the hazard.

47. This item was properly grouped with Citation 1, Item 1a and no penalty was imposed.

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. Respondent is subject to the provisions and jurisdiction of the Act.

3. Knowledge of the hazardous condition by the respondent's supervisor is imputable to the respondent.

4. Complainant proved by a preponderance of the evidence the following:

- a. Citation 1, Item 1a: respondent committed a serious violation of 29 CFR 1926.501(a)(2) and should pay a \$1,050 penalty.
- b. Citation 1, Item 1b: respondent committed a serious violation of 29 CFR 1926.501(b)(2). Since this item was properly grouped with Citation 1, Item 1a, no penalty should be assessed.
- c. Citation 1, Item 1c: respondent committed a serious violation of 1926.501(b)(2)(ii). Since this item was properly grouped with Citation 1, Item 1a, no penalty should be assessed.
- d. Citation 1, Item 1d: respondent committed a serious violation of 29 CFR 1926.503(c)(3). Since this item was properly grouped with Citation 1, Item 1a, no penalty should be assessed.

BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, **IT IS ORDERED** as follows:

1. Citation 1, Item 1a alleging a serious violation of 29 CFR 1926.501(a)(2) is hereby affirmed; and
2. Citation 1, Item 1b alleging a serious violation of 29 CFR 1926.501(b)(2) is hereby affirmed; and
3. Citation 1, Item 1c alleging a serious violation of 29 CFR 1926.501(b)(2)(ii) is hereby affirmed; and
4. Citation 1, Item 1d alleging a serious violation of 29 CFR 1926.503(c)(3) is hereby affirmed; and
5. The proposed penalty of \$1,050 is hereby affirmed and shall be paid within ten (10) days of the filing of this Order; and
6. All violations not previously abated shall be immediately abated.

This the 5th day of April 2002.

Monique M. Peebles
Administrative Law Judge