

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

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 2002-4088  
OSHA INSPECTION NO. 305034852  
CSHO ID NO. T6259

v.

CAROLINA BRIDGE COMPANY, INC.,

**ORDER**

RESPONDENT.

APPEARANCES

Complainant:

Susan R. Lundberg  
Assistant Attorney General  
North Carolina Department of Justice

Respondent:

Greg C. Ahlum  
Attorney 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 April 28, 2003, at the Safety and Health Review Board, 217 West Jones Street in Raleigh, North Carolina.

Ms. Susan R. Lundberg, Assistant Attorney General, represented the Complainant. Attorney Greg C. Ahlum represented the respondent. Present for the hearing for the Department of Labor, OSHA Division, were Richard Teachey, Safety Compliance Officer ("SCO Teachey") and Lafayette Atkinson, Health Compliance Officer ("HCO Atkinson"). Present at the hearing for the respondent were Richard Nickel, vice president of Carolina Bridge Company Inc., Scott Nickel, president of Carolina Bridge Company Inc. and Manuel Pena Rosas, consultant for Carolinas AGC.

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 January 8, 2002, contesting a citation issued on December 13, 2001, to Respondent, Carolina Bridge Company, Inc. ("Respondent" or "Carolina Bridge").

3. Respondent, a corporation that does business in the State of North Carolina with its principal office located in Orangeburg, SC and 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).

4. Respondent is a heavy highway construction company that has constructed and demolished bridges for 32 years. Respondent employs about 23 employees.

5. The undersigned has jurisdiction over the case (N.C. Gen. Stat. § 95-135).

6. Carolina Bridge was awarded a contract with The Department of Transportation ("DOT") to dismantle a bridge on Kenric Road (1/4 mile off Highway 72 West), in Lumberton, North Carolina. Pursuant to the terms of the contract Carolina Bridge had to dismantle the bridge in the largest pieces possible for reuse of those pieces.

7. On December 4, 2001, SCO Teachey, with the North Carolina Department of Labor and HCO Atkinson inspected Respondent's work site on Kenric Road on the basis of a limited scope referral inspection. The referral alleged employees were working on a bridge without fall protection.

8. When SCO Teachey and HCO Atkinson arrived at the site on Kenric Road in Lumberton, Carolina Bridge was in the process of dismantling the bridge and he observed 4 employees working at the site.

9. SCO Teachey presented his credentials and held an opening conference with the site superintendent, Johnny Platt (Superintendent Platt"). SCO Teachey was granted permission to conduct an on site inspection by Superintendent Platt.

10. While SCO Teachey was on site, he interviewed 3 employees and took notes, measurements and photographs.

11. The deepest section the road bed measured 15 feet to the ground below and the remains of the bridge, depending on the water level, measured 12-15 feet to the water below.

12. SCO Teachey observed and photographed employees working on both the road bed and the remains of the bridge without using fall protection equipment or having any fall protection safety devices in place. (See Complainant Exhibits 2-12). He testified that the only attempt for fall protection was a warning line on the road bed.

13. A warning line, a wire rope around the perimeter of a walking working surface, is flagged every 6 feet and is typically used in roofing activity.

14. SCO Teachey testified that the warning line used by Carolina Bridge at the site on Kenric Road was not properly placed. The warning line was out farther from the edge and in his opinion, employees would not have been protected from a fall with this warning line system.

15. SCO Teachey also photographed several full body harnesses lying on the ground in the road bed area at the site. (Exhibit 13)

16. SCO Teachey learned through employee interviews that one day prior to the inspection, the employees were told that they no longer needed to wear the harnesses.

17. He also learned through employee interviews that Carolina Bridge had a verbal safety plan through "tailgate training" conducted one time per week.

18. SCO Teachey conducted a closing conference with Superintendent Platt and he recommended that 3 citations be issued.

19. On December 13, 2001, the three recommended citations were issued as follows:

**Citation 1 Item 1a: Serious**

Citation 1, Item 1 alleges a serious violation of 29 C.F.R. 1926.501(b)(1): " Employees(s) on a walking working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8m) or more above a lower level were not protected from falling by the use of guardrail systems, safety net systems or personal fall arrest system:"

(a) site - employees working on a portion of remaining road bed and the skeletal beams of what remains of a bridge that was 12- 15 feet above the water and the ground were not provided with fall protection.

The proposed penalty for this violation was \$350.00.

**Citation 1 Item 1b: Serious**

Citation 1, Item 1b alleges a serious violation of 29 C.F.R. 1926.503(a)(1):

"The employer did not provide a training program for each employee who might be exposed to fall hazards that would enable each employee to recognize the hazards of falling nor did the employer train each employee in the procedures to be followed in order to minimize these hazards:

(b) site - employees working on a portion of remaining road bed and the skeletal beams of what remains of a bridge were not provided a training program that would enable each employee to recognize the hazards of falling or how to minimize these hazards.

**Citation 1 Item 2: Serious**

Citation 1, Item 2 alleges a serious violation of 29 C.F.R. 1926.850(a): "Evidence in writing was not available that an engineering survey performed by a competent person had been performed prior to permitting employee(s) to start demolition operations:

c) site - employees working dismantling a bridge and evidence in writing of a Engineering Survey was not available.

The proposed penalty for this violation was \$350.00.

***Citation 1, Item 1a : 29 CFR 1926.501 (b)(1)***

***(Walking/working surface without fall protection)***

20. SCO Teachey determined that without fall protection, there was a possibility of an accident to one or more employees by falling into the water or river bank. He further determined that the likely substantial injury from a fall 12 -15 above the water or a fall from 15 feet above the ground would be serious injury, broken bones or death dependent on the height of the fall to the ground.

21. SCO Teachey found the frequency to be daily, the severity to be high, the probability to be medium and assessed a Gravity based penalty of \$3500.00.

22. Carolina Bridge was given a 65% reduction for size and a 10% reduction for basic safety (the employees were wearing hard hats, respondent provided floats and respondent had no serious violations within the past three years). The proposed penalties were computed in accordance with the provisions of the [Field Operations Manual](#).

23. Vice President and Safety Manager, Richard Nikel has been with Carolina Bridge 8 years and has supervised 20 + demolition projects.

24. Richard Nikel, confirmed that on December 3, 2001, the day before the inspection, he instructed his employees not to wear the harnesses because the project was getting to the stage of demolition where, in his opinion, it was too dangerous to have employees tied off.

25. He further testified that the more parts you remove, the more unstable the bridge gets and in his opinion a fall from 12 to 15 feet would be less dangerous than being tied off to a truss that could collapse.

26. Respondent was halfway through the disassembly plan in removing the floor beams 2 through 6, and as safety manager, Richard Nikel determined that drowning was a greater hazard.

27. In compliance with 29 C.F.R. 1926.106(a), employees working over or near water, where the danger of drowning exists, respondent's employees were wearing life jackets and respondent had ring buoys and a skiff in place at the site.

28. President of Carolina Bridge, Scott Nikel, who has built close to 1,000 bridges in his 32 years with Carolina Bridge, testified that being tied off has to be analyzed on a case-by-case basis.

29. Although respondent's employees were working with safety equipment for drowning hazards, after December 3, 2001, respondent's employees were working on the road bed and the remains of the bed without fall protection.

30. Respondent did not implement an alternate fall protection plan or a safety monitoring system after determining the use of personal fall arrest systems created a greater hazard.

31. Working 12-feet above the water and 15 feet above the river bank without any fall protection plan or safety monitoring system created a fall hazard, the substantial probable result of which would be broken bones or death based on the manner of the fall in the water below, or broken bones or death based on the height of the fall to the ground below the road bed.

32. Four employees were exposed to the fall hazard and the respondent was or should have been aware of these conditions.

33. The penalty was properly calculated pursuant to the [Field Operations Manual](#).

***Citation 1, Item 1b : 29 CFR 1926.503 (a)(1)***

***(Fall hazard training)***

34. SCO Teachey conceded that the employees he interviewed on December 4, 2001, did not actually tell him they had not received fall protection training, but rather, the responses he received from the employees led him to believe that they did not have training.

35. SCO Teachey never contacted respondent's safety director to inquire about safety training. In fact, SCO Teachey was not aware who respondent's safety director was.

36. Carolina Bridge holds weekly "tool box talk" safety meetings on various topics and the week of August 6, 2001, the topic was fall protection.

37. Richard Nikel testified that Carolina Bridge used fall protection equipment during bridgework in almost every instance and there is no dispute that respondent's employees were wearing fall protection equipment up until December 3, 2001.

***Citation 1, Item 2: 29 CFR 1926.850 (a)***

***(Engineering Survey)***

38. Subpart T of the North Carolina OSH standards covering Demolition, section 1926.850 (hereinafter "sec .850), entitled Preparatory Operations, requires the employer to make an "engineering survey" of the structure. Sec .850 requires the survey to be done by a competent person. The purpose of the survey is to "determine the condition of the framing, floors, and walls and possibility of unplanned collapse of any portion of the structure." Sec .850 also states "the employer shall have in writing evidence that such a survey has been performed."

39. Prior to beginning the disassembly of the bridge on Kenric Road, Richard Nikel:

1. Visited the site 3 times;
2. Took photographs of site;
3. Spent several hours measuring the bridge and trusses;
4. Examined the condition of bridge;
5. Did a subsurface assessment of the water below the bridge to determine the depth of the water and the presence of any obstructions in the water below that would cause any safety concerns;
6. Obtained old plans or "as-built" plans of bridge to analyze how it was built to prepare the disassembly plan; and
7. Hired an independent engineering company, Engineering Resources Corporation (hereinafter "ERC"), to conduct an analysis of his proposed truss disassembly plan.

40. Richard Nikel prepared a 3 page document entitled "Robeson County Truss Disassembly Plan." (Complainant's Exhibit 14). The plan outlines 10 steps to disassemble the bridge.

41. ERC produced a 19 page report and two page letter to Carolina Bridge regarding their "Structural Analysis of Bridge Truss Removal Robeson County, NC." (Complainant's Exhibit 15)

42. This writing evidence presented by Respondent addresses the disassembly of the bridge and not the actual survey that was performed to determine the condition of the bridge and possibility of unplanned collapse of any portion of the bridge.

43. Richard Nickel's Truss Disassembly Plan and ERC's Structural Analysis of Bridge Truss Removal failed to satisfy the engineering survey writing requirement mandated by 29 CFR 1926.850 (a).

44. Respondent violated 29 CFR 1926.850 (a) in that it failed to have a written engineering survey to determine the condition of the bridge and the possibility of an unplanned collapse.

45. The disassembly of the bridge presented the possibility of a bridge collapse, the substantially probable result of which would be broken bones or death. Respondent knew or should have known of the potential risk of a bridge collapse and could have prepared a written engineering survey to determine the condition of the bridge and the possibility of an unplanned collapse.

**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. This Court has jurisdiction of this cause and the parties are properly before the Court.

3. The respondent is subject to the provisions of the Act and is an employer within the meaning of N.C.G.S. § 95-127(9).

4. Complainant proved by a preponderance of the evidence that respondent violated 29 C.F.R. 1926.501(b)(1), in that its employees were working on a bridge with an unprotected side or edge which is 6 feet or more above a lower level and were not protected from falling by the use of guardrail systems, safety net systems or personal fall arrest system.

5. The Court cannot find from the greater weight of the evidence that Respondent did not provide training for each employee who might be exposed to fall hazards to comply with 29C.F.R. 1926.503(a)(1).

6. Complainant proved by a preponderance of the evidence that respondent violated 29 CFR 1926.850 (a) in that evidence in writing that an engineering survey was performed was not available.

7. All penalty calculations were properly done pursuant to the [Field Operations Manual](#).

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

a. Citation 1, Item 1a is hereby AFFIRMED as a serious violation of 1926.501(b)(1) with a penalty of \$350.00.

b. Citation 1, Item 1b is hereby DISMISSED.

c. Citation 1, Item 2 is hereby AFFIRMED as a serious violation of 1926.850(a) with a penalty of \$350.00.

This the 21st day of May 2003.