

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

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT,
v.

DOCKET NO. OSHANC 2002-4096
OSHA INSPECTION NO. 304743586
CSHO ID NO. M6855

CAROLINA BRIDGE COMPANY, INC.

ORDER

RESPONDENT.

APPEARANCES

Complainant:

Sonya Calloway
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 January 31, 2003, at the Safety and Health Review Board, 217 West Jones Street in Raleigh, North Carolina.

The Complainant was represented by Ms. Sonya Calloway, Assistant Attorney General. The Respondent was represented by attorney Greg C. Ahlum. Present for the hearing for the Department of Labor, OSHA Division, were Nancy Milliken, Compliance Safety Officer ("CSO") and Charles T. Murdock, Safety Compliance Officer ("SCO"). 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 John McClancy, engineer.

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 and 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 31, 2001, contesting a citation issued on December 18, 2001, to Respondent, Carolina Bridge Company, Inc. ("Respondent" or "Carolina Bridge").

3. Respondent, a corporation which does business in the State of North Carolina with its principal office located in Organgeburg, 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 built bridges throughout North Carolina and South Carolina for 32 years. Respondent employs about 30 employees.

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

6. On November 28, 2001, CSO Milliken, with the North Carolina Department of Labor, inspected Respondent's work site in LeGrange , North Carolina, Lenior County as a result of an anonymous complaint received on November 26, 2001 alleging damage to one of respondent's boom cranes.

7. When CSO Milliken arrived at the site on Highway 70 in LeGrange, she presented her credentials and held an opening conference with the foreman, Bernie Wiggins and the superintendent, Wayne Wright. ("Wright") CSO Milliken discussed the specific allegations with Wright and asked him to accompany her to the boom in question.

8. The boom was lying on the side of the road on Highway 70 when CSO Milliken examined it. CSO Milliken observed that in the midsection of the boom, the lattice was bent and the lattice member (rod that attaches to the chord) looked out of place.

9. CSO Milliken testified that Wright responded that it looked ok to him. CSO Milliken also testified that Wright told her the repairs had been done in South Carolina.

10. CSO Milliken took measurements and photographed the lattice work and these photographs were admitted into evidence. CSO Milliken conducted employee interviews with Wiggins and Wright and also one of the crane operators, Wesley Baker.

11. CSO Milliken was informed that the boom in question had been used when Respondent started working on the bridge's foundation on February 1, 2001 and was taken out of service in November 2001 as a result of a blown engine.

12. CSO Milliken received from respondent, a December 1998 invoice of repairs done to the base section of one of respondent's Link Belt Model 118 boom cranes (Exhibit 10), a 1998 annual inspection report of a Link Belt 118 base section (Exhibit 11) and the 1973 Link-Belt parts and service bulletin manual ("1973 manual")(Exhibit 15).

13. The evidence is unclear as to whether the 1998 repair invoice sent to CSO Milliken was for the repair made to the boom in question. One insert typically does not stay with the same boom crane. They are switched around indiscriminately and the serial number was never ascertained to link the repair invoice with the boom in question.

14. CSO Milliken testified that she requested and received a copy of the service manual from Link Belt ("most current manual")(Exhibit 13) directly because pages were missing from the manual provided to her by respondent.

15. Based upon CSO Milliken's observation of the lattice work of the boom in question and her comparison of it with the diagrams in the service manual she determined that it was not in "a perfect V" shape and she "had a suspicion that it was not right." She consulted SCO Murdock and he was of the opinion that the boom in question should not have been in use.

16. CSO Milliken conducted a closing conference with Mr. Wayne Wright and on December 18, 2001 she recommended a citation issue as follows:

Citation 1 Item 1: Serious

Citation 1, Item 1 alleges a serious violation of 29 C.F.R. 1926.550(a)(1): " The employer did not comply with the manufacturer's specifications and limitations applicable to the operation of crane(s)."

(a) East side of Bear Creek, on US Hwy 70, a 60 ton Model LS 118 Link Belt Crane, employer modified the boom that was not approved by the manufacture.

The proposed penalty for this violation was \$500.00.

17. CSO Milliken determined that the repair made to the lattice was not made in accordance with the manufacturer's recommendations and that there was a possibility of an accident to the employees if the crane failed in the weak spot.

18. CSO Milliken testified that repairs could have been made by either the 1973 manual or the most current manual.

19. Both service manuals only have diagrams and photographs of the lattice alignment and the most current manual sent to Milliken by the manufacturer instructs the person doing repairs to "position the replacement tube to be welded into the **proper location** and clamp into place".

20. Relying in part on the measurement taken by CSO Milliken (5 ½ inches) and his reliance on the appearance of the lattice from the photograph taken by CSO Milliken, SCO Murdock concluded that the lattice member was not in its proper position. Murdock testified that from the photograph, it appeared that the lattice member looked like it was short and it appeared to depict a piece of weld that had not been grinded off.

21. SCO Murdock did not personally observe the boom in question.

22. There is no dispute that the manufacturer's recommendations do not state what the proper distance between to lattice members should be when repairs are made to the lattice.

23. There exists conflicting evidence as to the actual distance between the lattice members where the repair was made. CSO Milliken testified that she measured the distance to be 5 ½ inches apart with a craftsman tape measure. Richard Nickel also took measurements of the distance between the same lattice members and testified that is was 3 ½ inches.

24. The photograph introduced by the respondent and admitted into evidence as respondent's Exhibit 1 clearly depicts the distance as 3 ½ inches as shown by the tape measure in the photograph.

25. Evidence was also presented through the testimony of Richard Nickel that the distance between the vertical lattice members of a section (Exhibit 2) identical to the boom in question and which had never been welded was 2 ¾ inches apart.

26. The distance between the lattice members of the boom in question only measured ½ inch wider than the distance between the lattice members of an identical section of another boom that had never been welded.

27. Evidence showed that horizontal chords are wider than vertical chords.

28. The most current manual states that the repair work should be done by qualified personnel.

29. Richard Nikel testified that the respondent only used certified welders. The certifications were introduced and admitted into evidence.

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. Complainant has failed to prove by the greater weight of the evidence that the respondent violated 29 CFR 1926.550(a)(1).

BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, **IT IS ORDERED** that Citation 1, Item 1 alleging a serious violation of 29 CFR 1926.550(a)(1) is hereby dismissed.

This the 6th day of March, 2003.

Monique M. Peebles
Administrative Law Judge