

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

COMMISSIONER OF LABOR  
OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 2002-4168  
OSHA INSPECTION NO. 305042947  
CSHO ID NO. M1375

v.

HAMPTON ROADS MECHANICAL  
CONTRACTORS, INC.,

**ORDER**

RESPONDENT.

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APPEARANCES:

Complainant:

Sonya M. Calloway  
Assistant Attorney General  
North Carolina Department of Justice

Respondent:

Not present

BEFORE:

Hearing Examiner: Carroll D. Tuttle

**THIS CAUSE** coming on for hearing and being heard before the undersigned Carroll D. Tuttle, Administrative Law Judge for the Safety and Health Review Board of North Carolina on June 27, 2003, at the Safety and Health Review Board, 217 West Jones Street in Raleigh, North Carolina.

The Complainant was present and represented by Ms. Sonya M. Calloway, Assistant Attorney General, North Carolina Department of Justice. An authorized representative on behalf of Respondent was not present.

Respondent was duly served with Notice of Hearing of this proceeding on April 29, 2003 in accordance with the Rules of Procedure of the Safety and Health Review Board of North Carolina.

Based upon the evidence presented by Complainant at the hearing, 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 the Act (N.C.G.S. § 95-133).
2. This case was initiated by a timely Notice of Contest which followed a citation issued to enforce the Occupational Safety and Health Act of North Carolina (OSHANC or Act) (N.C.G.S. § 95-126 *et seq.*).
3. On August 5, 2002, Complainant issued to Respondent Citation Number One, Item 1a alleging a serious violation of 29 CFR 1926.1101 (e) (1); Item 1b alleging a serious violation of 29 CFR 1926.1101 (e) (6); Item 1c alleging a serious violation of 29 CFR 1926.1101 (f) (2) (i); Item 1d alleging a serious violation of 29 CFR 1926.1101 (g) (9) (iv); Item 1e alleging a serious violation of 29 CFR 1926.1101 (k) (9) (v); Item 1f alleging a serious violation of 29 CFR 1926.1101 (o) (1) and Item 1g alleging a serious violation of 29 CFR 1926.1101 (o)(4) (ii). Although grouped together, each item of said citation carried a proposed penalty of \$700.00.
4. Respondent is subject to the provisions of the Act (N.C.G.S. § 95-128) and is an employer within the meaning of N.C.G.S. § 95-127(9).
5. The undersigned has jurisdiction over the case (N.C.G.S. § 95-135).
6. Mr. James R. Driver, Sr., an employee of Tidewater Mechanical Contractors, Inc., appeared with a letter from Respondent purporting to give Mr. Driver permission to act on behalf of Respondent. Mr. Driver indicated to the Court that he was neither an employee or officer of Respondent at the time of the hearing nor an employee or officer at the time of the inspection in question. Further Mr. Driver indicated to the Court that he is not an attorney at law.
7. Counsel for the Complainant objected to Mr. Driver acting on behalf of the Respondent.
8. The Court read to the parties provisions of the Rules of Procedure of the Safety and Health Review Board of North Carolina regarding representation of parties and intervenors at said hearings.
9. Counsel for Complainant moved the Court for an entry of judgment pursuant to Section .0503 of the Rules of Procedure of the Safety and Health Review Board of North Carolina, for failure to appear.

**CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact, the Court concludes as a matter of law as follows:

1. The Court has jurisdiction of this cause and the parties are properly before this Court.
2. Respondent is subject to the provisions of OSHANC (N.C.G.S. § 95-128) and is an employer within the meaning of N.C.G.S. § 95-127(9).
3. Mr. James R. Driver, Sr. cannot appear on behalf of Respondent, as Mr. Driver was neither an employee or officer of Respondent at the time of the inspection nor at the time of the hearing, and is not an attorney at law.
4. Respondent failed to appear in accordance with the Sections .0203(a) and .0101(5) of the Rules of Procedure of the Safety and Health Review Board of North Carolina.

IT IS THEREFORE ORDERED ADJUDGED AND DECREED that the Notice of Contest entered herein is hereby dismissed and the citation and notification of penalty is hereby deemed final as though no notice of contest had been filed.

It is also ORDERED that all penalties resulting from this order totaling Seven Hundred Dollars (\$700.00) shall be payable within 30 days of the date of this mailing of this order from the Safety and Health Review Board to Respondent.

This the 23rd day of July, 2003.

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Carroll D. Tuttle  
Administrative Law Judge Presiding