

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

OSHANCNO. 2003-4218
OSHA INSPECTION NO. 305746497
CSHO ID NO. K0050

v.

MCGEE BROTHERS COMPANY, INC.
and its successors,

ORDER

RESPONDENT.

THIS MATTER came on for Hearing before the Undersigned at 10:00 a.m. on June 18, 2003, Guilford County Courthouse, Courtroom 3D - Third Floor, 201 South Eugene Street, Greensboro, North Carolina. Complainant was represented by Jane Gilchrist, Assistant Attorney General, North Carolina Department of Labor. Respondent was represented by Don R. McGee, Vice President, McGee Brothers Company, Inc..

Following a pre-hearing conference Complainant made the following Motion : Dismiss Citation 1 Item (a) and Citation 1 Item (d); and reclassify Citation 1 Item (b) and (c) as non-serious without penalty. Respondent had no objection to the Motion and the Motion is **GRANTED**.

Respondent made a Motion to Withdraw its Notice of Contest to the Citation As Amended, stating that it was making its Motion without acknowledging liability but for the purpose of resolving the matter without the necessity of further litigation.

Respondent and Complainant agreed during the pre-hearing conference that the facts and circumstances with respect to Citation 1 Item (b) and (c) are unique in that: (1) both employees involved in the incident had received training from Respondent but had only approximately 1 year's work experience; (2) the employees were assigned a specific short-term task using a basket-pallet and forklift; and (3) the employees were informed that after completing the task they would be allowed to take a break from work. Complainant and Respondent agree that this Citation shall be used as the basis for a repeat citation only if the new violation involves the same facts and circumstances as stated above.

Complainant did not object to Respondent's Motion, and Respondent's Motion is **GRANTED**.

This the 18th day of June, 2003.

R. Joyce Garrett, Hearing Examine