

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 2003-4238
OSHA INSPECTION NO. 306250150
CSHO ID NO. K6952

v.

G L WILSON BUILDING COMPANY,

ORDER

RESPONDENT.

THIS MATTER was heard by the undersigned on June 4, 2003 in Charlotte, North Carolina. This matter was duly scheduled for hearing with proper notice to both parties.

The complainant was represented by Ralf Haskell, Special Deputy Attorney General. The respondent appeared *pro se* through its Vice President of Human Resources and Safety, Jack Zimmerman.

There were no preliminary matters submitted to the undersigned prior to the presentation of evidence.

After hearing and receiving the evidence and considering the arguments of the representatives of the parties, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor of the State of North Carolina is charged by law with responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").
2. The respondent is a corporation headquartered in Statesville, North Carolina. It is a licensed general contractor engaged in general commercial construction. It employs 125 employees.
3. On January 10, 2003, Compliance Safety Officers Rebecca Israel and Scott Powell were inside a Shoney's Restaurant on East Broad Street in Statesville. From inside the restaurant, both observed three persons on the roof of a partially constructed building adjacent to the Shoney's parking lot.
4. From their observation point inside the restaurant, it appeared to these compliance officers that the men were not wearing fall protection equipment and that no other fall protection was in place on the roof. It also appeared that fall protection would be required, given the height of the roof.
5. The two compliance officers immediately proceeded by car to the construction site, which was a Shell Oil service station/convenience store facility located at 1502 East Broad Street, Statesville, North Carolina. This building was 2460 square feet with a structural steel support and masonry outer walls. At the time of the inspection, it was 50% complete.
6. They photographed the three persons still on the roof, then conducted an opening conference with Rod Sprinkle, the respondent's job superintendent and Jack Zimmerman, respondent's vice president of human resources and safety officer, who was summoned by Mr. Sprinkle to the site. The compliance officers then proceeded to conduct a referral inspection limited to the fall protection issues on the roof.
7. The respondent was the general contractor for this construction project. One of its employees, Gary Call, was on the roof, installing a 2x8 "nailer" board to the top of an architectural parapet that spanned two sides of the building. Messers Call and Sprinkle were the only employees of respondent on the site at the time the compliance officers first arrived.
8. The compliance officers learned that the other two persons on the roof were Mike and Tammy McCarty of Cobra Contracting. Cobra Contracting was a subcontractor to respondent on this project and was completing installation of an OSB board decking for the roof.
9. When the compliance officers observed the McCartys on the roof, Mr. McCarty was turned away from Mr. Call speaking on a cell telephone. Ms. McCarty was looking away in a direction that did not permit her to readily see Mr. Call. The testimony at the hearing indicated that Cobra Contracting had finished its work and the McCartys were on the site to remove their tools.
10. The finish roof was to be a rubber membrane roofing material that would lay on the OSB decking and extend up the parapet wall and be secured on top of the "nailer" under the parapet cap. This rubber membrane was to be installed by another subcontractor to the respondent and was not yet in place. The final roof construction design was that of a low-sloped roof.
11. The parapet wall extended vertically less than 39 inches above the horizontal roof decking. The roof deck was approximately 14 feet above the ground, which was the next horizontal level. The roof was less than 50 feet in width.
12. When the compliance officers arrived on the job site, all three persons were still on the roof. It was apparent from the officers' direct visual observation that these persons were still not wearing fall protection equipment. Likewise, there were no warning line guardrail, safety net or any other restraint to warn of the edge of the roof. This circumstance was acknowledged orally by Mr. Call.
13. The method of access to the roof area from the ground was a ladder. None of the persons on the roof was working close to the ladder or at the point of access. The roof was a walking working surface as defined in 29 CFR 1926.500(b).
14. The respondent contended that it did not need to have any fall protection devices because it was entitled to use a safety monitor by law and that one of the McCartys was the safety monitor.
15. Neither McCarty had been designated as safety monitor by the respondent in advance of or at the time of working on the roof on January 10, 2003. There was no evidence that such a designation had been communicated to Mr. Call on or before that date.
16. There was no evidence that either McCarty was a "competent person" as required by 29 CFR 1926.502(b).
17. When interviewed by the compliance officers during the inspection, Mr. Call stated that he was not using any fall protection devices, not was there a safety monitoring system in place on the roof that day. Mr. Sprinkle told the compliance officers the same thing.
18. Mr. Zimmerman essentially told the compliance officers, "I know we're caught. The horse is out of the barn. We'll change and move on."
19. The parties dispute whether Mr. Call was performing "roofing work" as defined by 29 CFR 1926.500(b) when he was installing the "nailer" on the parapet. The undersigned makes no specific finding on this issue, as it is not determinative of the outcome of this matter, given the previous findings.
20. Mr. Call working on the roof without fall protection created the possibility of an accident for which the likely injury was death or serious injury.
21. The proposed penalty was calculated pursuant to the guidelines of the complainant's Operations Manual. The calculation was not contested by the respondent.

Based on the foregoing Findings of Fact, the undersigned makes the following

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. The respondent is subject to the provisions of the Act.
3. The respondent was required to protect Mr. Call from falling with a guardrail system, safety net system or personal fall arrest system while he was working on the Shell building roof 14 feet above the ground.
4. While the roof dimensions may have met the qualifications of the Act for use of a safety monitoring system, there is no evidence that such a system was in place on the roof while Mr. Call was working. The evidence indicates that a safety monitoring system was not in place.
5. The parapet wall was not high enough to serve as a guardrail.
6. The respondent violated the provisions of 29 CFR 1926.501 (b)(1), which violation was serious as defined in the Act.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. Citation 1, Item 1 is affirmed as a serious violation of 29 CFR 1926.501(b) (1) with a penalty of \$875.00.
2. This penalty shall be paid within twenty (20) days of the filing date of this Order.
3. All violations not previously abated shall be immediately abated.

This 9th day of June, 2003.

RICHARD M. KOCH
HEARING EXAMINER