

NORTH CAROLINA
CUMBERLAND COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO. 15 CVS 002782

THE GOODYEAR TIRE & RUBBER CO. ^{2016 FEB -8 PM 12: 12}

And its successors,

CUMBERLAND CO., C.S.C.

OSHANC NO. 2011-5221

PETITIONER,

BY _____

ORDER

v.

CHERIE K. BERRY, COMMISSIONER OF
LABOR OF THE STATE OF NORTH CAROLINA

RESPONDENT.

This matter comes before this Court upon the Petition of Goodyear Tire & Rubber Co. ("Petition") for Judicial Review of the Order of the Safety and Health Review Commission of North Carolina ("Review Commission"). This matter was heard on January 13, 2013 before Administrative Law Judge Regan H. Weaver. On January 14, 2014, Regan H. Weaver issued an Order holding that the Commissioner of Labor met her burden of proving by a preponderance of the evidence and by substantial evidence that the Petitioner committed a serious violation of 29 CFR 1910.23(c)(1). Petitioner timely filed its Petition for Review of the Order with the Review Commission and the matter was heard on November 18, 2014. On February 27, 2015, the Review Commission issued an order upholding Hearing Examiner Weaver's decision (OSHANC No 11-5221). Petitioner timely filed its Petition for Judicial Review and Motion to Stay Penalty ("Petition") on April 13, 2015, in which the Petitioner objected and excepted to Findings of Fact Nos. 5, 9, 10, 12, 13, 14, 15, 16, 20, and 22, as well as Conclusions of Law Nos. 3 and 4. The Petitioner asserted that the Commissioner of Labor did not prove by the greater weight of the evidence that it violated 29 CFR 1910.23(c)(1), by failing to provide guardrails for its employees working 52 inches above the concrete floor.

This Court held a hearing in this matter on December 14, 2015. Present at this hearing were Matthew J. Little, counsel for the Petitioner, and Larissa S. Williamson, Special Deputy Attorney General, counsel for the Respondent. The Court heard argument on the Petition and has considered the evidence presented. Based on the consideration of these matters, this Court makes the following FINDINGS and CONCLUSIONS pursuant to N.C. Gen Stat. §§95-141 and 150B-51:

- (1) The proper standard of review for the question of statutory interpretation is *de novo*. The reviewing court may substitute its judgment for that of the Review Commission if the Commission's decision was affected by an error of law.
- (2) The platen, and the base of the machine on which the platen was located, were not guarded by standard railing.
- (3) The platen is a "working space for person" as required by the definition of 29 CFR 1910.21(a)(4). Goodyear employees regularly stood on the platen to clean vent holes. While standing on the platen, the employees were over four feet above the concrete floor

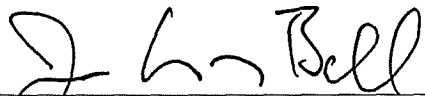
below.

- (4) The task of cleaning the vent holes was not scheduled, but was a predictable task that occurred approximately once per day.
- (5) The vent cleaning task was necessary for the efficient operation of the tire press machinery.
- (6) In keeping with the views of the court in *Donovan v. Anheuser-Busch*, 666 F.2d 315 (8th Cir. 1981), the platen is a platform as defined in 29 CFR 1910.21(a)(4). The holding in *Anheuser-Busch* is most relevant to this case. In the *Anheuser-Busch* case, the tops of pasteurizers were found to be platforms. That court found it significant that employees were required to be present on top of the pasteurizers on a predictable basis, and that the functions performed there were necessary to the efficient operation of the equipment. Just as in *Anheuser-Busch*, the Petitioner's employees stood on top of the platens on a predictable basis and the task was necessary for the efficient operation of the tire press.
- (7) The North Carolina OSHA Review Commission properly found that the Hearing Examiner's findings of fact and conclusions of law were supported by the evidence. There was substantial evidence presented to establish that the platen in question was a platform and, therefore, governed by 29 CFR 1910.23(c)(1).
- (8) Because there is no error of law or fact as to the Review Commission's Findings of Fact, Conclusions of Law, and Order with respect to its ruling that the Petitioner committed a serious violation of 29 CFR §1910.23(c)(1), as alleged in Citation One, Item 1a with an assessed penalty of \$1,950.00, the Order of the Review Commission is upheld.

Based on the foregoing, Petitioner's exceptions as set forth in the Petition for Judicial Review and Motion to Stay Penalty are without merit and are accordingly overruled.

IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that the Order of the North Carolina Safety and Health Review Commission in this case is AFFIRMED. IT IS FURTHER ORDERED that the Petitioner is to abate the violations and to pay the assessed penalty of \$1,950.00 within thirty (30) days of the filing of this Order.

This the 2 day of Feb, 2016.



Judge James Gregory Bell
Judge Presiding
December 14, 2015 Civil Session