

**BEFORE THE NORTH CAROLINA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
RALEIGH, NORTH CAROLINA**

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2013 - 5444
)	
)	INSPECTION
Complainant,)	NO: 316741818
)	
)	CSHO ID: Q3336
v.)	
ROLAND RENFROW & SON)	<u>FINAL ORDER</u>
CRANE SERVICE INC)	
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on August 28, 2013, as continued subsequently to October 31, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. On August 28, 2013 Linda Kimbell, Assistant Attorney General appeared as counsel for the Complainant along with Occupational Safety and Health Division District Supervisor Lafayette Atkinson. James Renfrow, President of Respondent, and Roland Renfrow appeared for the Respondent, along with Respondent’s Consultant Joe DeFranco of Construction Safety Experts. After a lengthy conference and some preliminary agreements between the parties, the parties requested that Hearing be continued for purposes of allowing the parties additional time to investigate and discuss certain issues. On October 31, 2013 either in person or by teleconference Complainant was represented by Linda Kimbell and Respondent was represented by James Renfrow.

Pursuant to the Hearing Order a pre-hearing conference as continued (collectively the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. Mr. James Renfrow and Mr. Roland Renfrow are the only employees of Respondent. At the Hearing Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”). Complainant and Respondent request that the Stipulations and Motions be made part of the Hearing record and that the Undersigned issue a Final Order. The Stipulations and Motions are as follows:

DATABASE
OB

STIPULATIONS

1. The Complainant as Commissioner of Labor of the State of North Carolina is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act"). The Review Commission has jurisdiction over the parties and the subject matter to this action.
2. Respondent is a North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Fayetteville, North Carolina. Respondent is in the business of crane rental with operator. Respondent is an "employer" within the meaning of N.C.G.S. Section 95-127(10); all employees referred to in this matter are "employees" within the meaning of N.C.G.S. Section 95-127(9).
3. On September 17, 2012, Jesse Mendoza, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 1910 Hayes Mill Road in Autryville, North Carolina (the "Inspection").
4. As a result of the Inspection, on February 8, 2013, Complainant issued one citation ("Citation 1") as more specifically described on Exhibit "A" (sometimes herein referred to as the "Original Citation").
5. Respondent submitted a timely Notice of Contest on March 14, 2013.
6. A Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").
7. Neither party has any objection, procedural or otherwise, to this Hearing.
8. Respondent posted the Original Citation and the Hearing Order as required by the Rules. Neither Complainant nor Respondent have received notification from any affected employee that such employee, or its representative, wishes to have a say in, or participate as a party in, this matter, or has any objections in connection with this matter including without limitation objection to the reasonableness of any abatement period.
9. Complainant and Respondent disagree as to the definition of the actions involved to 'receive a load'. Respondent asserts with respect to conditions pertaining to the violation alleged in the Original Citation that all 3 men working in the fall zone were involved in the 'receiving' process and were necessary for receiving the load.
10. Complainant agrees that the Original Citation and the Original Citation as amended by Complainant's Motion will not be used as the basis for Complainant asserting a 'repeat violation' against Respondent. Complainant further agrees that Complainant will assist in scheduling for Respondent's benefit a technical assistant visit from a representative from the Education, Training and Technical Assistance Bureau of the Department of Labor.
11. Respondent agrees that whenever Respondent has a concern as to safety, Respondent as crane operator has the authority to stop its own work and to refuse to handle loads until a

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Hearing.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. Neither party has any procedural objection to this Hearing
4. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State of North Carolina charged with the administration and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "the Act").
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.

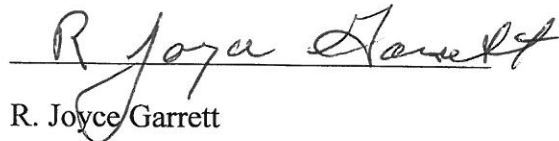
CONCLUSIONS OF LAW

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.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 31 day of October, 2013.


R. Joyce Garrett

Administrative Law Judge

Roland Renfrow & Son Crane Service Inc
2013-5444

CONSENTED TO:

Linda Kimbell

**-Linda Kimbell, Assistant Attorney General
Attorney for Complainant**

James Renfrow

**James Renfrow, President of Respondent
Representative for Respondent**

Exhibit "A"

Original Citation

CITATION NUMBER 1 (Type of Violation: Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1926.1425(d)	02/13/2013	\$1,400.00
		TOTAL	\$1,400.00

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing FINAL ORDER upon:

JAMES RENFROW
PRESIDENT
ROLAND RENFROW & SON CRANE SERVICE INC
2526 MURIEL DRIVE
FAYETTEVILLE NC 28306

LINDA KIMBELL
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

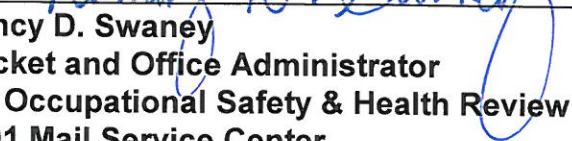
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 31st DAY OF October 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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