

**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 - 5490
)	
)	INSPECTION
Complainant,)	NO: 317018752
)	
v.)	CSHO ID: K2333
VEOLIA TRANSPORTATAION and its successors)	<u>FINAL ORDER</u>
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on November 14, 2013 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Jill F. Cramer, Assistant Attorney General appeared as counsel for the Complainant, and Brian J. Schoolman appeared as counsel for the Respondent.

Pursuant to the Hearing Order a pre-hearing conference (the “Hearing”) was held for the purpose of considering matters which would simplify the issues and expedite the proceedings in the above referenced case. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing. 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:

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 Maryland corporation, duly qualified under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business at 4104 Poole Road, Raleigh, North Carolina. Respondent is in the business of transportation management. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(10); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(9).
3. On April 17, 2013, Altagracia Guzman, an Occupational Compliance Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 4104 Poole Road in Raleigh, North Carolina (the “Inspection”).
4. As a result of the Inspection, on June 25, 2013, Complainant issued a citation (“Citation 1”) as more specifically described on **Exhibit “A”** (the “Original Citation”), which alleged violations related to material handling procedures in a transit maintenance facility, specifically citing the General Duty Clause and Materials Handling and Storage in Subpart N of 29 CFR 1910.
5. Respondent submitted a timely Notice of Contest on August 5, 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. Respondent agrees that the violations alleged in Citation 1 have been abated.
10. The parties agree that upon granting of Complainant’s Motion the penalty for each Item designated in the Original Citation as amended pursuant to Complainant’s Motion has been calculated in accordance with the standard Field Operations Manual procedure and giving consideration by Complainant to standard mitigating factors and to specific factors applicable to Respondent.
12. Respondent agrees to pay the penalty assessed in this matter of \$3,000 within 15 business days of the date of this Final Order.
13. The parties agree to bear their own fees, costs and other expenses, including attorney’s fees if any, that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.
14. Complainant and Respondent agree that provided the respective Motion of each party is granted there are no other matters that remain to be decided, and that other than a ruling with respect to the Motions no outstanding issues remain to be resolved by an evidentiary hearing of this matter. The parties agree that this Final Order is a full and final resolution of the claims set

out in the underlying Original Citation, as amended pursuant to the Motions by Complainant. The parties further agree that (i) the modification of any portion of the Original Citation by Complainant shall not be deemed to be an admission by Complainant that any such portion was alleged without merit, and (ii) none of the foregoing agreements, statements, stipulations and actions taken by Respondent shall be deemed an admission by the Respondent of any of the allegations contained in the Original Citation as amended or waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order. The agreements, statements, stipulations and actions herein by Complainant and by Respondent are solely for the purpose of resolving this matter economically and amicably without litigation and shall not be used for any other purpose except for proceedings and matters arising under the Act and Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

amend Citation 1 Item 1 by (i) deleting subpart d of Item 1; (ii) delete the language in subpart a and insert in lieu thereof the following: “at the maintenance shop on or about April 11, 2013, the employer allowed the employees to store Michelin bus tires model #305/85R22.5 fully inflated and with rims installed weighing approximately 200 pounds each, set on one individual carrier of a tire rack carousel, to a weight in excess of the load rating capacity communicated by the manufacturer”; (iii) delete the language in subpart b and insert in lieu thereof the following: “at the maintenance shop on or about April 11, 2013, the employer allowed the employees to store Michelin bus tires model #305/85R22.5 fully inflated and with rims installed weighing approximately 200 pounds each, set on one individual carrier of a tire rack carousel, to a weight in excess of the load rating capacity communicated by the manufacturer”; and (iv) reclassifying from serious to non-serious without a change in the proposed penalty of \$3,000.00.

amend Citation 1 Item 2 by (i) inserting in line 7 the word “additional” after the word “no” and before the word “protection”; and (ii) grouping Item 2 with Citation 1 Item 1, and deleting the penalty of \$5,600 separately stated for Item 2 (Note: the penalty for Item 1 and Item 2 as grouped shall be \$3,000.00);

amend Citation 1 by deleting Item 3, with its proposed penalty, in its entirety.

Respondent did not object to Complainant’s Motion.

Respondent requested that upon the granting of Complainant’s Motion that the Undersigned consider the following motion by the Respondent (“Respondent’s Motion”), and Respondent confirmed that the violations alleged in the Original Citation as amended have been abated:

to withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above.

Complainant did not object to Respondent's Motion.

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 14th day of November, 2013.



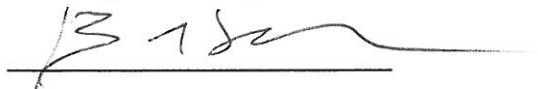
R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



**-Jill F. Cramer, Assistant Attorney General
Attorney for Complainant**



**Brian J. Schoolman
Attorney for Respondent**



**Scott McClellan, General Manager
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	NCGS 95-129(1) General Duty Clause	6/28/2013	\$3,000.00
2	29 CFR 1910.176(b)	6/28/2013	\$5,600.00
3	29 CFR 1910.176(g)	6/28/2013	\$2,100.00
		TOTAL	\$ 10,700.00

CERTIFICATE OF SERVICE

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

BRIAN J SCHOOLMAN
SAFRAN LAW OFFICES
PO BOX 587
RALEIGH NC 27602

JILL CRAMER
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 15th DAY OF November 2013.

OSCAR A. KELLER, JR.
CHAIRMAN



Nancy D. Swaney
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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