

**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 - 5513
)	
)	INSPECTION
Complainant,)	NO: 317094886
)	
)	CSHO ID: E6791
v.)	
GREYHOUND LINES, INC.)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on May 21, 2014 at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:00 a.m. Melissa H. Taylor, Assistant Attorney General appeared as counsel for the Complainant, and Brian O. Beverly, attorney at law, 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 employee’s 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”).

This Hearing was not an evidentiary hearing and the specific facts and circumstances relevant to the Inspection (hereinafter defined) and the Original Citation (hereinafter defined) were not introduced of record, and such facts and circumstances are not included in the Stipulations hereinafter set forth. Based on the Original Citation and Respondent’s Notice of Contest, it appears that no injuries were sustained and that: Respondent was in the business of providing inter-urban and rural bus transportation, and maintained a place of business in Fayetteville, North Carolina; the Inspector (hereinafter defined) conducted an inspection of Respondent’s worksite located at 324 Person Street in Fayetteville, North Carolina, and alleged

that (a) in Respondent's mop room facility employees were entering into such mop room where a compressed gas cylinder containing carbon dioxide did not have a removable type protective cap in place; (b) in Respondent's mop room facility employees were entering into such mop room where a compressed gas cylinder was not properly supported to prevent it from being knocked over; and (c) in Respondent's facility storage room, working space about electric equipment rated 600 volts, nominal, or less was used for storage, more specifically where a 120/208 volt Square D Company Power-Style Switchboard had cardboard boxes and other miscellaneous items stored in-front of switchboard; Respondent denied all such allegations.

As a result of this Hearing, 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 foreign corporation, authorized to do business in North Carolina, and is active and current and maintains a place of business in Fayetteville, North Carolina. Respondent is in the business of providing inter-urban and rural bus transportation. 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 August 8, 2013, Derrick Gibbs and Thomas Benz (collectively the "Inspector"), each an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted a general schedule safety inspection of Respondent's worksite located at 324 Person Street in Fayetteville, North Carolina (the "Inspection"). Marquis Merritt, Lead Supervisor for Respondent and Doris Francis, Occupational Health and Safety Manager for Respondent, consented to the Inspection.
4. As a result of the Inspection, on September 2, 2013, Complainant issued a citation ("Citation 1") as more specifically described on Exhibit "A" (the "Original Citation"). Citation 1 Items 1a and 1b (grouped) alleged citations classified as 'serious' with a total penalty of \$1,200.00; and Citation 1 Item 2 alleged a citation classified as 'nonserious' without penalty.
5. Respondent submitted a timely Notice of Contest dated October 11, 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 the Original Citation as amended herein have been abated.

10. The parties agree that upon granting of Complainant's Motion the penalty, if any, 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 .

11. 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 this case.

12. Complainant and Respondent agree that provided the respective Motions of each party are 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 Motion 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"):

- * to amend Citation 1 Item 2 so that such citation is referred to as Citation 2 Item 1;
- * amend Citation 1 by deleting Item 1a and its proposed penalty;
- * amend Citation 1 by amending Item 1b by deleting the description of the alleged violation and inserting in lieu thereof the following: "Citation 1 Item 1b Type of Violation: Nonserious. 29 CFR 1910.101(b): Section 3.3.5; Compressed Gas Association Pamphlet P-1-1965, as adopted by 29 CFR 1010.101(b): Storage rooms were not dry, cool and well

ventilated. (a) Facility, mop room – where employees stored a carbon dioxide compressed gas cylinder inside a janitor’s sink that was used to empty mop buckets. IMMEDIATELY ABATED. Proposed Penalty: \$0.00”.

*** except as set forth in this motion, the Original Citation shall remain unmodified or amended.**

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 21 day of May, 2014.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Melissa H. Taylor

**Melissa H. Taylor
Attorney for Complainant**

Brian O. Beverly

**Brian O. Beverly, Attorney At Law
Representative for Respondent**

Alan Smith

**Alan Smith, Director of Safety and Security
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>
1a	29 CFR 1910.101(b)	09/06/2013	\$1,200.00
1b	29 CFR 1910.101(b)	09/06/2013	Grouped

(Type of Violation: Nonserious)

2	29 CFR 303(g)(1)(ii)	Immediately abated	\$0.00
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TOTAL \$1,200.00

CERTIFICATE OF SERVICE

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

BRIAN O. BEVERLY
YOUNG MOORE AND HENDERSON PA
PO BOX 31627
RALEIGH NC 27622

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH NC 27602-0629

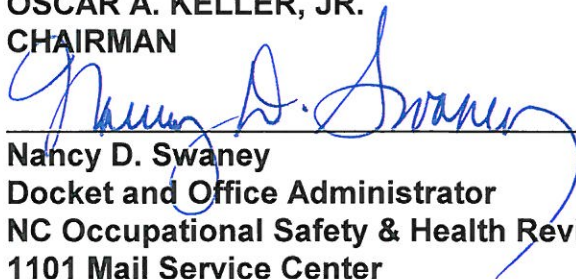
by depositing a copy of the same in the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

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 22nd DAY OF May 2014.

OSCAR A. KELLER, JR.
CHAIRMAN



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