

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

COMMISSIONER OF LABOR FOR)	DOCKET NO: 2014 - 5643
THE STATE OF NORTH CAROLINA)	
)	INSPECTION
Complainant,)	NO: 317717940
)	
v.)	CSHO ID: X6751
SCOTT FARMS, INC)	<u>FINAL ORDER</u>
and its successors)	
Respondent.)	

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on June 9, 2015, continued from March 5, 2015, at the Lee House, 2nd Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina at 10:30 a.m. Melissa Taylor, Assistant Attorney General appeared by teleconference as counsel for the Complainant, and Andrew M. Jackson, Attorney at Law, appeared by teleconference 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”).

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 one employee sustained a nonfatal injury and that: Respondent was alleged to be liable for a ‘serious’ violation of the ‘general duty clause’, with an assessed penalty of \$5,600, in connection with alteration of walk-behind lawn mowers; Respondent denied all such allegations and objected to all such penalty.

DATABASE

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, Article 16, Chapter 95 of the General Statutes of North Carolina (hereinafter "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 Lucama, North Carolina. 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 June 10, 2014, and extending through July 11, 2014, an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor conducted a complaint inspection of Respondent's worksite located at 7965-A Simpson Road in Lucama, North Carolina (the "Inspection").
4. As a result of the Inspection, on October 15, 2014, Complainant issued a citation alleging a violation of NCGS 95-129(1), classifying such violation as 'serious' and assessing a penalty of \$5,600 (such citation sometimes referred to herein as "Citation 1" or the "Original Citation").
5. Respondent submitted a timely Notice of Contest.
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, the Hearing Order and relevant Orders to Continue 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. The parties agree that the violation alleged in Citation 1, as amended pursuant to Complainant's Motion, has been abated by Respondent.
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.

11. Respondent agrees

* that it will implement the following work rule (“Work Rule”): if an employee is required to put his hand(s) in the blade area of a mower during maintaining, cleaning or installing a grass bag the employee must disconnect and secure the spark plug wire away from the spark plug;

* that it will train employees who work with the mowers or who work in the greenhouse with respect to the Work Rule and will take disciplinary action against any employee who violates the Work Rule;

* to pay the penalty assessed in this matter within 10 business days of the date of this Final Order; payment of the penalty is to be made by check or money order made payable to NC Department of Labor, OSHA Division and should include the inspection number (317717940); payment should be sent directly to the The Budget and Management Division, N. C. Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

12. 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.

13. 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 Complainant’s Motion. 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 reclassifying it from a serious violation of NCGS 95-129(1) with a penalty of \$5,600.00 to a serious violation of 29 CFR 1928.57(a)(6)(iii) with a penalty of \$2,940.00;

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"):

*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 9th day of June, 2015.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

**Melissa Taylor, Assistant Attorney General
Attorney for Complainant**

**Andrew M. Jackson, Attorney at Law
Attorney for Respondent**

Scott Farms, Inc
2014-5643

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 9th day of June, 2015.

R. Joyce Garrett

Administrative Law Judge

CONSENTED TO:



Melissa Taylor, Assistant Attorney General
Attorney for Complainant

Andrew M. Jackson, Attorney at Law
Attorney for Respondent

Scott Farms, Inc
2014-5643

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 9th day of June, 2015.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

Melissa Taylor, Assistant Attorney General
Attorney for Complainant



Andrew M. Jackson, Attorney at Law
Attorney for Respondent

CERTIFICATE OF SERVICE

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

ANDREW M. JACKSON
LAW OFFICES OF ANDREW M. JACKSON
PO BOX 27
CLINTON, NC 28329-0027

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

MELISSA TAYLOR
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

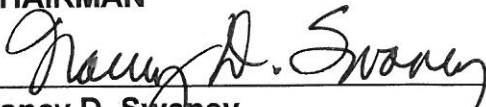
by depositing a copy of the same in the United States Mail, First Class;

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 June 2015.

OSCAR A. KELLER, JR.
CHAIRMAN



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