

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

COMMISSIONER OF LABOR OF THE )  
STATE OF NORTH CAROLINA )  
 )  
                  COMPLAINANT, )  
 )  
v. )  
 )  
BARNES & SEVERT LUMBER CO. INC. )  
and its successors )  
P.O. Box 530 )  
Millers Creek, NC 28651 )  
 )  
                  RESPONDENT. )

DOCKET NO. OSHANC 2015-5736  
INSPECTION NUMBER: 317988285  
CSHO ID: E3555

ORDER



This matter came on for hearing before the undersigned Carroll D. Tuttle, Administrative Law Judge for the Safety and Health Review Commission of North Carolina (the "Commission") on August 17, 2016 at the Law Offices of Groome, Tuttle, Pike & Blair, 210 Ridge Street NW in Lenoir, North Carolina.

Complainant was represented by Larissa S. Williamson, Special Deputy Attorney General, North Carolina Department of Justice, Labor Section, 9001 Mail Service Center, Raleigh, North Carolina 27699-9001. Respondent was represented by Gary Severt, Owner and Judy Severt, Secretary.

At the August 17<sup>th</sup> hearing Complainant presented its witness and offered several exhibits into evidence. Respondent also presented witnesses and offered exhibits into evidence. Complainant's witness was OSHA District Supervisor Ben Harris. Respondent's witnesses were Gary Severt and Judy Severt.

DATABASE  
BW

Based upon the evidence presented by the parties at the hearing, the undersigned makes the following Findings of Fact and Conclusions of Law and enters this Order.

**FINDINGS OF FACT**

1. 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, N.C.G.S. §§ 95-126 et seq. (the “Act”).

2. Respondent, Barnes & Severt Lumber Co. Inc. (hereinafter referred to as “Barnes & Severt”), is a corporation, is duly organized and existing under the laws of the State of North Carolina and is engaged in the sawmill business. At all times pertinent herein Respondent maintained a place of business located at 1016 Congo Road in Wilkesboro, North Carolina (the “Site”).

3. Respondent is an employer within the meaning of N.C.G.S. §§ 95-127(10) and is subject to the provisions of the Act.

4. On May 20, 2015 CSHO Kyle Baker commenced a compliance inspection at the Site.

5. On September 2, 2015 Complainant issued two (2) citations (the “Citations”) charging Respondent with multiple violations of the Act:

**CITATION NUMBER ONE (Repeat Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1	1910.265(c)(4)(iv) – Standard railings	\$5,000.00

**CITATION NUMBER TWO (Serious)**

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1a	1910.95(b)(1) – engineering controls	\$2,000.00
1b	1910.95(d)(1) – monitoring program	Grouped

1c	1910.95(i)(2)(ii) – hearing protection	Grouped
2	1910.147(f)(3)(ii)(D) - LOTO	Grouped

**CITATION NUMBER THREE (Nonserious)**

<u>Item No.</u>	<u>Standard</u>	<u>Penalty</u>
1	1910.24(f) – stair treads	\$0.00
2	1910.37(b)(2) - respirator	\$0.00
3	1910.37(b)(5) – slip/trip	\$0.00

6. On September 24, 2015 Respondent submitted a timely notice of contest contesting all violations and proposed penalties in the Citations.

**May 20, 2015 FATALITY**

7. The Respondent operates a family owned sawmill located in Wilkesboro, North Carolina. The saw mill is located on a 38.42 acre tract including an office building and log unloading building.

8. The process begins with the unloading of log trucks delivered by independent loggers with a knuckle boom. The logs are transported to the saw mill with wheel loaders and stacked adjacent to a second knuckle boom which transports logs from the stack onto a carriage system that sends logs to a debarking machine. Logs are then cut to length for lumber and remnants including bark and scrap wood are ground into sawdust and chips by a hog chipper. The lumber is transported to various companies with kilns throughout North Carolina, South Carolina, Virginia and Tennessee.

9. On May 19, 2015, Respondent’s employee worked approximately twelve (12) feet above the concrete ground below while adjusting a wheel on an end trimmer saw. The employee was working while standing on the edge of an unprotected platform.

10. The end trimmer saw required weekly maintenance and intermittent repairs. In order to access the end trimmer saw, the employee had to walk on the edge of the inner frame of

the “end trimming trough” and then stand on the 4” wide outer frame of the trough while performing the job task. The “end trimming trough” was approximately 30” wide and 32” deep.

11. Respondent’s employee was standing on the 4” side outer frame when he lost his balance, fell off the platform, and struck his head and shoulders on the concrete floor. He was airlifted to Baptist hospital in Winston Salem and was pronounced dead on May 20, 2015.

**29 CFR 1910.265(c)(4)(iv): Standard Railings**

14. During his inspection, CSHO Baker discovered five areas at the facility in which Respondent failed to provide standard railings for elevated platforms.

16. The end trimming saw area, the area in which the accident occurred, did not have standard railings. Employees performed routine maintenance and repair operations in this area. They were exposed to a 12’5” fall to the solid concrete floor while performing these duties.

17. The log loading area had runway stair risers between the runway and a knuckle boom cab entry platform that did not have standard railings. Employees would frequently ascend and descend the risers. They were exposed to a fall distance of five feet.

18. A railing between the scrag saw machine and bull edger had a top rail height of 25” above the runway and 15” intermediate rail height. Employees working in this area were exposed to a fall distance of 9’3” to the concrete floor.

19. There was a 34” deep and 31” wide floor opening at the end of the conveyor system adjacent to the end trimming saw. This area was not guarded and created a fall hazard of 7’11” to the concrete floor below.

20. Testimony by OSH Supervisor Ben Harris and Respondent’s witnesses, Gary Severt, President and Judy Severt, Secretary/Wife, established that Respondent knew about the lack of standard railings in those areas. They have since abated those hazards.

21. Respondent was previously cited for a violation of this standard. The previous citation was issued on January 31, 2014, with a final order date of February 20, 2014.

22. Respondent was properly cited for a repeat violation of this standard.

**29 CFR 1910.95(b)(1): Administrative/Engineering Controls**

23. Employees working in the hog chipper and end trimming saw areas were exposed to noise exceeding 90 decibels, which is the permissible noise level according Table G-16.

CSHO Baker conducted employee noise monitoring of the employees in those areas. The noise monitoring results determined that the employee in the hog chipper area was exposed to 96.7 dB calculated as a time weighted average for 450 minutes. The employee in the end trimming saw area was exposed to 92.0 dB calculated as a time weighted average for 450 minutes.

24. The Respondent had not implemented any administrative or engineering controls in an attempt to eliminate the excessive noise in those areas.

25. The Respondent had hearing protection in the form of foam earplugs available for employees' voluntary use.

26. The Respondent had not conducted, nor enlisted a third party to conduct, an evaluation of the workplace in order to determine which administrative or engineering controls could be implemented.

27. Supervisor Harris testified that the Respondent could have used sound enclosures around the pieces of equipment, established a formal employee rotation schedule, and/or install noise dampening materials to ensure that employees were not exposed to excessive noise.

28. Testimony from Supervisor Harris and Respondent's witnesses, Greg and Judy Severt established that the Respondent knew or could have known about the hazard.

29. Testimony from Supervisor Harris established that the Respondent's employees were at risk of permanent hearing loss due to the excessive noise.

**29 CFR 1910.95(d)(1): NOISE MONITORING PROGRAM**

30. Respondent had not implemented a noise monitoring program. Complainant established that such program would have included elements such as routine noise testing of the workplace and a formal employee rotation schedule to ensure that its employees were not exposed to excessive noise.

**CITATION TWO, ITEM 1c: 29 CFR 1910.95(i)(2)(ii), HEARING PROTECTORS**

31. Respondent provided foam earplugs to employees for voluntary use.

32. Respondent's employees, even those subjected to excessive noise, were not required to wear the earplugs.

33. Respondent had no program in place to ensure that the employees exposed to noise that exceeded 85 dB actually wore hearing protection.

34. In their testimony, Respondent's witnesses admitted that hearing protection was completely voluntary.

**CITATION TWO, ITEM 2: 29 CFR 1910.147(f)(3)(ii)(D), LOTO**

35. Respondent's employees perform routine maintenance and repair operations on the end trimming saw at the Respondent's facility. These operations include replacing flywheels, greasing bearings and adjusting belts. Lock out/tag out is required prior to the employees beginning these tasks.

36. Evidence was presented that Respondent's Production Manager would apply his lock to the end trimming saw when another employee performed the maintenance on the saw. These employees did not utilize group lockout when more than one employee was performing maintenance and/or repair on equipment.

37. The failure to ensure that each employee has his lock on the equipment while he

is performing maintenance work on the machine creates a hazard in which an employee can remove his lock and restart the equipment even though another employee may still be working on it.

37. The failure to perform group lockout on the end trimming saw exposes an employee to lacerations from the saw blades which could result in amputation or death.

**CITATION THREE, ITEM 1: 29 CFR 1910.24(f), STAIR TREADS**

38. Respondent's employees routinely used a fixed stairway located by the bull edger machine. The stairway was routinely used 5-6 times a day by the bull edger machine operator.

39. Four of the bottom riser treads were damaged and created an uneven rise height.

40. Evidence established that the stairs had been damaged for approximately six months as a result of blocks of wood being pushed down the stairs.

41. The uneven stair treads created a slip, trip, or fall hazard which could have resulted in a sprained ankle.

**CITATION THREE, ITEM 2: 29 CFR 1910.134(c)(2)(i), RESPIRATORS**

42. Respondent provided its employees with respirators (N95 two strap dust masks) upon request. The respirators were on a voluntary basis for nuisance dust.

43. Respondent did not provide a copy of Appendix D to its employees. Appendix D includes helpful information such as how to choose the proper respirator and how to properly use a respirator.

**CITATION THREE, ITEM 3: 29 CFR 1910.265(c)(3)(iv),**

**FLOORS/PASSAGEWAYS**

44. The Respondent's knuckle boom operator routinely used the runway floor located between the knuckle boom and the stairs.

45. This runway floor was littered with log bark and wood debris as a result of green

bark falling as logs are picked up by the knuckle boom.

46. The log bark and wood debris on the runway floor created a slip, trip, or fall hazard which could result in a bruised or sprained ankle.

### CONCLUSIONS OF LAW

1. The foregoing Findings of Fact in Paragraphs 1 through 46 are incorporated by reference into these Conclusions of Law to the extent necessary to give effect to the provisions of this Order.

2. The undersigned has jurisdiction over the case and the parties are properly before the Review Commission.

3. Respondent violated 29 CFR 1910.265(c)(4)(iv) in failing to ensure that elevated platforms four feet or more above the floor level were provided with standard railings.

4. Respondent's violation of 29 CFR 1910.265(c)(4)(iv) is a repeat violation of that standard.

5. Respondent violated 29 CFR § 1910.95(b)(1) for failing utilize feasible administrative or engineering controls when its employees were subjected to noise in excess of 90 dB.

6. Respondent violated 29 CFR §1910.95(d)(1) for failing to develop and implement a noise monitoring program when its employees were exposed to noise in excess of 85 dB.

7. Respondent violated 29 CFR § 1910.95(i)(2)(ii) by failing to ensure that hearing protection was worn by employees who were exposed to noise in excess of 85 dB.

8. Respondent violated 29 CFR § 1910.147(f)(3)(ii)(D) by failing to ensure that each authorized employee affixed his personal lockout device to a group lockout device prior to working on equipment.



9. Respondent violated 29 CFR § 1910.24(f) when it allowed its employees to utilize stair treads that were not uniform in rise height and tread width.

10. Respondent violated 29 CFR § 1910.134(c)(2)(i) when it failed to provide Appendix D to its employees who voluntarily used respirators.

11. Respondent violated 29 CFR § 1910.265(c)(3)(iv) when it failed to provide an effective means to minimize slipping and tripping on runway floors.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED, ADJUDGED** and **DECREED** that:

Citation No. 1, Item 1 is affirmed as a repeat serious violation with a penalty of \$5,000.

Citation No. 2, Items 1a, 1b, and 1c cited as serious violations of 29 CFR § 1910.95 are affirmed as serious violations with a grouped penalty of \$2,000.

Citation No. 2, Item 2 cited as a serious violation of 29 CFR § 1910.147(f)(3)(ii)(D) is affirmed with a penalty of \$2,000.

Citation No. 3, Item 1 cited as a non-serious violation of 29 CFR § 1910.24(f) is affirmed without any penalty.

Citation No. 3, Item 2 cited as a non-serious violation of 29 CFR § 1910.134(c)(2)(i) is affirmed without any penalty.

Citation No. 3, Item 3 cited as a non-serious violation of 29 CFR § 1910.265(c)(3)(iv) is affirmed without any penalty.

This the 4<sup>th</sup> day of October, 2016.

  
  
Carroll D. Tuttle  
Administrative Law Judge presiding

**CERTIFICATE OF SERVICE**

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

JUDY SEVERT  
P. O. BOX 530  
MILLERS CREEK, NC 28651

LARISSA S. WILLIAMSON  
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 4 DAY OF December 2017.

ARLENE K. EDWARDS  
CHAIRMAN

  
Karissa B. Sluss

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