

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

RALEIGH, NORTH CAROLINA



COMMISSIONER OF LABOR FOR)
THE STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
BASIC ELECTRIC COMPANY, INC.)
)
RESPONDENT.)
_____)

ORDER

OSHANC NO. 2016-5761
INSPECTION NO. 317999647
CSHO ID NO. N5659

THIS MATTER was heard by the undersigned on September 21, 2016 in Charlotte, North Carolina.

The complainant is represented by Jill F. Cramer, Assistant Attorney General; the respondent was unrepresented and did not appear, despite being duly notified of the hearing date, time and place by the Commission.

Because the respondent was not present for the hearing, the complainant submitted a certified copy of the investigative file in this matter, along with an affidavit of complainant's compliance officer. Absent objection from the respondent, these documents were admitted into evidence. *See, Commissioner v Eagle A, Inc.* OSHANC No. 2002-4200 (2004).

After consideration of the evidence presented, the undersigned makes the following

FINDINGS OF FACT

1. The complainant as Commissioner of Labor is charged with the responsibility for compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina (the "Act").

2. The respondent Basic Electric Company, Inc. is a North Carolina corporation with its principal place of business in Union County, North Carolina.

DATABASE
BW

3. On July 8, 2015, Compliance Safety and Health Officer Dawn Jarman initiated a complaint and accident inspection of a jobsite located at 425 West Trade Street in Charlotte, North Carolina.

4. This jobsite is located in downtown Charlotte and is to be a five story residential structure, which was under construction at the time of the inspection. The intended use of the project is for apartments called "The Mint".

5. Balfour Beatty Construction, LLC is the general contractor for the project. The respondent was the electrical subcontractor. The respondent was using its own employees on this project but also used employees of two temporary staffing companies: Premier Electrical Staffing, LLC ("Premier") and Skilled Trades Services, LLC.

6. Two complaints concerning this jobsite were received by the complainant on July 7, 2015. These complaints alleged that an industrial accident occurred on July 2, 2015, which resulted in an employee of Premier receiving second and third degree electrical burns. These complaints also alleged a lack of competence on the part of respondent's jobsite superintendent and a lack of compliance with provisions of the Act.

7. Ms. Jarman conducted a full investigation, including obtaining relevant documents and written statements from witnesses.

8. She determined that respondent was requiring its employees and those of Premier to work on electrical circuits while such circuits were energized and that respondent was not using any lockout-tagout procedures on the electrical circuit work it was installing on this project and had provided no training with reference to those procedures.

9. She also determined that after the aforementioned industrial accident resulted in serious injury to one of its temporary workers, respondent took no action to train any of its employees or temporary workers regarding energized circuit hazards and continued to fail to employ lockout-tagout procedures, even after training performed on this jobsite by Balfour Beatty Construction, LLC.

10. As a result of this lack of effort to provide training or change its work procedures to comply with the Act, the respondent was terminated as the electrical subcontractor on the project.

11. The respondent's jobsite superintendent stated to Ms. Jarman that he had not received any lockout-tagout training from the respondent, even though he had been made the superintendent for the project.

12. The respondent had a written lockout-tagout policy which it provided to the complainant. Despite having such a policy, it did not adhere to it or enforce it on this project.

13. The respondent's superintendent mislabeled the electrical circuits, which created the circumstances that allowed the circuits on the wrong floor to be energized and was a contributing cause in the industrial accident described above.

14. The respondent's superintendent allowed or directed the respondent's employees and its temporary workers to work on circuits while they were "hot" (energized).

15. These energized circuits contained up to 220 volts and 1500 amperes.

16. These circumstances created the possibility of an accident, the substantially probable result of which would be serious bodily injury or death and in fact resulted in a serious injury to one of the respondent's temporary workers.

17. The complainant provided substantial evidence that the respondent ignored its own written lockout-tagout policy on this project; that it provided no training either to its own employees on the jobsite or to the temporary workers it engaged concerning lockout-tagout; that it undertook no inquiry concerning the level of knowledge of the temporary workers concerning jobsite safety or lockout-tagout in particular; that it undertook no safety training or change in procedures after the industrial accident on July 2, 2015 involving one of its temporary workers; and that its work on the project evinced a lack of competence or concern regarding the identification and labeling of circuits so that an incorrect circuit would not be energized while employees were working on it, such employees believing it was not energized.

18. The proposed penalties were computed in accordance with the complainant's Field Operations Manual.

Based on the foregoing Findings of Fact, the undersigned makes the following

CONCLUSIONS OF LAW

1. 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.

2. The respondent is subject to the provisions of the Act.

3. The respondent violated the provisions of 29 CFR 1926.21(b)(2) by allowing employees and temporary employees to be exposed to unsafe conditions, such as but not limited to contact with energized electrical equipment and circuitry including a 120/208 volt, 1500 amp, Level 1B Meter Center electrical panel.

4. The respondent violated the provisions of 29 CFR 1926.416(a)(1) by, while two temporary employees were working inside a 120/208 volt, 1500 amp, Level 1B Meter Center electrical panel (MSB – a first floor level), an arc flash occurred on July 2,

2015. The electrical switch gear panel was not de-energized and circuits were not effectively grounded or guarded.

5. The respondent violated the provisions of 29 CFR 1926.416(a)(3) when employees and temporary employees were exposed to energized electrical equipment and circuitry, to include but not limited to, a 120-208 volt, 1500 amp, Level 1B Meter Center electrical panel (MSB-A first floor level), lighting and breakers, that were energized and no warning signs had been posted, no information communicated to employees working in the immediate area, and no appropriate protective measures were taken to prevent employee exposure to hazardous energy.

6. The respondent violated the provisions of 29 CFR 1926.417(b) when employees were working on a 120/208 volt, 1500 amp, Level 1B Meter Center electrical panel (MSB-A) that was initially de-energized, but not rendered inoperative by use of protective measures, such as but not limited to, lock-out/tag-out procedures, to prevent employee exposure to hazardous energy. On July 2, 2015, an arc flash occurred, resulting in a temporary employee injury at the construction site, when employees were working on 120/208 volt, 1500 amp, energized electrical equipment and circuitry.

7. The foregoing are willful violations of the Act.

8. The respondent violated the provisions of 29 CFR 1926.403(h) by, while two temporary employees were working inside a 120/208 volt, 1500 amp, Level 1A and Level 1B Meter Center electrical panel (MSB – a first floor level). The electrical switch gear panel was not legibly marked to indicate its purpose.

9. This is a serious violation of the Act.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED as follows:

1. Citation 1, Item 1 is affirmed as a willful serious violation of 29 CFR 1926.21(b)(2), with a penalty of \$28,000.00.

2. Citation 1, Item 2 is affirmed as a willful serious violation of 29 CFR 1926.416(a)(1), with a penalty of \$28,000.00.

3. Citation 1, Item 3 is affirmed as a willful serious violation of 29 CFR 1926.416(a)(3), with a penalty of \$28,000.00.

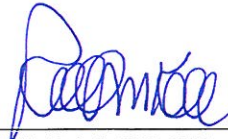
4. Citation 1, Item 4 is affirmed as a willful serious violation of 29 CFR 1926.417(b), with a penalty of \$28,000.00.

5. Citation 2, Item 1 is affirmed as a serious violation of 29 CFR 1926.403(h), with a penalty of \$2,800.00.

6. The total penalties of \$114,800.00 shall be paid within twenty (20) days of the filing date of this Order.

7. All violations not previously abated shall be immediately abated.

This 7TH day of December, 2016.



RICHARD M. KOCH
HEARING EXAMINER

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

COMMISSIONER OF LABOR FOR) DOCKET NO.: OSHANC 2016-5761
THE STATE OF NORTH CAROLINA,) INSPECTION NO.: 317999647
) CSHO ID.: N5659
COMPLAINANT,)
)
v.)
)
BASIC ELECTRIC COMPANY, INC.) AFFIDAVIT
and its successors,)
)
RESPONDENT.)

DAWN JARMAN, first being duly sworn, deposes and says:

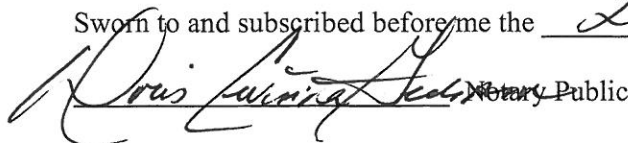
1. I am currently a Consultative Services officer in the Charlotte OSHA Field Office of the North Carolina Department of Labor.
2. In July of 2015, I was Compliance Safety and Health Officer II in the Charlotte OSHA Field Office of the North Carolina Department of Labor.
2. Beginning on July 8, 2015, I conducted a safety inspection of the Respondent's worksite.
3. Attached is a certified copy of the investigative file for OSHA File Number 317999647; all the information in the file is accurate.
4. The allegations and citations contained in OSHA File Number 317999647 are hereby incorporated by reference as if fully set out herein.

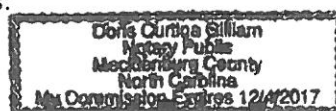
I have read the foregoing affidavit and swear that the contents are true to the best of my knowledge, information and belief.



Dawn Jarman
Consultative Services Officer - OSHA Division
North Carolina Department of Labor

Sworn to and subscribed before me the 21st day of September, 2016.

 Notary Public My commission expires:



CERTIFICATE OF SERVICE

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

CARLTON S. CLARDY, JR.
4519 NORA'S PATH RD
CHARLOTTE, NC 28226-3444

JILL CRAMER
NC DEPARTMENT OF JUSTICE
LABOR SECTION
P O BOX 629
RALEIGH, NC 27602-0629

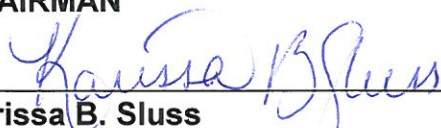
by depositing a copy of the same in the United States Mail, First Class;

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 13 DAY OF December 2016.

ARLENE K. EDWARDS
CHAIRMAN



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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