

FILED

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

MAR 12 2018

118 Department of Justice
Occupational Safety and Health

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA

) DOCKET NO.: OSHANC 2017-5938
) INSPECTION NUMBER: 318100880
) CSHO ID: F1857

COMPLAINANT,

v.

ORDER

KALA CONTRACTING, INC.
and its successors

RESPONDENT.

THIS CAUSE came on for hearing and was heard before the undersigned Reagan Weaver, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on March 8, 2018, at 9:30 A.M. pursuant to an Order for Motion to Continue. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared in person for Complainant. Michael Lord, Attorney, Williams Mullen, appeared in person for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

At the time of the Hearing, the parties agreed upon and consented to the following stipulations:

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, and actively maintains a place of business in Apex, North Carolina. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it maintains employees as defined by N.C.G.S. Section 95-127(10).
3. On March 6, 2017, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at Lot 112 Clarkson Ridge Lane in Hillsborough, North Carolina ("the Inspection").
4. As a result of the Inspection, on June 23, 2017, Complainant issued the following Citation and Notification of Penalty (herein referred to collectively as the "Original Citation"):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1926.21(b)(2)	8/10/2017	\$1500.00
002	29 CFR 1926.600(a)(3)(ii)	7/20/2017	\$1500.00

5. The 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. Respondent and Complainant waive the presence of a court reporter at the Hearing and the making of a transcript of the Hearing. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and both parties consent to the conduct of this Hearing by the Undersigned and to entry of this Order.
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 confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated. The parties agree to bear their own attorney's fees (if any), costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Order.
10. Complainant and Respondent agree that provided the respective Motions of each party are granted (a) 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; (b) this Order is a full and final resolution of the claim set out in the underlying Original Citation, as amended pursuant to Complainant's Motion; (c) 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, (d) none of the 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 Order brought directly under the Act by Complainant, this Order shall have the full force and effect of a final order; (e) 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 further 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; (f) 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; and (g) there has been no employee objection to the reasonableness of any abatement period.

11. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further :

- a. Respondent agrees to continue with its present safety program, including conducting periodic meetings with employees. During such meetings, employees will be able to communicate safety suggestions or complaints to their supervisor(s) who will forward the information to Respondent's safety spokesperson. Respondent agrees to meet regularly with its employees to discuss safety issues and receive safety suggestions or complaints. Respondent agrees that all employees that submit complaints or suggestions shall have the same protection as employees under Article 21, Chapter 95 of the North Carolina General Statutes.
- b. Respondent agrees that drivers of any vehicle operated by its employees will be trained, or a written verification of previous training will be made, prior to the operation of the vehicle. This documentation shall be provided to NCDOL at its reasonable request during any future inspection. Respondent shall also confirm that any driver of a vehicle operated by its employees has a valid license prior to allowing their first operation of the vehicle.
- c. Respondent agrees to pay the penalty of \$1950.00 (payment is to be by check payable to North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318107232) and mailed to Budget-Collections, North Carolina Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101. The payment will be made in two equal installments of \$975.00. The first installment is due to be paid on or before May 1, 2019. The second installment is due to be paid on or before June 3, 2019.

MOTIONS

Complainant moved to make the following amendments to the Original Citation ("Complainant's Motion"):

1. Reduce the penalty associated with Citation 01, Item 001 to \$975.00;
2. Reduce the penalty associated with Citation 01, Item 002 to \$975.00;
3. Reclassify Citation 01, Item 001 as non-serious; and
4. Edit the AVD in Citation 1, Item 002 to read "an employee on an inclined surface *with parking brake engaged and engine running* and the truck's wheels were not chocked." (inserted language italicized).

Except as expressly set forth in Complainant's 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 on 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 objection, procedural or otherwise, 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 Act.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of the Order.

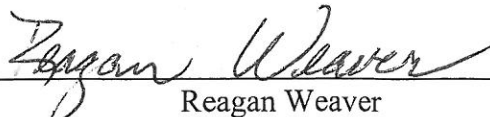
CONCLUSIONS OF LAW

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:

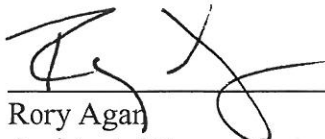
1. That Complainant's Motion is hereby **GRANTED**; and,
2. That Respondent's Motion is hereby **GRANTED**; Respondent shall pay the penalty of \$1,950.00 in the manner set forth in the Stipulations.

This the 8th day of March, 2019.



Reagan Weaver
Administrative Law Judge

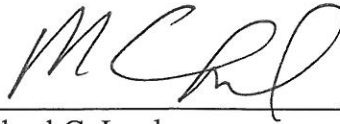
CONSENTED TO:



Rory Agar
Assistant Attorney General
North Carolina Department of Justice
Post Office Box 629/Labor Section
Raleigh, North Carolina 27602-0629

Telephone No. (919) 716-6680

ATTORNEYS FOR COMPLAINANT



Michael C. Lord
Attorney, Williams Mullen
PO Box 1000
301 Fayetteville Street, Suite 1700
Raleigh, North Carolina 27602

Telephone No. (919) 981-4093

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

MICHAEL C. LORD
WILLIAMS MULLEN
301 FAYETTEVILLE ST.
SUITE 1700
RALEIGH, NC 27602

RORY AGAN
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, 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 12 DAY OF March, 2019.

ARLENE K. EDWARDS
CHAIRMAN


Karissa-B. Sluss

Docket and Office Administrator
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