

FILED

SEP 3 2019

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

COMMISSIONER OF LABOR FOR
THE STATE OF NORTH CAROLINA

Complainant,

v.

UNITED PARCEL SERVICE, INC.
and its successors

Respondent.

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DOCKET NO: 2018-5990

INSPECTION NO: 318120268

CSHO ID: # Y3077

FINAL ORDER

THIS CAUSE came on for hearing and was heard before the undersigned R. Joyce Garrett, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on September 25, 2019, at 10:30 A.M. pursuant to a Notice of Hearing. Melissa H. Taylor, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared by teleconference for Complainant. Raymond Perez, Attorney, Jackson Lewis, P.C., Atlanta, Georgia, and Paul Holscher, Attorney, Jackson Lewis, P.C., Raleigh, North Carolina, appeared by teleconference for 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 an Ohio corporation, which was authorized to do business in North Carolina on April 7, 1967. It is active and current and maintains a place of business in Greensboro, 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. During the period of October 11, 2017 through November 15, 2017, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 3100 Flagstone Drive, Greensboro, North Carolina (the "Inspection").

4. As a result of the Inspection, on December 15, 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	NCGS 95-129(1)	Immediately Upon Receipt	\$7,000.00

stating that in the "automotive shop – the employer did not provide training/guidance on the placement of jack stands under package cars."

5. The Respondent submitted a timely Notice of Contest dated February 13, 2018.

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 Final 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.

10. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Final Order.

11. Complainant and Respondent agree that provided the respective Motion of each party is 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 claims 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 Final Order brought directly under the Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this Final Order shall have the full force and effect of a final order; and (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; and (f) there has been no employee objection to the reasonableness of any abatement period.

12. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further, Respondent agrees, with respect to its North Carolina operations, to do the following:

- * Make vehicle manuals available to the technicians online so that they can stay up-to-date on the most current versions;
- * Ensure all technicians have the training and experience to work safely on all vehicles including how to properly use jack stands and ensure the technicians have access online to the most current versions of the vehicle manuals which cover placement of jack stands;
- * Respondent has established job methods and Prework Communication Meeting (PCM) jack stand training which covers maintenance and servicing of vehicles; all technicians are trained on these work methods and PCM which cover the use of jack stands and wheel chocks; Respondent will ensure (i) all technicians have the training and experience to work safely on all vehicles including how to properly use jack stands; and (ii) the technicians have access online to the most current versions of the vehicle manuals which cover placement of jack stands;
- * Respondent will train technicians on Preventative Maintenance Inspection (PMI) checklists before performing maintenance work on vehicles to ensure that they use the necessary tools and equipment for the work to be performed including jack stands and wheel chocks;
- * Respondent will ensure that proper jack stands for the job task, i.e. weight & fit, are available.
- * Respondent will ensure that the chock blocks are available and are the correct fit for the vehicles which the employees are maintaining; the chock block is required to be at least 25% of the diameter of the wheel;
- * Respondent will (i) provide all technicians with PCM training which informs them to always use wheel chocks prior to beginning work; and (ii) ensure there is adequate observation of the work and correct any safety issues including use of wheel chocks.
- * Respondent further agrees, with respect to its North Carolina operations, 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 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 from employees. Respondent's safety spokesperson shall also make recommendations regarding safety to supervisors who will then present such information to employees at the periodic meetings. Respondent agrees that all employees who make suggestions or complaints to their supervisor or the safety spokesperson shall have the same protection provided employees under Article 21, Chapter 95 of the North Carolina General Statutes.

MOTIONS

Complainant moved to amend the Original Citation by deleting Item 001 of Citation 01 in its entirety (“Complainant’s Motion”).

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 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 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.

United Parcel Service, Inc. 2018-5990

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;

This 25th day of September, 2019.

R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa H. Taylor

Melissa H. Taylor, Special Deputy Attorney General
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent

Raymond Perez, Attorney,
Jackson Lewis, P.C., Atlanta, Georgia,

Paul Holscher, Attorney,
Jackson Lewis, P.C., Raleigh, North Carolina

United Parcel Service, Inc. 2018-5990

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;

This 25th day of September, 2019.

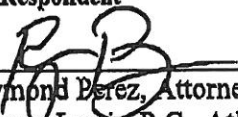
R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa H. Taylor, Special Deputy Attorney General
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent




Raymond Perez, Attorney,
Jackson Lewis, P.C., Atlanta, Georgia,

Paul Holscher, Attorney,
Jackson Lewis, P.C., Raleigh, North Carolina

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;

This 25th day of September, 2019.



R. Joyce Garrett
Administrative Law Judge

CONSENTED TO:

For Complainant

Melissa H. Taylor, Special Deputy Attorney General
North Carolina Department of Justice, Raleigh, North Carolina

For Respondent

Raymond Perez, Attorney,
Jackson Lewis, P.C., Atlanta, Georgia,

Paul Holscher, Attorney,
Jackson Lewis, P.C., Raleigh, North Carolina

CERTIFICATE OF SERVICE

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

RAYMOND PEREZ
JACKSON LEWIS P.C
171 17TH ST
STE 1200
ATLANTA GA 30363

PAUL HOLSCHER
JACKSON LEWIS PC
3737 GLENWOOD AVE
STE 450
RALEIGH NC 27612

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

by depositing same the United States Mail, First Class, 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 3rd DAY OF October 2019.

ARLENE K. EDWARDS
CHAIRMAN



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