

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

**COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA**

**Complainant,**

v.

**J.B. PRESLAR TRUCKING COMPANY, INC.**  
and its successors

**Respondent.**

**DOCKET NO: 2018 - 6002**

**INSPECTION NO: 318126174**

**CSHO ID: # Q5811**

**ORDER**

THIS CAUSE coming on pursuant to the Order of Pre-Hearing Conference (“Hearing Order”) on November 14, 2018 at 10:30 A.M. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared by teleconference for Complainant. J.B. Preslar, President of Respondent, 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.

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”). 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 corporation duly organized and existing under the laws of the State of North Carolina, is active and in good standing in the State of North Carolina, and maintains a place of business in Monroe, 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 December 20, 2017 through December 28, 2017, Leighton Jones, an Occupational Safety and Health Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 4210 Old Charlotte Hwy, Monroe, North Carolina (the "Inspection").

4. As a result of the Inspection, on March 27, 2018, Complainant issued the following Citation and Notifications of Penalty (herein referred to 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)	Immediately Upon Receipt	\$ 2,800.00

5. The Respondent submitted a timely Notice of Contest dated April 30, 2018.

6. The 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. 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 Occupational Safety and Health Act of North Carolina (hereinafter referred to as the "Act") by Complainant, this 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.

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

\* Respondent agrees to improve and maintain an effective and comprehensive safety and health program; as part of the safety and health program, Respondent will conduct job hazard analyses of all tasks that might expose workers to hazards;

\* Respondent shall barricade or otherwise guard the swing radius of equipment such as but not limited to the excavator; if barricading/guarding is not feasible then Respondent shall conduct safety training to ensure that all exposed employees (including all employees of all employers on the site) are adequately and effectively trained in the recognition and control or avoidance of hazards associated with the operation of machinery such as an excavator.

### MOTIONS

Complainant moved to make the following amendments to the Original Citation (“Complainant’s Motion”): Citation 01 Item 001, and its associated penalty, is hereby deleted in its entirety.

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.

J.B. Preslar Trucking Company, Inc. 2018-6002

- 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.

**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**.

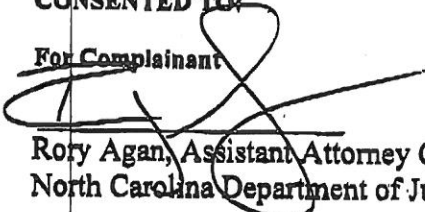
This 14th day of November, 2018.

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R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**



Rory Agan, Assistant Attorney General  
North Carolina Department of Justice, Raleigh, North Carolina

**Respondent**

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J. B. Preslar, President of Respondent

J.B. Preslar Trucking Company, Inc. 2018-6002

- 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.

**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 14th day of November, 2018.

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R. Joyce Garrett  
Administrative Law Judge

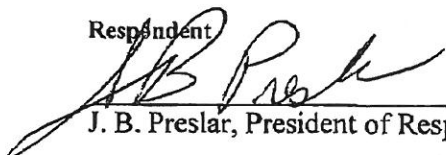
**CONSENTED TO:**

**For Complainant**

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Rory Agan, Assistant Attorney General  
North Carolina Department of Justice, Raleigh, North Carolina

**Respondent**



J. B. Preslar, President of Respondent

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.

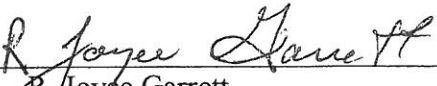
**CONCLUSIONS OF LAW**

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.

**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 14th day of November, 2018.

  
\_\_\_\_\_  
R. Joyce Garrett  
Administrative Law Judge

**CONSENTED TO:**

**For Complainant**

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Rory Agan, Assistant Attorney General  
North Carolina Department of Justice, Raleigh, North Carolina

**Respondent**

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J. B. Preslar, President of Respondent

CERTIFICATE OF SERVICE

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

J. B. PRESLAR  
J. B. PRESLAR TRUCKING CO., INC.  
4540 SECREST SHORT CUT RD.  
MONROE, NC 28100

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 27 DAY OF November, 2018.

ARLENE K. EDWARDS  
CHAIRMAN

  
Karissa B. Sluss

Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020