

FILED

NOV 2 2022

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

COMMISSIONER OF LABOR OF THE)	DOCKET NO.: OSHANC 2019-6174
STATE OF NORTH CAROLINA)	INSPECTION NUMBER: 318171022
)	CSHO ID: T8768
COMPLAINANT,)	
)	
v.)	
)	<u>ORDER</u>
B.C. CANNON CO., INC.)	
<i>and its successors</i>)	
)	
RESPONDENT.)	

THIS CAUSE came on for hearing and was heard before the undersigned Hearing Examiner Mary Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on October 21, 2022, at 10:00 A.M. pursuant to a Notice of Hearing. Rory Agan, Assistant Attorney General, North Carolina Department of Justice, appeared remotely for Complainant. Kim Wooten, Managing Litigation Attorney at McMichael Taylor Gray, LLC appeared pro hac vice remotely, and Brian Campbell, local associated counsel appeared remotely for Respondent. No other affected employee of Respondent attended to have a say in, or participate as a party in, the Prehearing.

At the time of the Prehearing, 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 South Carolina corporation, active and in good standing in the State of North Carolina, and maintains a place of business in Greenville, South 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 between June 24 and July 17, 2019, an Occupational Safety and Health Officer with the North Carolina Department of Labor conducted an inspection of Respondent's worksite located at mile marker 28 on I-85 in Charlotte, North Carolina hereinafter referred to as "the site."

4. CSHOs properly entered the site pursuant to notice of injury.
5. As a result of the Inspection, on August 6, 2019, Complainant issued the following Citation and Notification of Penalty:

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	95-129(01)	08/12/2019	\$3500.00
2	29 CFR 1926.200(g)(2)	08/12/2019	\$3500.00

6. Respondent submitted a timely Notice of Contest.
7. 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") and proper notice to the employees and other interested parties was made.
8. Respondent and Complainant waived the presence of a court reporter at the Hearing and the making of a transcript of the Hearing.
9. 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.
10. Respondent posted the Citation and the Hearing Notice 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.
11. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motion have been abated or will be abated by Respondent as soon as reasonably possible where a new procedure must be drafted and trained.
12. 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.
13. 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; (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.

14. Respondent agrees to continue to use its best efforts to comply with the requirements of the Act. Further, it agrees that it will:

1. Continue using its updated policy of using police during set-up and breakdown of construction sites on roadways with active traffic wherever possible;
2. Conduct a hazard analysis and take appropriate steps to abate hazards to the fullest extent possible where such use of police is not possible; and,
3. Conduct refresher training on the policies for safe set-up and breakdown now in effect for all employees working in North Carolina within the next six months.

MOTIONS

Complainant's Motion

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

1. Withdraw Citation 1, Items 1 and 2, and delete the associated penalties.
Respondent did not object to Complainant's Motion.

Respondent'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"):

1. Withdraw Respondent's Notice of Contest to all Citation and Notification of Penalties as amended pursuant to Complainant's Motion set forth above.
2. Respondent has completed abatements for all items.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Hearing 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**.

Nov 2, 2022

This the _____ day of October, 2022.

Mary-Ann Leon

Mary-Ann Leon (Nov 2, 2022 11:26 EDT)

Mary Ann Leon
Hearing Examiner

CONSENTED TO:

Rory Agan

Rory Agan (Nov 1, 2022 09:32 EDT)

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

Telephone No. (919) 716-6680

ATTORNEY FOR COMPLAINANT

Kim Wooten

Kim Wooten (Oct 21, 2022 15:49 EDT)

Kim Wooten
Managing Litigation Attorney
McMichael Taylor Gray, LLC
3550 Engineering Place, Suite 260
Peachtree Corners, GA 30092

Telephone No. (864) 979-4879

Brian L. Campbell

Brian L. Campbell (Nov 1, 2022 09:29 EDT)

Brian Campbell
McMichael Taylor Gray, LLC
Local Counsel

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

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

KIM WOOTEN
MCMICHAEL TAYLOR GRAY, LLC
3550 ENGINEERING PL.
SUITE 260
PEACHTREE CORNERS, GA 30092

BRIAN CAMPBELL
MCMICHAEL TAYLOR GRAY, LLC
3550 ENGINEERING PL.
SUITE 260
PEACHTREE CORNERS, GA 30092

By depositing same in the United States Mail, Certified Mail, Return Receipt Requested, postage prepaid at Raleigh, North Carolina, and upon:

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, first class, postage prepaid at Raleigh, North Carolina, and upon:

NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101

via email to carla.rose@labor.nc.gov.

THIS THE 4 DAY OF November 2022.



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