

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

Filed

AUG 10 2022

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
)
v.)
)
INDUSTRIAL FABRICATORS, INC.,)
and its successors)
)
RESPONDENT.)
_____)

North Carolina Occupational & Safety
ORDER

OSHANC NO. 2019-6191
INSPECTION NO. 318172020
CSHO ID: G7653

THIS MATTER was before the undersigned for hearing via the Lifesize video conference platform on May 12, 2022.

The complainant was represented by Stacey A. Phipps, Assistant Attorney General; the respondent was represented by Gerald L. Liska of Mullen Holland & Cooper, PA.

Based on the evidence, consisting of testimony and admitted documents, and the post-hearing briefs of counsel, the undersigned makes the following

FINDINGS OF FACTS

1. The complainant as the Commissioner of Labor is charged by law with compliance with and enforcement of the provisions of the Occupational Safety and Health Act of North Carolina ("the Act").
2. The respondent is a North Carolina corporation which is authorized to do business in North Carolina. The respondent is a manufacturer of metal parts and provides assembly and coating services.
3. The respondent operates nine different plant locations in North Carolina and has approximately 500 employees.
4. This matter involved a partial inspection at the respondent's Central or "Alpha" plant, located at 105 Chickasaw Road, Gastonia, North Carolina, as a result of serious injuries to an employee being crushed by two 2000-pound coils of aluminum, which fell on him as he was using an overhead bridge crane to position the coils to be loaded into a cut-to-length machine.

5. This employee, Jared Barker, was using a steel mesh sling around the coils to attach to the hook on the Stewart 15-ton overhead bridge crane. Because the employee did not raise the anti-tip arms on the coil car being used to transport the coils to the machine, the coils shifted and fell on him, breaking both of his arms, one of his legs and separating his pelvis from his spine.

6. This accident occurred on July 3, 2019. It was reported to the complainant by the respondent on July 5, 2019. The inspection was assigned to CHSO Richard Kraemer, who began his inspection on July 8, 2019 and ended it on August 22, 2019.

7. In the course of his inspection, Mr. Kraemer observed a damaged rope guide, a damaged sheave guard and a broken safety latch spring on the hook that had been used by Mr. Barker on the date of the accident.

8. Mr. Kraemer then learned that the cranes in the facility had been inspected on June 20, 2019 by a third-party crane sales and service company, Konecranes, Inc. Their report, of which Mr. Kraemer obtained a copy, identified the above deficiencies as safety risks. Mr. Kraemer learned directly from Konecranes that it defines a safety risk as an unsafe condition and failure to remedy such a condition before continued operation of the crane could result in personal injury including death and property damage. The respondent claimed that Konecranes indicated to it that these deficiencies were not safety risks.

9. After the inspection by Konecranes on June 20, 2019, the respondent continued to operate the crane before correcting the deficiencies discovered in the inspection. Correction of the deficiencies occurred after the accident involving Mr. Barker.

10. The respondent contends that the parts to correct the deficiencies were on order with Konecranes or that respondent was not completely aware of the deficiencies. The evidence of this is conflicting, but the respondent did not take the crane out of service until later.

11. Mr. Kraemer learned that the respondent conducts daily inspections of the cranes and keeps written reports of such inspections. Mr. Kraemer obtained copies of these reports for the relevant period. None of the reports indicated any of the above deficiencies, which calls into question the reliability of the inspections.

12. The respondent was not cited for the exact circumstances of the injury to Mr. Barker, but was cited for the unsafe conditions represented by the above deficiencies and for the unreliability of respondent's inspections of the cranes, which did not indicate any of these deficiencies.

13. All penalties were computed in accordance with the North Carolina 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 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 1910.179(l)(3)(i), as alleged in Citation No. 1, Item 1a a), b) and c), and such violations were serious violations of the standard.
4. The respondent violated the provisions of 29 CFR 1910.179(j)(2)(i), as alleged in Citation No. 1, Item 1b, and such violation was a serious violation of the standard.

Based on the forgoing Findings of Fact and Conclusion of Law, IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. The respondent has violated the provisions of 29 CFR 1910.179(l)(3)(i), which violations are affirmed as serious violations of the standard, with a combine penalty of \$6,300.00.
2. The respondent has violated the provisions of 29 CFR 1910.179(j)(2)(i), which violation is affirmed as a serious violation of the standard, with a penalty combined with that of Citation 1, Item 1a.
3. The respondent shall pay the total penalties of \$6,300.00 within ten (10) days of the filing date of this Order.
4. All violations not previously abated shall be immediately abated.

This 25th day of August, 2022.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

GERALD L. LISKA
MULLEN HOLLAND & COOPER
PO BOX 488
GASTONIA, NC 28053

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

STACEY A. PHIPPS
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 26 DAY OF August 2022.



Karissa B. Sluss
Docket and Office Administrator
NC Occupational Safety & Health Review Commission
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Raleigh, NC 27699-1101
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