

AUG - 3 2022

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

North Carolina Occupational & Safety
Review Commission

COMMISSIONER OF LABOR OF THE
STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

NC DOT SAFETY & RISK MGMT
TRAFFIC SVCS – STANLY CTY
and its successors

RESPONDENT.

) DOCKET NO.: OSHANC 2019-6215
) INSPECTION NUMBER: 318179777
) CSHO ID: L9094

ORDER

THIS CAUSE came on for Pre-Hearing Conference in accordance with Rule.0402 of the Rules of Procedure for the North Carolina Occupational Safety and Health Review Commission and was heard before the undersigned, Mary-Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, July 27, 2022 at 10:00 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Pre-Hearing Conference. Sage A. Boyd, Assistant Attorney General, North Carolina Department of Justice, appeared as counsel for Complainant. Colin Justice, Special Deputy Attorney General, North Carolina Department of Justice, and Daniel Covas, Assistant Attorney General, North Carolina Department of Justice, appeared as counsel for Respondent.

Pursuant to the Notice of Pre-Hearing Conference, a Pre-Hearing Conference was held for the purpose of considering matters which would tend to simplify the issues or expedite the proceedings, and if possible, to reach a resolution without the necessity for hearing. This Pre-Hearing Conference was not an evidentiary hearing. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Pre-Hearing Conference. At the Pre-Hearing Conference, Complainant and Respondent notified the Undersigned that the parties wish to agree upon certain stipulations (“Stipulations”) and to make certain motions (“Motions”).

At the Pre-Hearing Conference, Complainant and Respondent requested that the Stipulations and Motions be made part of the 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 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”).

2. The Review Commission has jurisdiction over the parties and the subject matter of this action.
3. Respondent is a division of an agency of the State of a North Carolina, duly organized and existing under the laws of the State of North Carolina. Respondent is an "employer" within the meaning of N.C.G.S. § 95-127(11); and maintains "employees" within the meaning of N.C.G.S. § 95-127(10). Respondent is responsible for the installation and maintenance of traffic signals and lights, signs, and pavement markings in five counties including Anson, Stanly, Union, Cabarrus, and Mecklenburg.
4. On or between September 30, 2019 and October 28, 2019, Compliance Safety and Health Officer Jill Warren, employed by the North Carolina Department of Labor, inspected Respondent's worksite located at 915 Coble Avenue, Albemarle, North Carolina pursuant to programmed planned public sector inspection in accordance with OPN 128U, Public Surveys and Inspections ("the Inspection").
5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on November 15, 2019 ("the Original Citation"):

CITATION NUMBER ONE (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.212(a)(1)	Immediately Upon Receipt	\$3,750.00

CITATION NUMBER TWO (Non-Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.28(b)(11)(ii)	Immediately Upon Receipt	\$0.00
2	29 CFR 1910.36(g)(2)	Corrected During Inspection	\$0.00
3	29 CFR 1910.37(b)(2)	Immediately Upon Receipt	\$0.00

6. Respondent submitted a timely Notice of Contest, dated December 16, 2019.
7. A Pre-Hearing Conference in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina ("the Rules").
8. Complainant and Respondent waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Pre-Hearing Conference and the entry of this Order.
9. Respondent posted the Original Citation and the Notice Pre-Hearing Conference as required by the Rules. Neither Complainant nor Respondent has received notification from any affected employee that such employee, or his or her 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.

10. Respondent confirms that the violations alleged in the Original Citation have been abated and has agreed to provide documentation to Complainant of the aforesaid abatement for all violations alleged in the Original Citation in advance of the Hearing Examiner entering this Order.
11. 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.
12. Provided the respective Motions below of each party are granted, Complainant and Respondent agree that:
 - (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;
 - (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 or as a waiver of defense, 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 purposes 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 has been calculated in accordance with the standard Field Operations Manual procedure 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.
13. Respondent agrees to continue its best efforts to comply with the requirements of the Act.

14. Respondent further agrees to conduct a State-wide audit or assessment of all Roper Whitney, Inc. Deep Throat Hand Punches and all Whitney Jensen Electrical Shears to ensure appropriate guarding at all NCDOT facilities across the State of North Carolina.
15. Respondent agrees to pay the proposed total penalty of **\$3,750.00 within ten (10) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSHA Division (Identifying Inspection No. **318179777**) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center Raleigh, North Carolina 27699-1101 or via IGO/IAT (Intergovernmental Agency Transfer).

MOTIONS

1. Complainant moves to make the following amendments to the Original Citation (“Complainant’s Motion”):

- (a) Delete Citation Two, Items 1, 2, and 3.

Except as expressly set forth above in Complainant’s Motion, the Original Citation shall remain unmodified or amended.

Respondent did not object to Complainant’s Motion.

2. Respondent requested that, upon the granting of Complainant’s Motion, the Undersigned consider its Motion to Withdraw Respondent’s Notice of Contest to the Original Citation.

Complainant did not object to Respondent’s Motion.

FINDINGS OF FACT

Based on the stipulations at the time of the Hearing and as memorialized herein, the Undersigned makes the following:

1. Complainant, Commissioner of Labor of the State of North Carolina, is an agency of the State charged by law with and enforcement of the provisions of the Act.
2. Respondent is subject to the provisions of the Act and jurisdiction of the Safety and Health Review Commission of North Carolina.
3. This Court has jurisdiction over the parties and the subject matter of this action.
4. Neither party has any objection, procedural or otherwise, to this Pre-Hearing Conference.
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. The Complainant's Motion is hereby **GRANTED**; and
2. The Respondent's Motion is hereby **GRANTED**, and Respondent shall pay the penalty of \$3,750.00 in the manner set forth herein.

This the _____ day of **Aug 3, 2022**, 2022.

Mary-Ann Leon

Mary-Ann Leon (Aug 3, 2022 15:40 EDT)
MARY-ANN LEON
Hearing Examiner

CONSENTED TO:

Sage A. Boyd

Sage A. Boyd (Aug 3, 2022 15:38 EDT)

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ATTORNEY FOR COMPLAINANT

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

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

COLIN JUSTICE
SPECIAL DEPUTY ATTORNEY GENERAL
NC DEPARTMENT OF JUSTICE
TRANSPORTATION DIVISION
1505 MAIL SERVICE CENTER
RALEIGH, NC 27699-1505

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

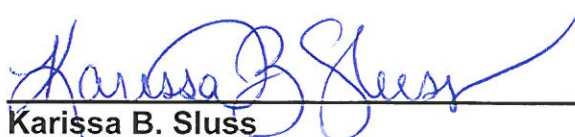
SAGE A. BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

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

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

THIS THE 5 DAY OF August 2021.



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