

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

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

COMPLAINANT,

v.

**SMITHFIELD TAR HEEL DISTRIBUTION
CENTER,
and its successors
RESPONDENT.**

) **DOCKET NO.: OSHANC 2020-6325**
) **INSPECTION NUMBER: 318188018**
) **CSHO ID: I9042**

) **CONSENT ORDER**

) **MAY 16 2023**

) **NC OSH Review Commission**

THIS CAUSE came on for hearing and was heard before the undersigned, Mary-Ann Leon, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, May 16, 2023 at 10 a.m., via the Lifesize teleconferencing platform, pursuant to a Notice of Hearing. Jonathan D. Jones, Assistant Attorney General, North Carolina Department of Justice appeared for Complainant. Reilly Moore and Susan Wiltsie, of Hunton Andrews Kurth, LLP, appeared 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 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, Smithfield Tar Heel Distribution Center is a Delaware corporation, which does business in the State of North Carolina, and maintains a place of business in Tarheel, North Carolina. Respondent was authorized to do business in North Carolina on June 10, 2019. Respondent is in the business of food processing and distribution. 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).

4. On or between January 28, 2020 and July 2, 2020, Compliance Safety and Health Officer Merville Forrester, employed by the North Carolina Department of Labor, inspected the worksite located at 16261 NC Hwy 87W, Tar Heel, North Carolina pursuant to an accident report.
5. As a result of the inspection, Complainant issued the following citations carrying the following proposed abatement dates and penalties on July 2, 2020:

CITATION NUMBER ONE (Repeat Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.178(l)(3)(i)(F)	Immediately Upon Receipt	\$7,000.00

6. The Respondent submitted a Notice of Contest, dated August 31, 2020.
7. No formal pleadings were requested.
8. A hearing in this matter was scheduled pursuant to the Rules of Procedure of the Occupational Safety and Health Review Commission of North Carolina (“the Rules”).
9. Complainant and Respondent waived the making of a transcript of the proceeding before the undersigned, and neither objected, either procedurally or otherwise, to this Hearing and the entry of this Order.
10. Respondent posted the original citation and the Notice of 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.
11. Respondent confirms that the violations alleged in the Original Citation have been abated.
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. 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.

14. Respondent agrees to continue its best efforts to comply with the requirements of the Act.

15. Respondent further agrees to the following:

- (a) Respondent certifies that it will continue to provide all required visibility and blind spot training for powered industrial truck (PIT) drivers.

16. Respondent agrees to pay the proposed total penalty of **\$3,500.00 within twenty (20) days of this Order**. Payment is to be by check payable to North Carolina Department of Labor, OSH Division (Identifying Inspection No. 318188018) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina, 27699-1101.

MOTIONS

1. Complainant moves to make the following amendments to the Original Citation

("Complainant's Motion"):

(a) Reclassify Citation 1, Item 001 to NONSERIOUS.

(b) Amend the alleged violation description as follows. *"Warehouse - where the employer's PowerPoint training program for powered industrial truck operators focused on blind spots when passing other vehicles. On or about January 26, 2020 an operator of a Raymond reach truck (model 752-DR32TT, SN# 752-18-AD674900) collided with a support column while transporting a pallet of product."* Amended language in italics.

(c) Decrease the penalty for Citation One, Item 1 from \$7,000.00 to \$3,500.00; and

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 granting the 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 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 **\$3,500.00** in the manner set forth herein.

This May 15, 2023.

Mary-Ann Leon

Mary-Ann Leon (May 15, 2023 21:46 EDT)

Mary-Ann Leon
Hearing Examiner
NC OSH Review Commission

CONSENTED TO:

JOSHUA H. STEIN
Attorney General

Jonathan Jones

Jonathan Jones (May 15, 2023 21:19 EDT)

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Assistant Attorney General
North Carolina Department of Justice
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ATTORNEY FOR COMPLAINANT

Reilly Moore

Reilly Moore (May 15, 2023 16:39 EDT)

Reilly Moore
Associate, Attorney at Law
Hunton Andrews Kurth LLP
Riverfront Plaza East Tower
951 East Byrd Street
Richmond, Virginia
Telephone No. (804) 788-8409
rmoore@hunton.com
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

REILLY MOORE
HUNTON ANDREWS KURTH LLP
RIVERFRONT PLAZA EAST TOWER
951 EAST BYRD ST
RICHMOND, VA 23219

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

JONATHAN JONES
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
carla.rose@labor.nc.gov

via email.

THIS THE 19 DAY OF May 2023.



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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