

BEFORE THE NORTH CAROLINA OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION NC OSH Review Commission RALEIGH, NORTH CAROLINA

COMMISSIONER OF LABOR OF THE STATE OF NORTH CAROLINA,

) DOCKET NO.: OSHANC 2021-6373
) INSPECTION NO.: 318208204
) CSHO ID: T7621

COMPLAINANT,

v.

WALMART INC. DBA WALMART STORE #1238 and its successors

RESPONDENT.

ORDER

THIS CAUSE came on for Pre-Hearing Conference (hereafter referred to as "the hearing") and was heard before the undersigned, Reagan H. Weaver, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, May 10, 2023 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. Ronald W. Taylor, Attorney with Venable, LLP appeared pro hac vice for Respondent.

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 is Walmart, Inc. DBA Walmart Store #1238. Walmart, Inc. is a Delaware corporation, which was authorized to do business in the State of a North Carolina on July 23, 1982. It is active and current and maintains a place of business in Fayetteville, North Carolina doing business as Walmart Store #1238. 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 engaged in the business of retail sales.

4. On November 24, 2020, Compliance Safety and Health Officer (CSHO) Kevin Higham, employed by the North Carolina Department of Labor (NCDOL), inspected Respondent's worksite, Walmart Store #1238, located at 1500 Skibo Road, Fayetteville, North Carolina, pursuant to an accident referral.
5. On March 12, 2021, as a result of the inspection, Complainant issued the following citation, carrying the following proposed abatement dates and penalties ("the Original Citation"):

CITATION NUMBER ONE (Serious)

<u>Item</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
1	29 CFR 1910.178(m)(5)(iii)	Immediately Upon Receipt	\$4,000.00

6. Respondent submitted a timely Notice of Contest, dated April 20, 2021.
7. A hearing in these matters 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 Hearing and the entry of this Order.
9. Respondent posted the Original Citations and the Hearing Order 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. 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.
11. 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.

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

13. Respondent further agrees to:

(a) Amend Respondent's written policies on forklift operating procedures to address the required steps to be taken when parking and (or) dismounting a forklift to include, but not limited to: fully lowering forks, shutting off the engine, neutralizing controls, and setting brakes. In addition, associates will be instructed that keys should be removed from the ignition if and when the employee-operator will be or is out of the line of sight of the forklift. Respondent's written policy shall be amended to address required employee procedures and prohibitions when parking and (or) dismounting on an incline; and

(b) Conduct retraining for all current employee-operators at Walmart Store #1238 on the aforementioned amended policy within one hundred and twenty (120) days of this Order, and include the amended policy as part of the forklift training program for new employees.

MOTIONS

1. Complainant moves to make the following amendments to the Original Citation ("Complainant's Motion"):

(a) Delete Citation One, Item 1, and delete the penalties associated therewith.

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 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**.

This the May 10, 2023.

Reagan H Weaver

Reagan H Weaver (May 10, 2023 20:22 EDT)

REAGAN H. WEAVER
Hearing Examiner

CONSENTED TO:

Sage A. Boyd

Sage A. Boyd (May 10, 2023 16:02 EDT)

Sage A. Boyd
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ATTORNEY FOR COMPLAINANT

Ronald W. Taylor

Ronald W. Taylor (May 10, 2023 15:55 EDT)

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rwtaylor@venable.com
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ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

RONALD W TAYLOR
VENABLE LLP
750 E PRATT ST STE 900
BALTIMORE MD 21202

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

BRIAN BEVERLY
YOUNG MORE & HENDERSON
PO BOX 21629
RALEIGH NC 27622

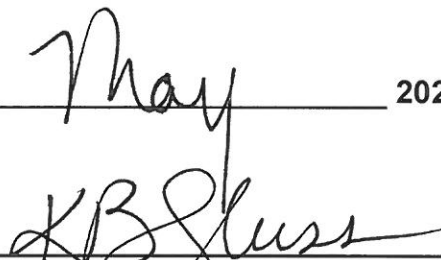
SAGE BOYD
NC DEPARTMENT OF JUSTICE
LABOR SECTION
PO BOX 629
RALEIGH, NC 27602-0629

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
carla.rose@labor.nc.gov

via email.

THIS THE 12 DAY OF May 2023.



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