

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

NC OSH Review Commission

COMMISSIONER OF LABOR OF) DOCKET NO: 2021-6420
THE STATE OF NORTH CAROLINA) INSPECTION NO: 318213790
) CSHO ID: R0137
Complainant,)
v.) <u>FINAL ORDER</u>
)
NATIONAL SPINNING CO., INC.)
and its successors)
Respondent.)

THIS CAUSE came on for pre-hearing and was heard before the undersigned Reagan Weaver, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission, on February 26, 2024, pursuant to a Notice of Pre-Hearing Conference. Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, appeared for the Complainant. Michael McKnight, Attorney with Ogletree Deakins, Raleigh, North Carolina, appeared for the Respondent. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Pre-Hearing.

At the time of the Pre-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 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 North Carolina corporation, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina and maintains a place of business in Whiteville, North Carolina. Respondent is in the business of site textiles. Respondent is an "employer" as defined by N.C.G.S. Section 95-127(11) and it has employees as defined by N.C.G.S. Section 95-127(10).

3. Starting February 25, 2021, Holly Pups an Occupational Safety and Health Compliance Officer with the North Carolina Department of Labor, conducted an inspection of Respondent's worksite located at 240 Spinning Road in Whiteville, North Carolina (the "Inspection").

4. As a result of the Inspection, on August 20, 2021, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the "Original Citation"):

Citation	Item	Standard	Type	Penalty
1	1	1910.147(c)(4)(i)	Serious	\$6,300.00
1	2	1910.147(c)(6)(i)	Serious	\$6,300.00
1	3	1910.147(c)(7)(i)	Serious	\$7,000.00
1	4	1910.212(a)(3)(ii)	Serious	\$5,000.00

5. Respondent submitted a timely Notice of Contest.

6. The Pre-Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the "Rules").

7. Complainant and Respondent agreed that the Pre-Hearing in this matter shall be conducted via the video conferencing platform known as "Lifesize", the presence of a court reporter during the Pre-Hearing is waived, the Pre-Hearing's audio and video will be recorded through Lifesize (the "Recording"), the Recording will be the official record of the Pre-Hearing, and the Pre-Hearing will be deemed to have taken place in Raleigh, North Carolina. Complainant and Respondent have no objection, either procedural or otherwise, to this Pre-Hearing and both parties consent to the conduct of this Pre-Hearing by the Undersigned and to entry of this Final Order.

8. Respondent posted the Original Citation and the Notice of Pre-Hearing 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.

9. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant's Motions have been abated. As the plant at issue in this inspection is shutting down within the month of March 2024, and as the device is no longer in service, abatement is complete. No further abatement is required.

10. The parties agree to bear their own attorney's fees, costs and other expenses that have been incurred in connection with any stage of these proceedings up to and including the filing of this Final Order.

11. 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 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.

MOTIONS

Complainant moved to do the following ("Complainant's Motion"):

- a. Amend the citations as follows:
 - i. Group Citation 1, Items 1-3 as Citation 1, Item 1a-1c;
 - ii. Group the penalty to a total penalty of \$13,600.00.

Citation	Item	Standard	Type	Penalty
1	1a	1910.147(c)(4)(i)	Serious	\$13,600.00
1	1b	1910.147(c)(6)(i)	Serious	Grouped
1	1c	1910.147(c)(7)(i)	Serious	Grouped
1	4	1910.212(a)(3)(ii)	Serious	\$5,000.00

iii. Delete Citation 1, Item 4 and associated penalty.

Respondent did not object to Complainant'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"):

- a. Respondent shall remove from service the #06 Trutzschler DK903 Card Machine. The machine shall not be entered back into service in North Carolina at any time without first providing notice to NCDOL-OSH;
- b. To withdraw Respondent's Notice of Contest to the Original Citation as amended pursuant to Complainant's Motion set forth above; and.
- c. To pay the penalty of \$13,600.00 within 45 days of the entry of this Order.

Complainant did not object to Respondent's Motion.

FINDINGS OF FACT

Based on the Stipulations at the time of the Pre-Hearing and the record, the Undersigned makes the following Findings of Fact:

1. This Court has jurisdiction over the parties and the subject matter of this Pre-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 Pre-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 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. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That Respondent shall pay the new total penalty of \$13,600.00 within 45 days of the entry of this Order.

This the 28th day of February, 2024.

Reagan Weaver

Reagan Weaver (Mar 4, 2024 15:51 EST)

Reagan Weaver
Hearing Examiner

CONSENTED TO:

Rory Agan

Rory Agan (Feb 28, 2024 14:03 EST)

Rory Agan
Special Deputy Attorney General
NCDOJ-Labor Section
114 W. Edenton Street
Raleigh, North Carolina 27603
Attorney for NCDOL

Michael McKnight

Michael McKnight (Feb 28, 2024 13:55 EST)

Michael McKnight
Partner
Ogletree Deakins
8529 Six Fork Roads, Forum IV
Raleigh, North Carolina 27615
Attorney for Respondent

CERTIFICATE OF SERVICE

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

**MICHAEL D. MCKNIGHT
OGLETREE DEAKINS
FORUM IV
8529 SIX FORKS RD, STE 600
RALEIGH, NC 27615**

By depositing a copy of the same in the United States Mail, by 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**

**NC DEPARTMENT OF LABOR
LEGAL AFFAIRS DIVISION
1101 MAIL SERVICE CENTER
RALEIGH, NC 27699-1101
carla.rose@labor.nc.gov**

via email.

THIS THE 6 DAY OF March 2024.

**PAUL E. SMITH
CHAIRMAN**



**Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
1101 Mail Service Center
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