

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

FILED

JUL 31 2024

COMMISSIONER OF LABOR FOR THE STATE OF NORTH CAROLINA)	DOCKET NO: 2022-6455
)	
)	INSPECTION
)	NO: 318229846
Complainant,)	
)	CSHO ID: Q7129
v.)	
CAROLINA TRACTOR & EQUIPMENT COMPANY)	<u>CONSENT ORDER</u>
<i>and its successors</i>)	
Respondent.)	

THIS CAUSE coming on pursuant to the Notice of Hearing (“Hearing Notice”) on July 31, 2024 at 10:00 a.m. Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant; Michael McKnight, attorney with Ogletree Deakins, North Carolina, appeared as counsel for Respondent.

At the Hearing, Complainant and Respondent (i) notified the Undersigned that the parties agree upon certain stipulations (“Stipulations”) and wish to make certain motions (“Motions”), and (ii) request that the Stipulations and Motions be made part of the Hearing record and that a Consent Order be issued. 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 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 Charlotte, North Carolina. Respondent is in the business of providing equipment sales, rental, product support, maintenance, and site technology solutions.

3. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); all of Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).

4. During the period between September 27, 2021 and September 28, 2021, Compliance Safety and Health Officers Clarence Joye and Kevin Barnes, employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 6605 W.T. Harris Blvd., Charlotte, North Carolina (the “Inspection”). The Inspection was conducted pursuant to a referral. CSHO Joye and Barnes presented credentials and initiated the Inspection; Dennis Seymour, Respondent’s safety director, was on site during the time of the Inspection.

5. As a result of the Inspection, on March 21, 2024, Complainant issued the following Citation and Notification of Penalty (herein collectively referred to as the “Original Citation”):

CITATION 01 (Serious)

<u>Item No.</u>	<u>Standard</u>	<u>Abatement Date</u>	<u>Penalty</u>
001	29 CFR 1910.28(b)(1)(i)	3/29/2022	\$5,000

6. Respondent submitted a timely Notice of Contest dated April 18, 2022.

7. On or about May 25, 2022, Complainant received “Employer’s/Respondent’s Statement of Position” which requested that formal pleadings be served. The Complaint and the Answer of Respondent were timely served and filed.

8. The Hearing in this matter was scheduled pursuant to the Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).

9. Complainant and Respondent waived the making of a transcript of this proceeding before the Undersigned, and neither objected, either procedurally or otherwise, to this Hearing and to entry of this Order.

10. Respondent posted the Original Citation and the Hearing Notice 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.

11. Respondent confirms that the violations alleged in the Original Citation as amended pursuant to Complainant’s Motion have been abated or do not exist. Complainant confirms that no additional documentation of abatement is required by Complainant.

12. The parties agree that, upon granting of Complainant’s Motion, 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 that the new proposed penalty for each Item designated in the Original Citation as amended pursuant to

Complainant's Motion has been derived giving consideration of the standard mitigating factors and specific factors applicable to Respondent.

13. Respondent agrees:

-To pay the penalty assessed in this matter within 30 days of the date of this Order. In the event Respondent does not pay as agreed upon, Complainant retains the right to institute collection proceedings as allowed by law. Respondent agrees to pay attorney's fees to Complainant in the event that the Complainant has to institute collection proceedings to collect the debt.

Payment is to be by check payable to the North Carolina Department of Labor, OSHA Division (identifying Inspection No. 318221348) and mailed to North Carolina Department of Labor Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

-That all items stored on the mezzanine area referenced in Citation 1, Item 1 have been removed, sheets of plywood have been placed around the perimeter of the platform to prevent access, and "no access" signage has been posted.

- For a period of twelve (12) months from the date of this Order, conduct inspections of all walking-working surfaces (including fall protection systems) in its SITECH division at its establishment at 6605 W.T. Harris Blvd., Suite K, Charlotte, North Carolina on a regular basis to ensure they are maintained in a safe condition. These inspections will be documented and will be provided to the OSH Division upon request although no record will need to be retained beyond twelve (12) months from the date of the record's creation.

- Prior to allowing contractor(s) to work for its SITECH division at its establishment at 6605 W.T. Harris Blvd., Suite K, Charlotte, North Carolina, Respondent will request the contractor conduct a risk/hazard assessment of the work area and type of work to be performed.

-Within sixty (60) days of the date of this Order, Respondent will provide training to all employees working in its SITECH division at its establishment at 6605 W.T. Harris Blvd., Suite K, Charlotte, North Carolina on the following topics: identifying walking-working surfaces and safe work practices when working on or near walking-working surfaces, including the use of fall protection when required by the walking-working surface standards.

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

15. Complainant and Respondent agree that provided the respective Motions of each party are granted 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. The parties agree that this Consent Order is a full and final resolution of the claims set out in the underlying Original Citation, as amended pursuant to Complainant's Motion. The parties

further agree that (i) 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, and (ii) none of the foregoing 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 a waiver of any defenses that Respondent may have; provided, however, that in any subsequent proceeding with respect to matters covered by this Consent Order brought directly under the Act by Complainant, this Consent Order shall have the full force and effect of a final order. 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 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.

MOTIONS

Complainant moved to do the following (“Complainant’s Motion”):

-Change the standard cited to 29 CFR 1910.22(d)(1).

-Reduce the penalty to \$4000.00.

-Rewrite the SAVE and the AVD to state as follows:

“29 CFR 1910.22(d)(1): The employer did not ensure walking-working surfaces were inspected, regularly and as necessary, and maintained in a safe condition:

a) Mezzanine area-where one or more employees accessed a mezzanine located above a dropped ceiling to retrieve, place stored items and did not inspect the area on a regular basis to ensure that it was maintained in a safe condition.”

-Reclassify Citation 1, Item 1 from Serious to Non-serious.

Except as set forth in this motion, the Original Citation shall remain unmodified or amended.

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”):

***to withdraw Respondent’s Notice of Contest to the Original Citation as amended pursuant to Complainant’s Motion set forth above.**

Complainant did not object to Respondent’s Motion.

FINDINGS OF FACT

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

1. 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.
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 Hearing.
4. Neither party has any objection, procedural or otherwise, to this Hearing.
5. The Stipulations are incorporated by reference as Findings of Fact to the extent necessary to give effect to the provisions of this Order.
6. No affected employee of Respondent, or its representative, attended to have a say in, or participate as a party in, the Hearing.

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**; and
2. That Respondent's Motion is hereby **GRANTED**.

This the 31st day of July, 2024.

Richard M. Koch
Richard M. Koch (Jul 31, 2024 10:09 EDT)

Richard Koch
Hearing Examiner

CONSENTED TO:

Rory Agan
Rory Agan (Jul 30, 2024 15:18 EDT)

**Rory P. Agan, Special Deputy Attorney General,
North Carolina Department of Justice,
Raleigh, North Carolina
Attorney for Complainant**

Michael McKnight
Michael McKnight (Jul 30, 2024 15:16 EDT)

**Michael McKnight, Attorney
Ogletree, Deakins, Nash, Smoak & Stewart, PC
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**


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.

THIS THE 2nd DAY OF August 2024.

**PAUL E. SMITH
CHAIRMAN**



**Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
1101 Mail Service Center
Raleigh, NC 27699-1101
TEL.: (984) 389-4132
NCOSHRC@oshrc.labor.nc.gov**