

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

FILED

APR 22 2024

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)
)
COMPLAINANT,)
)
v.)
)
SUPERIOR CRANES, INC. and its)
successors)
)
RESPONDENT.)
_____)

NC OSH Review Commission
ORDER ON
RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT

OSHANC NOS. 2022-6505

THIS MATTER was before the undersigned on April 17, 2024 for oral argument on the respondent's motion for summary judgment and any other pre-hearing matters.

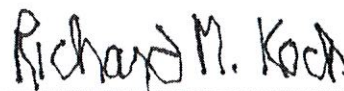
The complainant is represented by Sage A. Boyd, Assistant Attorney General; the respondent is represented by Michael Rubin of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.

The respondent had previously filed a motion for summary judgment in this case, dated March 14, 2024. The respondent had two affidavits attached to its motion: Jonathan McElrath, the crane operator and Jim D. Wiethorn, offered as an expert in the ownership and safe operation of cranes. The respondent also provided a memorandum of law in support of its motion. The complainant filed a response to that motion, which is dated March 27, 2024. Previously, the parties had filed formal pleadings in this case.

After review of all the filed documents relating to this motion and hearing the arguments of counsel for the parties, the undersigned is of the opinion that there exist no genuine issues of material fact with reference to the two citation items asserted against the respondent in this matter and that for some of the reasons argued by the respondent's counsel, summary judgment should be entered against the complainant on the respondent's motion for summary judgment.

IT IS ORDERED that the respondent's motion for summary judgment is GRANTED and that the two citation items: Citation 1, Item 1, an alleged violation of 29 CFR 1926.1417(p) and Citation 1, Item 2, an alleged violation of 29 CFR 1926.1419(a)(3), and the associated penalties are dismissed.

This 22nd day of April, 2024.



RICHARD M. KOCH
HEARING EXAMINER

CERTIFICATE OF SERVICE

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

MICHAEL RUBIN
OGLETREE DEAKINS
ESPLANADE CENTER II
2415 EAST CAMELBACK RD
SUITE 800
PHOENIX, AZ 85016

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:

SAGE BOYD
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 24 DAY OF April 2024.

PAUL E. SMITH
CHAIRMAN



Karissa B. Sluss
Docket Administrator
NC Occupational Safety &
Health Review Commission
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Raleigh, NC 27699-1101
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