

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

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

v.

**MONRO, INC. dba
MR. TIRE AUTO SERVICE CENTERS
and its successors**

Respondent.

**DOCKET NO: 2023 - 6591
INSPECTION NO: 318272648
CSHO ID: S3158**

**FINAL ORDER
(with Consent)**

FILED

FEB 21 2025

NC Occupational Safety & Health
Review Commission

THIS CAUSE came on for a hearing before the undersigned Hearing Examiner R. Joyce Garrett, Hearing Examiner for the North Carolina Occupational Safety and Health Review Commission pursuant to the Notice of Hearing (“Hearing Notice”) at 10:00 a.m. on February 18, 2025 and continued to 10 a.m. February 19, 2025, via Lifesize teleconferencing platform. The Notice of Hearing was posted as required by the Rules of the North Carolina Occupational Safety and Health Review Commission. The Notice of Hearing explicitly stated that the purpose of the hearing is to determine all matters relating to Respondent’s Notice of Contest in this matter.

Rory Agan, Special Deputy Attorney General, North Carolina Department of Justice, Raleigh, North Carolina, appeared as counsel for the Complainant. Raymond Perez, II, Attorney with Jackson Lewis P.C., in Atlanta, Georgia, appeared Pro Hac Vice as counsel for Respondent, being sponsored by Dena J. Griffin, Attorney with Jackson Lewis P.C., Raleigh, North Carolina. No affected employee of Respondent attended to have a say in, or participate as a party in, the Hearing.

At the Hearing, Complainant and Respondent notified the Undersigned that the parties agree upon certain stipulations and requested that the stipulations be made part of the Hearing record; such stipulations are admitted into evidence and are set forth below in the section captioned “Stipulations”. Based upon the record and the Stipulations the Undersigned makes the Findings of Fact as hereinafter set forth. During the Hearing, Complainant made the motion set forth in Complainant’s Motion. Complainant’s Motion being granted, Respondent made the Motion set forth in Respondent’s Motion.

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”), including making inspections and issuing citations and other pleadings, and brings this action pursuant to N.C.G.S. §§ 95-133 et seq.

2. Pursuant to N.C.G.S. § 95-135, the Review Commission has jurisdiction over the parties and the subject matter to this action.
3. Respondent, Monro Inc. dba Mr. Tire Auto Service Centers, is a New York corporation, which was authorized to do business in North Carolina on August 1, 1995. It is active and current in North Carolina and maintains a place of business in Asheville, North Carolina. Respondent provides auto care and service. Respondent is an “employer” within the meaning of N.C.G.S. Section 95-127(11); and Respondent’s employees referred to in this matter are “employees” within the meaning of N.C.G.S. Section 95-127(10).
4. On August 29, 2023, an Occupational Safety and Health Compliance Officer employed by the North Carolina Department of Labor, conducted an inspection of Respondent’s worksite located at 990 Patton Ave, Asheville, North Carolina (the “Inspection”).
5. As a result of the Inspection, on September 8, 2023, Complainant issued two citations carrying the following proposed abatement dates and penalties (collectively hereafter referred to as the “Original Citation”):

CITATION NUMBER 01 (Serious)

Item	Standard	Abatement Date	Penalty
001	NCGS 95-129(01)	Immediately Upon Receipt	\$14,062.50

CITATION NUMBER 02 (NonSerious)

Item	Standard	Abatement Date	Penalty
001	29 CFR 1910.157(e)(3)	Immediately Upon Receipt	\$ 0.00
002	29 CFR 1910.305(b)(2)(i)	Immediately Upon Receipt	\$ 0.00

6. Respondent submitted a timely notice of contest dated October 18, 2023. On or about November 20, 2023, Complainant received “Employer’s/Respondent’s Statement of Position” which requested that formal pleadings be served. The Complaint was filed January 26, 2024 and Respondent’s Answer To Complaint was filed April 5, 2024.
7. The Hearing in this matter was scheduled pursuant to Rules of Procedure of the Safety and Health Review Commission of North Carolina (the “Rules”).
8. Complainant and Respondent have no objection, either procedural or otherwise, to this Hearing and consent to the conduct of this Hearing by the Undersigned and to entry of this Final Order.
9. Respondent confirms that the Original Citation and the Hearing Notice have been posted as required by the Rules.

10. 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 have been abated and agrees to continue to use its best efforts to comply with the requirements of the Occupational Safety and Health Act of North Carolina.

Complainant confirms that no additional documentation of abatement is required by Complainant.

12. Respondent further agrees to ensure that the inspection of the lift at issue in this case is inspected annually per the manufacturer's recommendations.
13. Respondent agrees to pay the penalty of \$2,500.00 assessed in this matter within thirty (30) days of the date of this Final Order. In the event Respondent does not pay the penalty as agreed upon, all unpaid amounts shall become immediately due and payable, and the 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 institutes 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. 318272648) and mailed to North Carolina Department of Labor, Financial Services Division, ATTN: Collections Division, 1101 Mail Service Center, Raleigh, NC 27699-1101. Credit card payment may also be arranged.
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 Final Order.
15. 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 additional evidentiary hearing of this matter;
 - (b) this Final Order is a full and final resolution of the claims 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 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 waiver of defenses; provided however that in any subsequent proceeding with respect to matters covered by this Final Order brought directly under the Act by Complainant, this Final Order shall have the full force and effect of a final order; and
- (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 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.

MOTIONS

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

- a) **Change the standard cited for Citation 1, Item 1 from NCGS 95-129 to 1910.22(d)(1);**
- b) **Rewrite the SAVE for Citation 1, Item 1 to state: “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:”**
- c) **Rewrite the AVD for Citation 1, Item 1 to state: “a) Facility –where employees were working on or under automotive lifts such as the Rotary Lift, Magnum, Challenger, and Hunter Engineering Company, to service vehicles and the lifts were not inspected on an annual basis within one year from the prior inspection in accordance with the ANSI/ALI ALOIM:2008 (R2013).”**
- d) **Reclassify the amended Citation 1, Item 1 to Non-serious; and,**
- e) **Adjust the penalty to a new settlement amount of \$2,500.00 associated with the amended Citation 1, Item 1.**

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"):

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 record and the Stipulations at the time of the Hearing as memorialized herein, 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. No affected employee elected party status and no employee raised an objection to the reasonableness of the abatement time.
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.

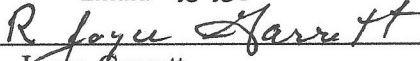
NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

1. That Complainant's Motion is hereby **GRANTED**;
2. That Respondent's Motion is hereby **GRANTED**;
3. That Respondent shall pay the penalty of \$ 2,500.00 within thirty (30) days of this Order; and
4. That the parties shall comply with the terms and conditions set forth in the Stipulations.

Effective the 19th day of February, 2025.

Signature:

Email: rjg.rjg@aol.com



R. Joyce Garrett
Hearing Examiner

CONSENTED TO:

Signature: Rory Agan
Rory Agan (Feb 19, 2025 11:00 EST)

Email: ragan@ncdoj.gov

Rory Agan
Special Deputy Attorney General
North Carolina Department of Justice
Ragan@ncdoj.gov
ATTORNEY FOR COMPLAINANT

Signature: Ray Perez
Ray Perez (Feb 19, 2025 10:57 EST)

Email: raymond.perez@jacksonlewis.com

Raymond Perez
Pro Hac Vice Approved
Attorney at Law
Jackson Lewis P.C.
Raymond.perez@jacksonlewis.com
ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

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

RAYMOND PEREZ II
JACKSON LEWIS
171 17TH ST., NW
SUITE 1200
ATLANTA, GA 30363

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

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

via email.

This 24 day of February 2025.



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