

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

FILED

DEC 6 2024

COMMISSIONER OF LABOR OF THE)
STATE OF NORTH CAROLINA)

COMPLAINANT,)

v.)

FOOD LION, LLC)
and its successors)

RESPONDENT.)
_____)

ORDER

NC OSH Review Commission

OSHANC NO. 2024-6666

THIS MATTER was before the undersigned on respondent's petition for review of default order dated November 19, 2024 and complainant's objection and response to that motion, dated November 25, 2024.

Counsel for the complainant is Vanessa N. Totten, Special Deputy Attorney General; the respondent is represented by Brian Hokamp.

The respondent's motion asks the Review Commission to review and reconsider its notice of default dated September 16, 2024 pursuant to Rule .0309(b). The complainant points out in its objection and response that the respondent did not file a statement of position until November 14, 2024, 50 days after dismissal of the notice of contest. The complainant also says that the petition for review should have been filed on October 25, 2024, pursuant to Rule .0309(b).

This matter raises questions about how much knowledge each side should have concerning the other party with reference to these proceedings. There is no question that Food Lion is known in North Carolina to be a long standing North Carolina company founded in Salisbury and in the grocery business with individual stores all over the state. The citations in this case involved one of its stores in Greenville, North Carolina. The complainant and Review Commission served all of their documents on the Greenville store address, although the complainant had the address of Mark Meek, Food Lion's Safety Manager in Salisbury from the notice of contest, filed August 8, 2024.

On the other hand, the respondent took no steps with the complainant to make sure that Mr. Meek timely received further information concerning this case in Salisbury. Additional documents in this case were still being sent by complainant to the Greenville store and apparently were not being timely forwarded by that store to Mr. Meek. That is not the complainant's problem.

I do not find it surprising under the circumstances that we ended up in this position in this case. I am not necessarily faulting either party, except that they each have to live with their communication problems, which should not be the responsibility of the Review Commission.

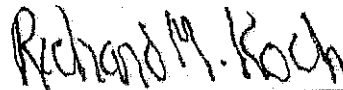
The respondent's petition raises only one substantive issue concerning the citations issued in this case. That issue is one of preemption of the Federal Motor Carrier Safety Administration of safety issues involving commercial motor vehicles. I have difficulty seeing how that applies here. I have handled a number of cases for the Review Commission concerning wheel chocks holding delivery vehicles in place at a dock. That issue does not come up in a situation where the truck is parked at the respondent's dock at the respondent's place of business and the respondent's employees are unloading the trailer and may be having to deal with movement of the trailer because the wheels of the trailer are not chocked. The respondent still has the responsibility for the safety of its employees under North Carolina law regardless of whose truck and trailer. What actually happened in this situation is not before me except for what has been alleged in the citation items.

Even though there may be excusable neglect on the part of the respondent, it could have helped itself. Without any evidence of a substantive issue that needs to be resolved if this matter were reopened and the default set aside, I am reluctant to do so.

IT IS ORDERED that the respondent's petition for review of default order is DENIED.

IT IS FURTHER ORDERED that the citation items are affirmed and should be abated immediately if not already done.

This 6th day of December, 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:

**BRIAN HOKAMP
AHOLD DELHAIZE USA
1159 HARRISBURG PIKE
CARLISLE, PA 17013**

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:

**VANESSA N. TOTTEN
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 11 DAY OF December 2024.

**PAUL E. SMITH
CHAIRMAN**



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