

**BEFORE THE SAFETY AND HEALTH REVIEW BOARD  
OF NORTH CAROLINA**

COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

v.

ANSCO & ASSOCIATES, INC.,

RESPONDENT.

DOCKET NO. OSHANC 90-1724  
OSHA INSPECTION NO. 18571653  
CSHO ID NO. L9106

**ORDER**

**APPEARANCES**

Complainant:

Hal Pell, Assistant Attorney General and

Linda Kimbell, Associate Attorney General

Respondent:

Joseph F. McNulty, Jr. of  
Tuggle, Duggins & Meschan, P.A.

**BEFORE**

Review Board:

Robin E. Hudson, Chair

Kenneth K. Kiser, Member

Hugh M. Wilson, Member

**DECISION OF THE REVIEW BOARD**

This cause was heard at or about 9:00 A.M. on the 10th day of March, 1995 in the Conference Room in the office of the Safety and Health Review Board of North Carolina at 217 West Jones Street, Raleigh, North Carolina. This matter came to be heard on remand to the Review Board from the North Carolina Court of Appeals to recalculate the penalty in light of the Court of Appeals' modification of the alleged willful violations of 29 CFR 1926.651(c) and 29 CFR 1926.651(f) from willful to serious.

After hearing the arguments of the parties, the Board finds that the parties agree that the penalty is classified as serious and that the matter can best be settled by the parties conferring to reach an agreement on the proper calculation of the penalty and failing that to each submit its own separate proposed order on the proper calculation of the penalty.

**IT IS THEREFORE ORDERED** that the parties confer and within 30 days of the filing of this order submit a proposed consent Order reflecting the parties' agreement on the proper calculation of the penalty; in the event the parties cannot agree on the contents of the consent Order, the parties shall each submit within 30 days of the filing of this Order a proposed Order reflecting its contentions on the proper calculation of the penalty.

This the 23rd day of June, 1995.

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ROBIN E. HUDSON, CHAIR

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HUGH M. WILSON, MEMBER

DISSENT:

I dissent. The Field Operations Manual plainly states how to calculate the penalty for a Serious violation. This is how I think it should be done and save all this time.

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KENNETH K. KISER, MEMBER