

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
92CVS9806

JOHN C. BROOKS, COMMISSIONER
OF LABOR OF NORTH CAROLINA,

OSHANC NO. 90-1854

Petitioner,

ORDER DISMISSING APPEAL

v.

CAROLINA COACH COMPANY,

Respondent.

This cause came on to be heard before the undersigned Judge at a regular civil session of Wake County Superior Court. Having considered the record on appeal, the arguments and briefs of counsel, the court concludes as follows:

1. The Commissioner of Labor, pursuant to N.C.G.S. § 95-138, has authority to assess civil penalties for violations of the Occupational Safety and Health Act of North Carolina. Pursuant to N.C.G.S. § 95-137(b)(4), the employer may appeal such penalties to the Safety and Health Review Board (the "Board"). Pursuant to N.C.G.S. § 95-138 (a) the standard of review to be applied by the Board for the commissioner's penalty assessment is either de novo or based upon an abuse of discretion of the Hearing Examiner.
2. In the case of de novo review, the Board must look to the evidence of record and may assess the penalty it deems proper after applying the appropriate statutory limitations found in N.C.G.S. § 95-138(a),
3. If the Board's review is based on the abuse of discretion standard, the Board must review the evidence of record to assure that the penalty reduction is supported by substantial evidence.
4. The order from which this appeal was taken states that the abuse of discretion standard of review was applied to the Hearing Examiner's order reducing the penalties assessed the Respondent. However, the order also indicates that the Board, applying the de novo standard of review considered the evidence of record, gave due consideration to the factors set out in G.S. § 95-138(a) and assessed a total penalty of five hundred dollars (\$500.00) against the Respondent. Accordingly, the Board complied with the requirements of the N.C.G.S. § 95-138(a) with respect to de novo review.
5. The Hearing Examiner's order contained sufficient facts to support a penalty reduction. However, the Board, on appeal, set forth additional evidence which further supports the penalty reduction. There is no evidence of an abuse of discretion by the Board in its review of the Hearing Examiner's assessment of the penalty against Respondent.
6. . Under either the abuse of discretion or de novo standards of review, the Board's order should he affirmed.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The Board's order from which this appeal was taken is hereby affirmed in all respects;
2. The Complainant's appeal is hereby denied; and,
3. The Complainant's Petition is hereby dismissed with prejudice.

This the 12 day of October, 1993.

Donald W. Stephens
Superior Court Judge