

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
93CVS02235

LIGGETT GROUP, INC.,

OSHANC NO. 91-2074

Petitioner,

ORDER

v.

HARRY E. PAYNE, JR., COMMISSIONER
OF LABOR OF NORTH CAROLINA

Respondent.

THIS MATTER came on for hearing before the undersigned Superior Court Judge at the November 6, 1995 Session of Durham County Superior Court upon Petition for Judicial Review filed by Petitioner pursuant to G.S. § 150B-45 seeking review of a final administrative agency decision entered May 13, 1993 by the Safety and Health Review Board of North Carolina, and the Court, after careful consideration of the Petition For Review, the Decision of the Review Board, transcript of evidence and the arguments and briefs of counsel, finds the following:

1. This case was initiated by a Citation issued August 14, 1991 to Petitioner by the Commissioner of Labor pursuant to G.S. § 95-137. The Citation was issued for violation of a specific safety regulation or, in the alternative, a violation of G. S. § 95-129(1), the General Duty Clause. Petitioner timely contested the Citation and proposed penalty.
2. On July 20, 1992, an evidentiary hearing was held before Hearing Examiner Carroll D. Tuttle, who heard evidence, made findings of fact and entered an Order filed with the Review Board on September 11, 1992, which affirmed the Citation as to the alleged violation of G.S. § 95-129(1), the General Duty Clause.
3. On May 13, 1993, the Review Board affirmed the findings and penalties assessed below and Petitioner has sought review in this Court.
4. This court has conducted a whole record test and from the matters of record concludes:
 - (a) There is substantial and ample evidence, upon review of the entire record, to support the Review Board's finding and conclusion that Respondent violated G.S. § 95-129(1), the General Duty Clause;
 - (b) There is sufficient competent evidence of record to support the Review Board's finding of facts including those facts found by the Hearing Examiner which were adopted by the Review Board;
 - (c) Based upon such findings of fact the Review Board made correct and proper conclusions of law with regard to these violations;
 - (d) There was no violation of any statutory or constitutional right of the Petitioner and the Review Board did not act in excess of its statutory authority or jurisdiction;
 - (e) The Review Board's decision was not made upon improper procedure and was not affected by any error of law;
 - (f) The Review Board's decision is supported by substantial competent evidence in view of the entire record as a whole; and, as such,

(g) The Review Board's decision is not arbitrary or capricious.

5. This decision is rendered in Chambers and out of session by the consent of the parties given in open court through their counsel.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED, that the Decision of the Review Board is affirmed in all respects.

This the 4th of January 1996.

A. Leon Stanback, Jr.
JUDGE PRESIDING