

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

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA,

COMPLAINANT,

DOCKET NO. OSHANC 93-2969
OSHA INSPECTION NO. 111091393
CSHO ID NO. R2311

v.

MASTERS PERSONNEL, INC. dba
INTERIM PERSONNEL,

ORDER

RESPONDENT.

APPEARANCES

Complainant:

No appearance

Respondent:

No appearance

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.

ISSUE PRESENTED

1. Was Item one of Citation one and its \$500.00 associated penalty effectively dismissed by the Department of Labor?

Having reviewed the record and on its own finding a material issue of law presented on the record (N.C.G.S. § 95-135(i)) the Safety and Health Review Board of North Carolina hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The Commissioner of Labor (Complainant) is responsible for enforcing OSHANC (N.C. Gen. Stat § 95-133).
2. The employer (Respondent) Masters Personnel, Inc. is subject to the provisions of OSHANC (N.C. Gen. Stat § 95-128).
3. On July 28, 1993, the Respondent was inspected by the North Carolina Department of Labor
4. On September 22, 1993 Masters Personnel (hereinafter "Masters") was issued a citation alleging three nonserious violations as follows:

Citation 1, Item 1: a violation of 29 CFR 1904.2(a) for failure to keep an OSHA 200 log of injuries,

Citation 1, Item 2: a violation of 29 CFR 1910.157(e)(3) for failure to have fire extinguishers inspected annually and

Citation 1, Item 3: a violation of 29 CFR 1910.157(g)(1) for not providing training on the use of fire extinguishers.

A penalty in the amount of \$500.00 was assessed for the Citation 1, Item 1 for failure to keep the OSHA 200 log and no penalties were assessed for the other two nonserious violations.
5. The Respondent attended an informal conference with the Department of Labor on September 30, 1993.
6. On or before October 12, 1993, the Department of Labor issued a citation amendment, deleting Item 1 of Citation 1 and the associated penalty.
7. On October 13, 1993 the Department of Labor received a letter from Ms. Marie Westmoreland, President of Respondent contesting Citation 1, Item 1 (29 CFR 1904.2(a)) and the \$500.00 fine.
8. The above referenced contestment letter was filed with the Review Board on October 20, 1993.
9. Citation 1, Item 2 and Citation 1, Item 3 were not amended by the Department of Labor.
10. Citation 1, Item 2 and Citation 1, Item 3 were not contested by the Respondent and more than 15 working days has passed since the Respondent received the Citations.
11. A Notice of Docketing was mailed to the Respondent on October 20, 1993.
12. A Notice of Default was mailed to the Respondent on November 30, 1993.
13. An Order Dismissing Notice of Contest was signed on January 18, 1994 by the Honorable J. B. Kelly, Chairman of the Review Board and mailed to Respondent on January 20, 1994.
14. A letter from Respondent was received by the Review Board on February 1, 1994 requesting that the case be reopened by the Board and that the Board delete citation one and the penalty.
15. The case was referred to the full Board who determined, on December 9, 1994, that the matter should be reopened and scheduled for hearing by the full Board.
16. A Notice of Review setting the matter for hearing on March 10, 1995 was mailed to the Respondent on February 13, 1995.
17. A Petition to Withdraw Notice of Contest was received by the Attorney General's office on March 3, 1995 and forwarded to the Review Board on March 20, 1995, ten days after the hearing.

18. Respondent's Petition to Withdraw is based on the fact that the contest was limited to Item one of Citation One and its proposed penalty of \$500.00 which had already been deleted in an Amended Citation issued by the Complainant.

CONCLUSIONS OF LAW

1. The foregoing findings of fact are incorporated as conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. The Department of Labor had jurisdiction of the matter on October 12, 1993 when it amended the Citation by deleting Item 1 of Citation 1 and the associated penalty.
3. At the time that the Department of Labor received the contestment letter contesting Item 1 of Citation 1 and the \$500.00 penalty, the very same items and penalty had already been deleted and there was no longer any matter in controversy.
4. Citation 1, Item 1 and the \$500.00 penalty has been effectively dismissed by the Department of Labor.
5. Citation 1, Item 2 and Citation 1, Item 3 were neither contested nor amended and have become the final order of the Commissioner.

DISCUSSION

Pursuant to N.C.G.S. § 95-137(b)(1) in effect for citations issued before October 1, 1993 the employer has 15 working days in which to contest the citations and proposed penalty. Before the 15 day period expired the Department of Labor issued an amended citation deleting Citation one, Item one and the associated \$500.00 penalty. One day after the amended citation was issued the Department of Labor received a contestment letter contesting the very same Citation one, Item one which had been deleted by the Department of Labor in an amendment issued the previous day. Therefore, the contestment letter purporting to contest that same item and penalty attempts to contest a moot issue in that the item and penalty had already been dismissed.

ORDER

For the reason stated herein, the Review Board hereby **ORDERS** that Citation 1, Item 1, a violation of 29 CFR 1904.2(a) for failure to keep an OSHA 200 log of injuries and the associated \$500.00 penalty has been effectively dismissed by the Department of Labor and that the Respondent owes no penalty. The nonserious violations of 29 CFR 1910.157(e)(3) and 29 CFR 1910.157(g)(1) alleged in Citation 1, Item 2 and Citation 1, Item 3, respectively were neither amended nor contested and they have become the final order of the Commissioner as nonserious violations with no penalty.

The Review Board further **ORDERS** that the Respondent's Petition to Withdraw Notice of Contest is hereby granted.

This the 15th day of June, 1995.

ROBIN E. HUDSON, CHAIR

KENNETH K. KISER, MEMBER

HUGH M. WILSON, MEMBER