

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
02 CVS 09738

In the Matter of

OSHANC NO. 98-3647

COMMISSIONER OF LABOR OF
THE STATE OF NORTH CAROLINA

ORDER

Respondent,

v.

CAROLINA TELEPHONE AND
TELEGRAPH COMPANY

Petitioner.

THIS MATTER came on for hearing before the undersigned Superior Court Judge of Wake County Superior Court upon Petition for Judicial Review filed by Petitioner pursuant to North Carolina General Statutes 95-141 and 150B-45 seeking review of a final administrative agency decision entered June 20, 2002 by the Safety and Health Review Board of North Carolina. The Court, after careful consideration of the entire record, including the Petition for Review, the Decision of the Review Board, the transcript of evidence and the briefs and arguments of counsel, finds the following:

1. The Commissioner, through her agents, inspected the training facility of Petitioner Carolina Telephone and Telegraph Company ("Carolina Telephone") located in Rocky Mount, North Carolina. As a result of the inspection, the Commissioner issued Carolina Telephone a Citation and Notification of Penalty alleging a violation of 29 CFR 1910132(a) or, in the alternative, NCGS § 95-129(1).
2. Carolina Telephone properly contested the citation and submitted the contested case before the jurisdiction of the Review Board.
3. Hearing Examiner R. Joyce Garrett presided at the evidentiary hearing. At the hearing, the Respondent dismissed the alternative citation to NCGS § 95-129(1). Based on the evidence presented, Judge Garrett found that the Respondent failed to prove a violation of the cited standard and dismissed the citation as amended.
4. On November 10, 2000, the Commissioner appealed the ALJ's decision to the Review Board. Carolina Telephone cross appealed. The appeal was not heard until February 2002, when a newly constituted Review Board appointed by the Governor was in place.
5. On June 20, 2002, a divided Review Board reversed the ALJ's decision and affirmed the amended citation.
6. Carolina Telephone is aggrieved by the final decision of the Review Board and has exhausted all remedies available before the agency.
7. The Court has conducted a *de novo* review of the Review Board's statutory interpretation and a whole record review to determine whether the Review Board's decision is supported by substantial evidence, and from the matters of record concludes:

(a) Based on Petitioner's uncontested evidence regarding its method of training employees to climb telecommunications poles, including the final free-climbing exercises which are a prerequisite to

successful completion of the course and Petitioner's evidence that employees are occasionally required to perform free-climbing when working in the field, Respondent did not satisfy its burden of proving that Carolina Telephone's training method violated 29 CFR 1910.132(a), if applicable.

(b) As such, the Review Board's decision is unsupported by substantial evidence in view of the entire record as submitted.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED, that the decision of the Review Board is reversed.

This the 11th day of June, 2004.

The Honorable Abraham Penn Jones