

NORTH CAROLINA  
SURRY COUNTY

COMMISSIONER OF LABOR FOR  
THE STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
00-CVS-1625

Complainant,

v.

JIMMY R. LYNCH & SONS, INC.

ORDER

Respondent.

This matter came on for hearing at the January 8, 2001, session of the Superior Court of Surry County, North Carolina upon the Petition of the respondent, Jimmy R. Lynch & Sons, Inc. to review a decision of the Safety and Health Review Board of North Carolina pursuant to N.C.G.S. § 150B-51.

1. The Safety and Health Review Board of North Carolina (the "Review Board") determined in its order entered on September 20, 2000, that the respondent Jimmy R. Lynch & Sons, Inc. had committed a willful serious violation of 29 C.F.R. § 1926.652(a)(1) for failing to protect employees in an excavation and sloping the excavation at an angle steeper than one and one half horizontal to one vertical and penalized the respondent \$17,500.00.
2. The Review Board determined that the respondent Jimmy R. Lynch & Sons, Inc. committed a serious violation of, 29 C.F.R. § 1926.651(j)(2) for failure to protect employees from equipment that could pose a hazard by falling or rolling into an excavation and penalized the respondent \$1,750.00.
3. The respondent in its petition and brief filed with the Court contended that the foregoing determinations by the Review Board were affected by an error of law and were not supported by substantial evidence.

Based on a review of the Record on Appeal and the brief and arguments presented by the parties, the Court concludes as follows:

The decision of the Review Board that the respondent committed a willful, serious violation of 29 C.F.R. § 1926.652(a)(1) for failing to protect employees in an excavation by sloping the excavation at an angle steeper than one and one half horizontal to one vertical is not supported by substantial evidence, prejudices substantial rights of the respondent, and should be reversed.

The Court finds from a review of the record that there was substantial evidence that Mark Lynch, an employee of the respondent and a competent person, examined the construction site and found no indication of a potential cave-in from any excavations made on said site by the respondent. There was an absence of substantial evidence in the record that the respondent excavated any portion of the project to a depth of greater than five feet. There was substantial evidence that the exception to the sloping requirement set forth in C.F.R. § 1926.652(a)(ii) is applicable to respondent in this case.

The Court further concludes based on its review of the record that the decision of the Review Board that the respondent Jimmy R. Lynch & Sons, Inc. committed a serious violation of 29 C.F.R. § 1926.651(j)(2) for failure to protect the employees from equipment that could pose a hazard by falling or rolling into an excavation is not affected by an error of law, is supported by substantial evidence, and should be affirmed.

NOW, THEREFORE, it is hereby ordered, adjudged and decreed that the order of the Safety and Health Review Board of North Carolina that respondent Jimmy R. Lynch & Sons, Inc. committed a willful serious violation of

29 C.F.R. § 1926.652(a)(1) for failing to protect employees in an excavation by sloping an excavation at an angle steeper than one and one half horizontal to one vertical is hereby reversed and that the decision of the Safety and Health Review Board of North Carolina that the respondent Jimmy R. Lynch & Sons, Inc. committed a serious violation of 29 C.F.R. § 1926.651(j)(2) for failure to protect employees from equipment that could pose a hazard by falling or rolling into an excavation is hereby affirmed.

Entered this 24th day of January, 2001.

Honorable Michael E. Helms  
Judge Presiding