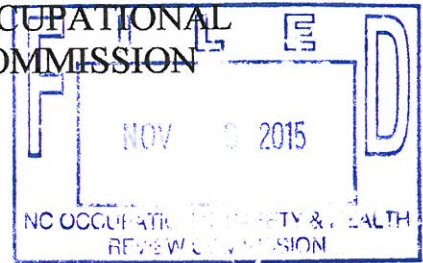


BEFORE THE NORTH CAROLINA OCCUPATIONAL  
SAFETY AND HEALTH REVIEW COMMISSION



COMMISSIONER OF LABOR OF  
THE STATE OF NORTH CAROLINA,

Complainant,

DOCKET NO. OSHANC-2015-5679  
OSHA INSPECTION NO: 317843555  
CSHO ID: Y8949

vs.

ATLANTIC HOIST & CRANE, INC.  
*and its successors*

ORDER

Respondent.

THIS CAUSE came on for hearing and was heard before the undersigned Monique M. Peebles, Administrative Law Judge for the North Carolina Occupational Safety and Health Review Commission, on October 13, 2015, at the Lee House, 2<sup>nd</sup> Floor Hearing Room, 422 North Blount Street, Raleigh, North Carolina 27601.

The Complainant was represented at the hearing by Assistant Attorney General Melissa Taylor, North Carolina Department of Justice, and the Respondent was pro se. Present at the hearing for Complainant was Gary Thorpe, SCO II, Assistant Attorney General Larissa Williamson, North Carolina Department of Justice, and Dylan Sugar, North Carolina Department of Justice. Present for Respondent was Jason Upchurch and David Houston, President of Atlantic Hoist & Crane.

After reviewing the evidence presented at the hearing the undersigned makes the following Findings of Fact and Conclusions of Law and enters an Order accordingly.

## FINDINGS OF FACT

1. Complainant, the North Carolina Department of Labor, by and through its Commissioner, is an agency of the State of North Carolina charged with inspection for, compliance with, and enforcement of the provisions of N.C. Gen. Stat. § 95-126 et. seq., the Occupational Safety and Health Act of North Carolina (the “Act”).
2. This case was initiated by Notice of Contest received by the Complainant, Commissioner of Labor of the State of North Carolina, on or about January 29, 2015, contesting a citation issued on January 6, 2015, to Respondent, Atlantic Hoist & Crane, Inc. (“Atlantic Hoist”).
3. Respondent, a material handling company, duly organized and existing under the laws of the State of North Carolina, which does business in the State of North Carolina, subject to the provision of the Act (N.C. Gen Stat § 95-128 and 129) and is an employer within the meaning of N.C. Gen. Stat. § 95-127 (10). Respondent maintains a place of business in Atlantic Beach, North Carolina, and employs 6 workers overall; and 2 people were employed at the worksite at the time of the inspection.
4. The undersigned has jurisdiction over the case (N.C. Gen. Stat. § 95-135).
5. On October 23, 2014, Compliance Safety and Health Officer II, Gary Thorpe (“SCO Thorpe”) inspected Respondent’s worksite at King Machine in Fayetteville, North Carolina, (“site”) pursuant to a partial inspection as a result of a complaint. King Machine cleans tire moles for Goodyear.
6. King Machine hired Respondent to perform maintenance on 2 cranes, one with a 3 ton hoist, and one with a half-ton hoist.

7. When SCO Thorpe entered the site the morning of October 23, 2014, he spoke to King Machine and found out Respondent was not on site at the time. SCO returned at 1:15 pm the same afternoon, properly entered the site and received consent to the inspection by King Machine and Bill Maynard, former president of Respondent. (President at the time of inspection) SCO Thorpe conducted an opening conference with Mr. Maynard.
8. SCO Thorpe took pictures at the site, notes and conducted interviews with several witnesses.
9. SCO Thorpe conducted a closing conference by telephone with Mr. Maynard the same day, and he recommended that one serious citation be issued.
10. As a result of the recommendations of the compliance officer, on January 6, 2015, the Complainant issued a serious citation to Respondent as follows:

**Citation 1 Item 1: Serious**

Citation 1, Item 1, alleges a serious violation of 29 CFR 1910.145(f)(3): Tags were not used as a means to prevent accidental injury or illness to employees who were exposed to hazardous or potentially hazardous conditions, equipment or operations which were out of the ordinary, unexpected or not readily apparent:

- (a) Sandblasting area – The installer did not attach a tag or otherwise indicate a new 3-ton hoist was out-of-service where the installer had not completed the installation process.
11. On October 20, 2014, 3 days before the inspection, Respondent's Regional Manager, Bob Hieb, was installing the hoist for the 3-ton crane at the King Machine's worksite.

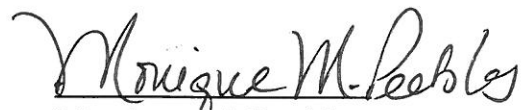
12. Mr. Hieb did not complete the installation of the hoist on the 3 ton crane and left the site without attaching a tag indicating it was out of service.
13. On October 21, 2014, one of the King Machine employees, Mr. Melvin, used the crane to pick up and pull the segments with the hoist on the 3-ton crane to the sandblaster (see Complainants' Exhibits 2 & 4) He was unaware the hoist was being worked on the day before.
14. The hoist fell behind Mr. Melvin and he suffered bruising on his shoulder from the hoist's chain.
15. Failure to tag out the incomplete installed hoist created a hazardous condition.
16. Without the hoist being tagged out indicating it was out of service, there was a possibility of an accident resulting from employees using the hoist without spacers, which would cause it to fall off; the substantial probable result is death or serious injury.
17. Use of tags on the hoist indicating a hazard if used, would have reduced or eliminated the hazardous.
18. Respondent knew or should have known of the hazardous condition in that Respondent's regional manager was responsible for installing the hoist.
19. Two employees were exposed to the hazard.
20. CSHO Thorpe found the severity to be high, the probability greater, and assessed a Gravity based penalty of \$7,000. He applied 70% total reduction for size and no prior accidents within 3 years, and proposed an adjusted penalty in the amount of \$2,100. The proposed penalties were computed in accordance with the provisions of the Field Operations Manual.

### Conclusions of Law

1. The foregoing findings of fact are incorporated by reference as Conclusions of Law to the extent necessary to give effect to the provisions of this Order.
2. Respondent is subject to the provisions and jurisdiction of the Act.
3. Complainant proved by a preponderance of the evidence that Citation 1, Item 1, was a serious violation of 29 CFR 1910.145(f)(3) in that Respondent failed to tag out a 3 ton hoist indicating that it was out of service.

BASED UPON the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, **IT IS ORDERED, ADJUDGED, AND DECREED** that all of the citations and penalties are hereby affirmed; and Respondent shall pay the penalties as set forth in the Findings of Fact and Conclusions of Law above.

This the 4 day of November, 2015.

  
Monique M. Peebles  
Administrative Law Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing ORDER, upon:

DAVID HOUSTON  
ATLANTIC HOIST & CRANE, INC  
351 SALTER PATH RD  
ATLANTIC BEACH, NC 28512

by depositing same the United States Mail, Certified Mail, postage prepaid, at Raleigh, North Carolina, and upon:

MELISSA TAYLOR  
NC DEPARTMENT OF JUSTICE  
LABOR SECTION  
P O BOX 629  
RALEIGH, NC 27602-0629

by depositing a copy of the same in the United States Mail, First Class;

NC DEPARTMENT OF LABOR  
LEGAL AFFAIRS DIVISION  
1101 MAIL SERVICE CENTER  
RALEIGH, NC 27699-1101

by depositing a copy of the same in the NCDOL Interoffice Mail.

THIS THE 9<sup>th</sup> DAY OF November 2015.

OSCAR A. KELLER, JR.  
CHAIRMAN

Karissa B. Sluss  
Karissa B. Sluss

Docket and Office Administrator  
NC Occupational Safety & Health Review Commission  
1101 Mail Service Center  
Raleigh, NC 27699-1101  
TEL.: (919) 733-3589  
FAX: (919) 733-3020