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COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #1118

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CASTLE SHOWCASE COMPANY, INC.

RESPONDENT

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
LOCAL 566

AUTHORIZED
EMPLOYEE REPRESENTATIVE

DECISION AND ORDER

All parties in the above referenced action shall take notice that Complainant's Petition for Discretionary Review was GRANTED and this case was called for review on July 25, 1985. The issue on review was whether the Hearing Officer erred in vacating the proposed penalty.

KRS 338.991(2) requires that a serious violation be accompanied by some penalty assessment. American Saw & Tool Division of Vermont American Corporation, KOSHRC #854 (1982).

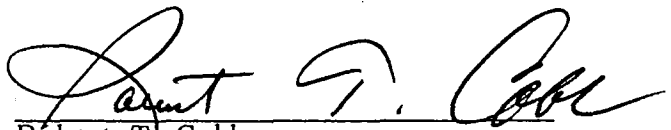
After a careful review of the evidence presented at the hearing held on September 14, 1984, the Commission VACATES the Recommended Order of the hearing officer insofar as it vacates the proposed penalty of \$480 for the serious violations sustained therein.

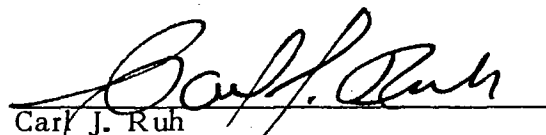
We find that a penalty assessment of fifty dollars (\$50.00) is reasonable under the circumstances of this case.


The Commission hereby ORDERS Respondent to pay a penalty of fifty dollars (\$50.00) for the serious violations of 29 CFR 1910.217(c)(1)(i); 29 CFR 1910.217(b)(4)(i), and 29 CFR 1910.213(h)(1). Abatement shall be accomplished immediately.

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Decision and Order
Page Two

All other findings and conclusions of the hearing officer
not inconsistent with this decision and order are hereby AFFIRMED.


Robert T. Cobb
Chairman


Carl J. Ruh
Commissioner


Charles E. Braden
Commissioner

DATE: July 29, 1985

DECISION NO. 1446

Copy of this Order has been served on the following parties in the manner indicated:

Hon. Rose Ashcraft
Assistant Counsel
Labor Cabinet
Office of General Counsel
U. S. 127 South
Frankfort, KY 40601

(Messenger Mail)

Mr. Bernard Overall
Castle Showcase Company
120 Seventeenth Street
Ashland, KY 41101

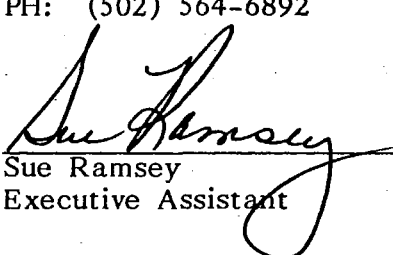
(Cert. Mail #P587 662 805)

Mr. Willis Nichols, Pres.
United Brotherhood of Carpenters
& Joiners of America, Local 566
c/o Castle Showcase Company
120 Seventeenth Street
Ashland, KY 41101

(Cert. Mail #P587 662 805)

This 29th day of July, 1985.

Kenneth Lee Collova
Executive Director
KOSH REVIEW COMMISSION
Airport Bldg., Louisville Rd.
Frankfort, KY 40601
PH: (502) 564-6892


Sue Ramsey
Executive Assistant

7-15
7-30
7/15
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FV

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHR #1118

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CASTLE SHOWCASE COMPANY, INC.

RESPONDENT

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA,
LOCAL 566

AUTHORIZED
EMPLOYEE REPRESENTATIVE

**NOTICE OF RECEIPT OF RECOMMENDED ORDER
AND ORDER OF THIS COMMISSION**

All parties to the above-styled action before this Review Commission will take notice that pursuant to our Rules of Procedure a Decision, Findings of Fact, Conclusions of Law and Recommended Order is attached hereto as a part of this Notice and Order of this Commission.

You will further take notice that pursuant to Section 48 of our Rules of Procedure any party aggrieved by this decision may submit a petition for discretionary review by this Commission. The petition must be received by the Commission in its offices in Frankfort on or before the 25th day following the date of this notice. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction of this matter now rests solely in this Commission, and it is hereby ordered that unless this Decision, Findings of Fact, Conclusions of Law and Recommended Order is called for review and further consideration by a member of this Commission within 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, it is adopted and affirmed as the Decision, Findings of Fact, Conclusions of Law and Final Order of this Commission in the above-styled matter.

Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.

Copy of this Notice and Order has been served on the following parties in the manner indicated:

KOSHRC #1118

Hon. Rose Ashcraft
Assistant Counsel
Labor Cabinet
Office of General Counsel
U. S. 127 South
Frankfort, KY 40601

(Messenger Mail)

Mr. Bernard Overall
Castle Showcase Company
120 Seventeenth Street
Ashland, KY 41101

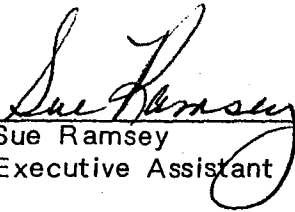
(Cert. Mail #P587 654 116)

Mr. Willis Nichols, Pres.
United Brotherhood of Carpenters
& Joiners of America, Local 566
c/o Castle Showcase Co.
120 Seventeenth Street
Ashland, KY 41101

(Cert. Mail #P587 654 116)

This 20th day of June, 1985.

Kenneth Lee Collova
Executive Director
KOSH Review Commission
Airport Bldg., Louisville Rd.
Frankfort, KY 40601
PH: (502) 564-6892


Sue Ramsey
Executive Assistant

KOSHRC 1118

COMMONWEALTH OF KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

SECRETARY OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CASTLE SHOWCASE CO., INC.

RESPONDENT

UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, LOCAL 566

AUTHORIZED
EMPLOYEE REPRESENTATIVE

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED DECISION

* * * * *

This case involves a safety inspection conducted on or about March 6, 1984 by an OSHA Compliance Officer employed by the Secretary of Labor (hereinafter Secretary) upon the worksite of Castle Showcase Company, Inc. (hereafter Respondent), located in Boyd County, at or near Ashland, Kentucky. Respondent was engaged in the manufacture of store fixtures, mainly showcases. During the course of that inspection, the Compliance Officer issued to the Respondent two (2) citations for three (3) serious violations and one (1) other than serious violation of the Kentucky Occupational Safety and Health Act (hereinafter the Act). The Compliance Officer further recommends a proposed penalty totalling Four Hundred and Eighty Dollars (\$480.00).

PROCEDURAL INFORMATION

The pertinent procedural information is as follows:

1. An inspection of the work premises of the Respondent was conducted on or about March 6, 1984.

2. The Respondent was issued two (2) citations for three (3) serious violations and one (1) other than serious violation under the Act. The citation alleged:

(a) Violation of 29 CFR 1910.217(c)(1) (i) in that:

The employer did not provide and ensure the usage of "point of operation guards" or properly applied point of operation devices on every operation performed on mechanical power press(es):

The "Roussell E" No. 2F serial #44222 full revolution mechanical power press in the door making department;
The "L & J Press Corp." #11 Serial #35131 full revolution mechanical power press in the metal shop;
The "Alva Allen" BT5-E5 G 9243 Co. #12 full revolution mechanical power press in the metal shop;
The "Alva Allen" BT 5-101 full revolution mechanical power press in the futura metal cutting dept.

(b) Violation of 29 CFR 1910.217(b)(4)(i) in that:

pedal mechanism(s) on mechanical power press(es) using full revolution clutches were not protected to prevent unintended operation from falling or moving objects or by accidental stepping onto the pedals:

The "Alva Allen" BT5-101 Co. #81 full revolution mechanical power press in the futura metal cutting dept.;
The "Alva Allen" BT5 Co. #77 full revolution mechanical power press in the imperial building dept.

(c) Violation of 29 CFR 1910.213(h)(1) in that:

The sides of the lower exposed portion of the blade or radial saw(s) were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut:

the "Tatry" Co. #3 radial saw with a ten (10) inch blade in the base cutting dept.;
The "Tatry" Co. #8 radial saw with a ten (10) inch blade in the base cutting dept.;
The "DeWalt" AMF" radial saw with an eight (8) inch blade in the imperial building dept.

(d) Violation of 29 CFR 1910.213(c)(2) in that:

Hand-fed circular rip saw(s) were not furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator:

The hand-fed rip saw Co. #4, in the base cutting dept;
The "Tannwitz Works Co. #62 hand-fed rip saw on the second floor cutting dept.

3. The Compliance Officer recommended a penalty totalling Four Hundred and Eighty-Dollars (\$480.00).

4. On March 30, 1984, notification fixing the abatement dates and proposed penalties as follows was issued to Respondent:

<u>Subparagraph Number</u>	<u>Abatement Date</u>	<u>Penalty</u>
2 (a)	April 18, 1984	\$ 240.00 for
2 (b)	April 18, 1984	6(a) and 6(b)
2 (c)	April 18, 1984	\$ 240.00
2 (d)	April 13, 1984	-0-

5. On April 10, 1984, the Respondent filed a Notice of Contest with Complainant, objecting to and contesting the alleged violations and said Notice of Intent to contest was duly transmitted to the Review Commission on April 18, 1984.

6. On April 18, 1984 members Local Union Number 556 of the United Brotherhood of Carpenters and Joiners of America were granted party status to represent the

affected employees represented by the Union.

6. The Complaint was filed by the Secretary on May 1, 1984.

7. The case was then assigned to a hearing officer.

8. The hearing was conducted on September 14, 1984 in Ashland, Kentucky.

The aforementioned hearing is held under the provisions of KRS 338.071(4), one of the provisions for the safety and health of employees which authorizes the Review Commission to hear and rule on appeals and citations, notification and variances issued under the Act, and to adopt and promulgate aspects of this hearing under the provisions of KRS 338.081. A hearing was authorized and this hearing officer was appointed by the Review Commission to serve in its place. After a hearing, the Review Commission may sustain, modify or dismiss a citation or penalty.

FINDINGS OF FACT

On or about March 6, 1984, Mr. Jerome Conley, a Safety Compliance Officer, with the Labor Cabinet of the Commonwealth of Kentucky, Division of Occupational Safety and Health conducted a routine safety inspection upon the work premises of the Respondent. (TH 8). The Compliance Officer issued to the Respondent two (2) citations for three (3) serious violations and one (1) other than serious violation of the Act.

The first citation alleged violation of 29 CFR 1910.217(c)(1)(i) in that, the Respondent did not provide

and ensure the usage of point of operation guards on properly applied point of operation devices on five (5) specific pieces of machinery. (TH 10-11). The first machine was described as a Roussell E. No. 2F mechanical power press with a full revolution mechanical press which was located in the door making department. (TH 11). According to the testimony of the Compliance Officer, this particular machine when in operation would make a full revolution with the employee holding the material to be pressed with his hands and the machine being operated by a foot treddle. (TH 13). The Compliance Officer stated there are two (2) potential dangers to the employee with this operation method. (TH 13). On the day of the inspection, the Compliance Officer did not witness the machine in operation. (TH 16). According to an employee of the Respondent, the machine is in use approximately thirty (30) minutes a week. (TH 17).

The second machine was described as a L & J Press Corporation full revolution mechanical power press located in the metal shop. (Id.). According to the Compliance Officer there are no points of operation guard and it was operated by a foot treddle also. (Id.). The Compliance Officer testified that the potential hazard to be protected against would be the accidentally tripping of machine by foot with the hands or fingers being placed in a situation causing amputation or other serious physical injury. (TH 20). This machine was in operation at the time of the inspection. (Id.).

The third machine was the Alva Allen Company full

revolution mechanical power press in the imperial building department. This machine is operated by material being held by one hand and a hand lever is then pushed down with the other hand. (TH 21). Depending upon the operation, the first hand may be ten inches close to the point of operation. (Id.). The machine was used on the day of the inspection. (Id.). According to employees, the machine is used about one (1) hour a year. (TH 22). Similarly, as with the prior mentioned machine, the potential hazard cited was amputation of the fingers or hands. (Id.).

The fourth machine was an Alva Allen Company BT5-101 full revolution mechanical power press in the imperial building department. According to the Compliance Officer, the press is operated by a foot treddle while the operator holds the material in place with his hands. (TH 22-23). The most serious injury is amputation of the fingers or hands. (Id.).

The fifth machine is an Alva Allen Company full revolution press located in the futura metal cutting metal department. According to the Compliance Officer, the machine was for notching the showcase frame material. (TH 23). The machine was operated by a foot treddle and performed two functions. (Id.). These functions were to notch the aluminum frame and to provide a bend in the frame. (Id.) The employee is exposed to the same dangers as described above. (Id.).

The Compliance Officer submits that it is feasible and possible to guard each of these machines. (TH 24). There could be either a fixed barrier guard or a movable barrier guard. (TH 24). The Compliance Officer introduced into

the record a machine safeguarding manual that is put out by the State Division of Education and Training of OSH. (TH 28). The manual describes not only the different types of guards for presses, but also describes guards for various types of machines such as saws.

The second citation alleged violation of 29 CFR 1910.217(b)(4)(i) in that pedal mechanisms on mechanical power presses using full revolution clutches were not protected to prevent unintended operation from falling or moving objects or by accidental stepping onto the pedal. The Alva Allen full revolution mechanical power press in the imperial power building department was cited herein. Employees are exposed to the danger of a slipping or falling thereby activating the machine while the hands or arms are near the point of operation.

The Compliance Officer testified it is reasonable and feasible to cover the foot peddles to provide safety. (TH 41). Further, the record indicates that the safety covers are generally available in the market place. (TH 41). Again, the Alva Allen machine located in the futura metal power press cutting department was not in operation. (TH 41). Also the Alva Allen machine in the imperial building department was not in operation. (TH 41).

The secretary designated the violations supra as serious within the meaning of the Act. The testimony of the Compliance Officer stated that serious injury such as amputation of finger(s) and arms(s) could result because of the lack of guards and covers for these machines. He

recommended a penalty of \$240.00 for the violation of the two standards cited herein.

The third citation alleged violation of 29 CFR 1910.213(h)(1) in that the sides of the lower exposed of the blade of three (3) radial saws were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with material being cut. The first saw was a Tatry Company #3 radial saw with a ten (10) inch blade in the base cutting department. (TH 41). The saw had a guard on the left-hand side of the blade, but not the right-hand side of the blade. Unless both sides are guarded it is still possible for the employee to come in contact with the saw blade. (TH 43). All three saws were in operation for one (1) hour each day. (Id.). Similarly, the two (2) other saws namely, the Tatry and Dwalt AMF lacked proper guards. The Compliance Officer testified that it was feasible to guard each saw. (TH 44). In support of that position the Compliance Officer presented a pamphlet with pictures of such guarding. (TH 44-5). As to this situation the Compliance Officer recommended a penalty of Two Hundred Forty Dollars (\$240.00).

The last citation alleged that two (2) hand-fed circular saws, one the base cutting department and the second in the second floor cutting department, were not furnished with a spreader to prevent material from squeezing the saw and being thrown back at the operator. (TH 49-50).

The primary hazard to the employee is the possibility of the material being thrown back at the employee. (TH 50). According to the Compliance Officer, the possibility of serious physical injury was not great and therefor he did not recommend a penalty. (TH 50).

The Respondent was represented by Mr. Edward Schottland who along with his brother, started Castle Showcase in 1947. (TH 53). Mr. Schottland presented evidence that not one serious physical injury had occurred since the plant opened. (TH 53). Furthermore, the Respondent submitted that two (2) previous inspections had taken place. (TH 54). Of particular note is that previous inspections failed to result in citations to the Respondent for the violation herein despite the fact that the plant has changed little since those inspections. (Id.). Furthermore, the Respondent states he has assigned an employee to look into the citation and welcomes the Secretary to bring the Educational Section to his plant to advise changes stated in the Complaint. (TH 59).

CONCLUSIONS OF LAW

After a review of the record herein, the hearing officer concludes that the Respondent violated the Act in manners specified in the Secretary's Complaint. There is sufficient evidence in the record to support the Secretary's contention that the mechanical power presses were not guarded in a manner so that the employees were not protected from an exposure to serious physical injuries such as amputation of fingers, hands and arms. Similarly,

the record supports the fact that employees' exposure to the unguarded radial saw blades coupled with failure to guard the revolution clutches on two power presses to protect against accidental contact thereby activating the machines is dangerous. Lastly, we find the record supports the Secretary's allegations that the two fed circular saws in question were not provided with a spreader to prevent material from being thrown back at the operator. Additionally, we believe the secretary's designation of this citation as other than serious is also correct.

The last issue to be resolved is the issue of penalty. The Respondent, along with his brother, were the founders of the business in 1947. It is uncontradicted in the record that there has not been a serious physical injury at the worksite since its inception. The Respondent has had previous inspection(s) by representatives of the Kentucky Occupational Health and Safety Program and also the federal program as well. The Respondent points out that the actual plant itself has changed little since those previous inspections.

Several of the machines cited were in infrequent use. For example, the Alva Allen Company Full Revolution Mechanical Power Press in the imperial building department was in use for only "one hour per year". Another machine was used only thirty (30) minutes each day. Despite this infrequent use, the Respondent did not complain as to cost of abatement. Rather, he emphasized his need for help in finding the appropriate equipment to make his company safer.

The Respondent points out with much pride the safety record of the plant. Understandably, he is concerned that his violation of the Act was not brought to his attention during the previous inspections. It is quite plausible that he relied on the previous inspections. However, the state law charges every citizen with the knowledge of the law. Booth v. Special Fund, Ky. App. 668 S.W.2d 66,67(1984),

The Respondent makes a strong case. But this hearing officer is constrained from amending his findings since there is no proof in the record that the violations cited herein have been abated. However, because of the safety record of the Respondent and his willingness to work with the secretary in abating the citations, this hearing officer believes it is quite consistent with the purposes of the Act that upon proper showing of abatement to the Review Commission that the proposed fines be vacated. Based upon the evidence contained in the record, a reduction of the fine is appropriate upon proof of abatement. Absent abatement, the fine should be affirmed in full.

RECOMMENDED ORDER

IT IS HEREBY ORDERED that all the violations cited herein are and the same are hereby **SUSTAINED**; and

IT IS FURTHER ORDERED, that the proposed penalty of Four Hundred Eighty Dollars (\$480.00) is hereby **VACATED** upon the express condition that violations cited herein be abated within thirty (30) days of this Order; otherwise, the penalty is affirmed in full.

DATED: June 20, 1985
DECISION NO. 1432


SHIRLEY A. CUNNINGHAM, JR.