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COMMONWEALTH OF KENTUCKY  
OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC #1249

SECRETARY OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

SOUTHERN TIRE DISTRIBUTORS, INC.

RESPONDENT

**DECISION AND ORDER  
OF REVIEW COMMISSION**

Before **SHIELDS**, Chairman; **RUH** and **BRADEN**, Commissioners.

**SHIELDS** and **BRADEN**, for the majority:

A Recommended Order of Hearing Officer Charles A. Goodman III, issued February 18, 1986, is presently before this Commission for review pursuant to a Notice and Order Calling Recommended Order for Review issued March 31, 1986.

Discretionary review of said Recommended Order is limited to the issue of whether or not the hearing officer erred in dismissing the alleged violation of 29 CFR 1910.177(f)(7) as set forth in item 1 of Citation No. 1.

After reviewing the entire record in this case, we agree with the Recommended Order of the Hearing Officer for the reasons set forth hereinafter.

The record reveals that the basis for the alleged violation was not as specifically described in item 1 of Citation No. 1. The basis for the alleged violation was Respondent's alleged failure to use a proper restraining device while inflating the multi-piece rim wheel in question.

Two questions are presented:

1. Does 29 CFR 1910.177(f)(7) require a restraining device to be used when servicing a multi-piece rim wheel?

2. If so, did the chains used by Respondent meet the definition of a restraining device?

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Safety and health standards in Kentucky are, in most instances, adopted by reference from the federal standards set forth in the Code of Federal Regulations. In interpreting and applying the Kentucky standards in cases before us, frequent reference is made to the reported federal decisions involving the parallel federal standard.

In this instance, however, there are no reported federal decisions, nor has this Commission previously considered 29 CFR 1910.177.

Under the circumstances, we consider it appropriate to look to the text of the Federal Register notice (49 F.R. 4338) regarding this standard, as amended, for guidance. That text can be read in the CCH Employment Safety and Health Guide, 1983-1984 Transfer Binder ¶8095.

Pertinent portions of that text reveal that the Occupational Safety and Health Administration (OSHA) intended to require that tires on multi-piece rim wheels be inflated while protected by a restraining device. (¶8095 at pages 6365 and 6371.) However, it also reveals that OSHA intended to permit the use of devices or equipment which were not specifically designed for use as restraining devices, to allow additional flexibility for the employer. (¶8095 at page 6365.) OSHA reasoned that any device or piece of equipment which was not originally designed or intended to be used as a restraint could be used as a restraining device if it was capable of protecting the employee. (¶8095 at page 6367.) The text points out that the final rule is written to ensure that restraining devices and barriers meet minimum strength requirements. (¶8095 at page 6367.)

Looking to the standard itself, 29 CFR 1910.177, as adopted by 803 KAR 2:020, we note that several subsections refer to restraining devices: subsection (b) defines the term "restraining device;" subsection (d)(1) requires that an employer furnish a restraining device for inflating tires on multi-piece wheels; subsection (d)(3) sets forth the strength requirements for restraining devices; subsection (f)(5) states that tires shall be inflated outside a restraining device only to a pressure sufficient to create an airtight seal with the tire and bead; and subsection (f)(7) requires that, after tire inflation, the tire and wheel components shall be inspected while still within the restraining device to make sure that they are properly seated and locked.

In determining the applicability of 29 CFR 1910.177(f)(7) to the alleged violation, the hearing officer read the cited standard as standing alone. In Martin Marietta Aluminum, KOSHRC #728 (1981), the Review Commission cited the Federal Review Commission decision in Dravo Corporation, 1980 CCH OSHD ¶24,158, which advised reading the cited provision together with the sections of the standard to

obtain the necessary guidance. When read together, subsections (d)(1), (f)(5) and (f)(7) inform employers that a restraining device must be used when servicing a multi-piece rim wheel.

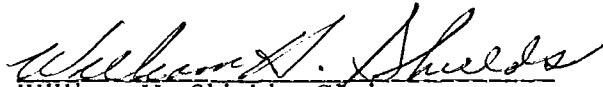
We find nothing in our review of 29 CFR 1910.177 to preclude the usage of chains as a restraining device.

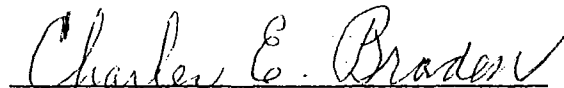
Although, in the appropriate case, the chains used may not meet some particular requirement of 29 CFR 1910.177 for restraining devices, we decline to adopt the position that chains can never be used as a restraining device.

Since Complainant's case hinges on the alleged failure of Respondent to use a proper restraining device while inflating the multi-piece rim wheel in question, we find no violation of 29 CFR 1910.177(f)(7).

ORDER

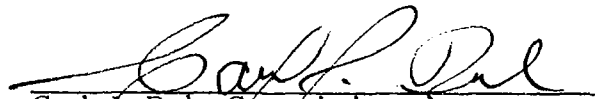
**THEREFORE, IT IS HEREBY ORDERED** that the Recommended Order dismissing the alleged violation of 29 CFR 1910.177(f)(7) as set forth in item 1 of Citation No. 1 is **AFFIRMED**.

  
William H. Shields, Chairman

  
Charles E. Braden, Commissioner

**RUH**, Commissioner, agreeing with the majority:

After a thorough review of the record and evidence in this case and a thorough reading of the applicable standard, I hereby vote with the majority due to the lack of specific terminology prohibiting the use of chains as a restraining device in the standard.

  
Carl J. Ruh, Commissioner

DATE: June 2, 1986  
DECISION NO. 1595

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

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

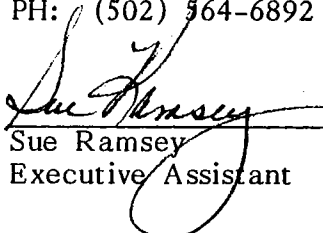
(Messenger Mail)

Mr. Robert Kidd, Jr.  
Southern Tire Distributors  
319 Sough Highway 27  
Somerset, KY 42501

(Cert. Mail #P283 321 876)

This 2<sup>nd</sup> day of June, 1986.

Kenneth Lee Collova  
Executive Director  
KOSH REVIEW COMMISSION  
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Sue Ramsey  
Executive Assistant