

Issue



126
(157)

JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

September 2, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 126

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

SPRING GROVE DAIRY, INC.

RESPONDENT

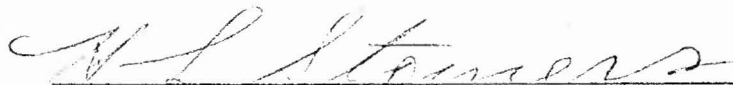
DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Roger D. Riggs, dated July 16, 1975, is before the Commission for review.

Upon thorough review of the entire record in this case, it is the unanimous ORDER of this Commission that the decision of the Hearing Officer shall be and it hereby is AFFIRMED in all respects not inconsistent with this opinion.


H. L. Stowers, Chairman

/s/ Charles B. Upton
Charles B. Upton, Commissioner

/s/ Merle H. Stanton
Merle H. Stanton, Commissioner

Dated: September 2, 1975
Frankfort, Kentucky

DECISION NO. 157


This is to certify that a copy of this Decision and Order has been served by mailing or personal delivery on the following:

Commissioner of Labor
Commonwealth of Kentucky
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety and Health

Honorable Earl Cornett, General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

Mr. Aubrey Kautz, Jr., (Certified Mail #467051)
Spring Grove Dairy, Inc.
East Main Street
Morehead, Kentucky 40351

This 2nd day of September, 1975.


Iris R. Barrett, Executive Director



JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

July 16, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 126

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

SPRING GROVE DAIRY, INC.

RESPONDENT

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 within 25 days from date of this Notice submit a petition for discretionary review by this Commission.

Pursuant to Section 47 of our Rules of Procedure, jurisdiction in 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 30 days of this date, 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 filed by one or more Review Commission members.

Copy of this Notice and Order has been served by mailing or personal delivery on the following:


Commissioner of Labor
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

Honorable Earl M. Cornett
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

Mr. Aubrey Kautz, Jr.
Spring Grove Dairy, Inc.
East Main Street
Morehead, Kentucky 40351

(Certified Mail #469033)

This 16th day of July, 1975.



Iris R. Barrett
Executive, Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #126

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS. DECISION, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

SPRING GROVE DAIRY, INC.

RESPONDENT

* * * * *

On January 23, 1975 an inspection took place at Spring Grove Dairy, Inc. located on East Main Street, Morehead, Kentucky. As a result of the inspection of respondent's milk processing plant, the Kentucky Department of Labor, Division of Occupational Safety and Health, issued a citation to respondent charging seven other than serious violations of the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972). The contested items were stated as follows in the citation:

As to Item #1, the standard allegedly violated was National Electric Code 110-17 (a) as adopted by 29 CFR 1910.309(a) (as adopted by 803 KAR 2:020) and was described as:

Live parts of electrical equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures.

(a) An electric junction box on the wall at the west side of the receiving room did not have a cover, exposing bare wires.

(b) An electric control box ("Pressuretrol") on the boiler in the receiving room did not have a cover, exposing bare wires.

(c) A "timing pump" junction box did not have a cover provided, exposing bare wires at the center of the processing room.

(d) A 100 watt light bulb with exposed bare wires at the east side of the raw milk storage area over the centrifuge machine was not covered.

(e) A fuse box containing two fuses and also two empty sockets, in the compressor.

As to Item #2, the standard allegedly violated was National Electrical Code 250-45 (d) as adopted by 29 CFR 1910.309(a) (as adopted by 29 CFR 1910.309(a) (as adopted by 803 KAR 2:020 and was described as follows:

Cord and plug connected appliances used in damp and wet locations were not grounded.

(a) The "centrifuge" machine at the east side of the raw milk storage room was not provided with a 3-wire plug.

(b) A one-half ($\frac{1}{2}$) inch portable electric drill at the east side of the maintenance shop was being used in a 2-wire wall receptacle plug.

(c) A "Craftsman" electric floor model drill at the east side of the maintenance shop was not grounded having a two-wire plug.

As to Item #6, the standard allegedly violated was 29 CFR 1910.219 (d)(1) (as adopted by 803 KAR 2:020) and was described as:

Pulleys which were seven (7) feet or less from the floor or working platform were not fully guarded.

(a) An air compressor at the south side of the air compressor room equipped with one driven twenty (20) inch pulley and one drive six (6) inch pulley being approximately twelve (12) inches to approximately thirty-two (32) inches above the floor did not have the pulleys fully guarded.

(b) A "Craftsman" electric floor model drill with a three (3) inch drive pulley and a four (4) inch driven pulley which were approximately five (5) feet above the floor level did not have the pulleys fully guarded.

As to Item #7, the standard allegedly violated was 29 CFR 1910.219(e)(1) and was described as:

Horizontal belts which were seven (7) feet or less from the floor were not guarded.

(a) Four (4) V type one-half ($\frac{1}{2}$) inch horizontal belts on the air compressor at the south side of the compressor room approximately twelve (12) inches to approximately thirty-two (32) inches above floor level, were not fully guarded.

(b) A one-half ($\frac{1}{2}$) inch V type horizontal belt providing power to a "Craftsman" floor model drill at the east side of the maintenance shop, which was approximately five (5) feet above floor level, was not fully guarded.

These items were to be corrected by February 21, 1975.

Penalties were proposed for Item #1, \$34.00; Item #2, \$34.00; and Item #6, \$34.00.

On February 19, 1975, the Department of Labor received a letter from respondent stating employer's intention to contest portions of the citation as to the alleged violations numbered 1, 2, 6, and 7. Thereafter the Department of Labor issued a complaint, alleging the violations as previously noted and proposing said penalty amounts.

The proper notices were promptly sent to the parties including the Notice of Receipt of Contest, the Notice of Assignment to Hearing Officer and the Notice of Hearing.

Hearing was held on April 22, 1975 at the hour of 2:00 p.m. at the Rowan County Area Vocational school in Morehead, Kentucky under the provisions of KRS 338.071 (4), a section of Chapter 338 of the Kentucky Revised Statutes dealing with the safety and health of employees. This statute authorizes the Review Commission to hear and rule on appeals from citations, notifications, and variances issued under the provisions of said Chapter and to adopt and promulgate rules and regulations concerning the procedural aspects

of its hearings. By virtue of the provisions of KRS 338.081, hearings authorized by the provisions of this Chapter may be conducted by a Hearing Officer appointed by the Review Commission to represent the Commission in this manner. Following the hearing of an appeal, or on review of the decision of the Hearing Officer by its own motion, the Review Commission may sustain, modify, or dismiss a citation or penalty.

After hearing the testimony of the witnesses, and having considered the same together with the exhibits, stipulations, and representations of the parties, it is concluded that the substantial evidence on the record considered as a whole, supports the following:

FINDINGS OF FACT

1. Live parts of electrical equipment operating at 50 volts or more were not guarded against accidental contact by cabinet covers or enclosures as described hereafter:

(a) An electric junction box on the wall at the west side of the receiving room did not have a cover, exposing bare wires.

(b) An electric control box on the boiler in the receiving room did not have a cover, exposing bare wires.

(c) A junction box in the center of the processing room did not have a cover, exposing bare wires.

(d) There were exposed bare wires at the location of an uncovered 100 watt light bulb at the east side of the raw milk storage area.

(e) An uncovered fuse box containing two fuses and also two empty sockets was located in the compressor room.

2. Cord and plug connected appliances used in damp and wet locations were not grounded as described below:

(a) The "Centrifuge" machine at the east side of the raw milk storage room was not provided with a 3-wire plug.

(b) A one-half in portable electric drill at the east side of the maintenance shop was being used in a two-wire wall receptacle plug.

(c) An electric floor model drill at the east side of the maintenance shop did not have a 3-wire plug.

3. An air compressor was equipped with various pulleys and horizontal belts which were seven feet or less from the floor or working platform and were not fully guarded.

4. An electric floor model drill was equipped with various pulleys and horizontal belts which were seven feet or less from the floor or working platform and were not fully guarded.

5. Employees were exposed to the hazards of the conditions denoted above.

Upon the basis of the foregoing, the Hearing Officer makes the following:

CONCLUSIONS OF LAW

The Respondent puts up little argument as to whether or not the alleged violations occurred. The argument was presented that there were no exposed bare wires as defined by the National Electric Code, even though the various boxes were not covered. As brought out by Mr. Broada's testimony, though, it is of course obvious that the wires be exposed on the ends to achieve contact and thus with no covers there exists the danger of exposure to bare wires.

Respondent also expressed the opinion that Items 6 and 7 of the Citation unfairly duplicate charges of the same alleged violations. On the surface it does appear that Respondent is being accused of the same thing twice. Technically, however, if one is in violation of the standard concerning pulleys, he must necessarily be in violation of the standard concerning horizontal belts if the belts are in fact on the pulleys.

Complainant's interpretation of 29 CFR 1910.219 (d)(1) and (e)(1) (as adopted by 803 KAR 2:020) concerning the guarding of belts and pulleys is to the effect that guards must be sufficient to prevent nip point and shear point exposure from the front, top, bottom or sides. Respondent had what he considered adequate guards on the machines.


It appears that Respondent, having guards on the machines for the purpose of protection from the pulleys and belts, would have some reason to believe that he had complied with these standards as they are written. But careful reading of the standards indicates that the guarding must be quite extensive, that complainant's interpretation is more nearly correct, thus the violation did exist. Considering the facts that (1) some guards, however inadequate, were on the machines and (2) considering that Respondent went so far as to construct a guard on a machine for which he was not cited but which he felt might be a hazard, then any penalty for these conditions would not further the purposes of the Act.

Due consideration was given to the proper criteria in the proposing of penalties for Items 1 and 2 of the Citation.

RECOMMENDED ORDER

Item Number 1 of the citation and the proposed penalty of \$34.00 shall be and the same hereby are SUSTAINED; Item Number 2 of the Citation and the proposed penalty of \$34.00 shall be and the same hereby are SUSTAINED; Item Number 6 of the Citation hereby is SUSTAINED and the proposed penalty therefore hereby is VACATED; and Item Number 7 of the Citation hereby is SUSTAINED.

All violations shall be properly corrected by August 8, 1975.



ROGER D. BIGGS
HEARING OFFICER

DATED: July 16, 1975
Frankfort, Kentucky

DECISION NO. 139