

Done



129 (177)

JULIAN M. CARROLL



GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision +
Order No. 177*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

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

October 21, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC #129

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CONTROL, INC.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON,
Commissioners.

PER CURIAM:

A Recommended Decision of Hearing Officer Roger D.
Riggs, dated September 4, 1975, is before the Commission for
review.

Upon thorough review of the record before it, it is
the unanimous order of this Commission that the proposed deci-
sion of the Hearing Officer to sustain Citations Nos. 2 and 3
and the penalty attaching to Citation No. 2 shall be AFFIRMED.
Further, that part of the proposed decision of the Hearing
Officer reducing the penalty on Citation No. 3 to \$100 shall
be REVERSED, and the original penalty of \$500 as proposed by
the Department of Labor shall be REINSTATED.

All other findings of the Hearing Officer in this
case shall be and they hereby are AFFIRMED in all respects not
inconsistent with this opinion.

H. L. Stowers
H. L. Stowers, Chairman

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

DATED: October 21, 1975
Frankfort, Ky.

/s/ M. H. Stanton
M. H. Stanton, Commissioner

DECISION NO. 177

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

Control, Inc.-
Post Office Box 43143
Middletown, Kentucky 40243

(Certified Mail #467102)

Mr. Ralph B. Burk
Control, Inc.
P. O. Box 428
Midvale, Utah 84047

(Certified Mail #467103)

This 21st day of October, 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

September 4, 1975

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 129

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

CONTROL, 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

Comtrol, Inc.
Post Office Box 43143
Middletown, Kentucky 40243

(Certified Mail #467057)

Mr. Ralph B. Burk
Comtrol, Inc.
P. O. Box 428
Midvale, Utah 84047

(Certified Mail #467058)

This 4th day of September, 1975.


Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC #129

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

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

CONTROL, INC.

RESPONDENT

* * * * *

On January 27, 1975 an inspection took place at Hurstbourne Lane, North of Interstate Highway 65 in Louisville, Kentucky. As a result of the inspection of respondent's church construction site, the Kentucky Department of Labor, Division of Occupational Safety and Health, issued three citations to respondent charging two serious and nine other than serious violations of the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972). The contested items were:

Citation No. 2 which alleged a violation of 29 CFR 1910.28 (a)(1) (now 803 KAR 2:020) and was described as:

A scaffold was not furnished for an employee engaged in hoisting bridging to joists 24 feet above a concrete floor. The employee would pull up the bridging with a rope while standing on the joists that varied in size from two by eight (2 X 8) to two by 16 (2 X 16). The

joists would also vary from twelve (12) inches on center to 16 inches on center. This employee would stand on the edge and move back approximately five (5) feet to stack the bridging on a plywood platform.

The date by which the alleged violation was to be corrected was stated as February 18, 1975 and a penalty of \$500 was proposed.

Citation No. 3 which alleged a violation of 29 CFR 1926.451 (e)(2), 29 CFR 1926.451 (e)(4), 29 CFR 1926.451 (a)(14), and 29 CFR 1926.451 (e)(10) (now 803 KAR 2:030) and were described as:

The 18 inch casters on a mobile scaffold were not provided with a positive locking device.

The working platform for a mobile scaffold was one (1) two by 12 (2 X 12) approximately 14 feet long that was not secured in place.

The two by twelve (2 X 12) scaffold plank on a mobile scaffold extended over the left support four (4) feet and over the right support three (3) feet.

Guardrails, midrails and toeboards were not provided for a mobile scaffold. The employee was approximately 17 feet above a concrete floor. This was the condition of the mobile scaffold at the inside of the north wall. This scaffold measured five feet by seven feet (5 X 7). The employee working on this scaffold was exposed to a fall of 17 feet to a concrete floor.

The date by which the alleged violation must be corrected was stated as February 18, 1975. A penalty of \$500.00 was proposed.

On March 3, 1975, the Department of Labor received a letter from respondent stating employer's intention to contest the proposed penalties for the alleged serious violations.

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 and a letter certifying that the required notice had been duly posted was received by the Review Commission on March 10, 1975. The Review Commission also received a certification from respondent that no affected employee is represented by an authorized employee representative.

Hearing was held on April 29, 1975 at the hour of 2:00 p.m. in the office of the Department of Labor in Louisville, 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. On the date of the inspection an employee was working near the edge of a solid wall construction, 24 feet above a concrete floor without any type of protection from falling.

2. The working platform for a mobile scaffold was a single 2" by 12" board approximately 14 feet long which was not secured in place.

3. The 2" by 12" scaffold plank on a mobile scaffold extended over each end support more than twelve inches.

4. Guardrails, midrails and toeboards were not provided for a mobile scaffold on which an employee was working approximately 17 feet above a concrete floor.

On the basis of the foregoing the Hearing Officer makes the following:

CONCLUSIONS OF LAW

The penalty for Citation No. 2 appears to be reasonable and appropriate based upon the factual description of the admitted violation and the described method by which the Compliance Officer arrived at a penalty amount.

As to Citation No. 3, there was a conflict in the testimony as to whether or not a positive locking device was on the scaffold in question. The Hearing Officer is aware that the appropriateness of the penalty (not the existence of

the violation) is in question here. However, the Respondent admitted to the fact of the violation but not that each allegation of the "grouped" items was true.

The Hearing Officer agrees with the Compliance Officer that even if the locking devices were on the scaffold, this would still be a serious violation. In view of the testimony and photographs, though, the violation does not seem to warrant such a large penalty since (1) there is some question about the locking devices, (2) the employee was protected by metal cross bars which would serve some of the protection of a midrail, and (3) the employee was working at only a height of approximately 17 feet from the ground.

For the above reasons the proposed penalty for Citation No. 3 should be reduced to \$100. The total of all penalties thus being \$600 is a reasonable and proper amount in view of the fact that all of the violations are concerned with the one question of sufficient scaffold protection from falling.

RECOMMENDED ORDER

Citation No. 2 is hereby SUSTAINED and the proposed penalty of \$500 is hereby AFFIRMED: Citation No. 3 is hereby SUSTAINED and the proposed penalty is hereby REDUCED to \$100.



Roger D. Riggs

Decision No. 161

Dated: Sept. 4, 1975
Frankfort, Kentucky

IN RE: KOSHRC NO. 163:

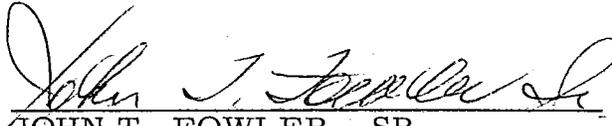
IT IS ORDERED that the violations as alleged in Citation 1, Items 1 and 2, and the no penalty provisions therefore, may be and the same are hereby sustained. The abatement date is set for as soon as possible, but not to exceed 30 days from the effective date of this Order.

IN RE: KOSHRC NO. 168:

IT IS ORDERED AND ADJUDGED that Citation 1, Item 1, and the no penalty provision for that violation is hereby sustained. Abatement date is set for as soon as possible, not to exceed 30 days from the effective date of this Order.

IT IS FURTHER ORDERED that the provisions of KRS 338 are applicable generally to the Railroad industry operating within the State of Kentucky.

DATED: March 31, 1976
Frankfort, Kentucky


JOHN T. FOWLER, SR.
Hearing Officer

Decision No. 256