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*10/1/75*

JULIAN M. CARROLL

~~WENDELL P. COBB~~

GOVERNOR

IRIS R. BARRETT

EXECUTIVE DIRECTOR

*KOSHRC  
Decision #  
Order No. 186*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

November 5, 1975

H. L. STOWERS

CHAIRMAN

MERLE H. STANTON

MEMBER

CHARLES B. UPTON

MEMBER

KOSHRC # 167

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FERROCRAFT DIVISION OF  
DART INDUSTRIES, INC.

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON,  
Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer John T. Fowler,  
Sr., dated September 30, 1975, is before the Commission for  
review.

In the final paragraph of his Recommended Order, the  
Hearing Officer has incorrectly reinstated an abatement date of  
last June 30, 1975, creating an impossibility of timely abatement  
by Respondent.

The Review Commission therefore corrects the Recommended  
Order to reflect an abatement date 30 days from the date the Recom-  
mended Order becomes final. The final abatement date of Novem-  
ber 26, 1975 is hereby set, and it is the unanimous order of this

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

Charles B. Upton  
Charles B. Upton, Commissioner

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

Merle H. Stanton  
Merle H. Stanton, Commissioner

DATED: November 5, 1975  
Frankfort, Kentucky

DECISION NO. 186

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: Thomas M. Rhoads  
Assistant Counsel

Mr. Merle L. Meeder, Pres. (Certified Mail #456483)  
Ferrocraft Division of Dart Industries, Inc.  
P. O. Box 55  
Morganfield, Kentucky 42437

This 5th day of November, 1975.

  
Iris R. Barrett, Executive Director

*Issue*



*161 (197)*

JULIAN M. CARROLL  
**PENDING**  
GOVERNOR

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

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

Sept. 30, 1975

H. L. STOWERS  
CHAIRMAN

MERLE H. STANTON  
MEMBER

CHARLES B. UPTON  
MEMBER

KOSHRC # 167

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FERROCRAFT DIV. OF DART INDUSTRIES, 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: Thomas M. Rhoads  
Assistant Counsel

Mr. Merle L. Meeder, Pres. (Certified Mail # 467041)  
Ferrocraft Division of Dart Industries, Inc.  
P.O. Box 55  
Morganfield, Kentucky 42437

This 30th day of September, 1975.

  
Iris R. Barrett  
Executive Director

COMMONWEALTH OF KENTUCKY  
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH  
REVIEW COMMISSION

KOSHRC Docket No. 167

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY,

Complainant.

vs.

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

FERROCRAFT DIVISION OF DART  
INDUSTRIES, INC.,

Respondent.

\* \* \* \* \*

Hon. Thomas M. Rhoads, Assistant Counsel, Department of Labor  
Frankfort, Kentucky, for Complainant.

Hon. Merle L. Meeder, President, Ferrocraft Division of Dart  
Industries, Inc., P.O. Box 55, Morganfield, Kentucky 42437,  
Present Per Se Without Counsel.

FOWLER - Hearing Officer.

\* \* \* \* \*

An inspection was made on June 4, 1975, by the Kentucky Department of Labor, Division of Occupational Safety and Health, at a place of employment located at 305 West Morton Street, Morganfield, Kentucky, and also at the Breckenridge Job Corps Center, apparently in the same City, and on the basis of the inspection it was alleged in a Citation dated June 19, 1975, that Respondent violated the provisions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act of 1972) in the following respects, which were alleged to be other than a serious violation:

There were six (6) Citations issued against Respondent and only one (1) Citation was protested, that being Item No. 3 which alleged a violation of 29 CFR 1910.212(a) (5), a description of the alleged violation being as follows:

"The metal blades of a portable fan less than seven (7) feet above the floor or working level located in the east end section of shearing department in the fabricating shop were not equipped with a guard having openings no larger than one-half (1/2) inch."

The date by which the alleged violation must be corrected was June 30, 1975.

The procedural pertinent information and dates are as follows:

1. Inspection of the premises mentioned above - June 4, 1975.
2. Citation issued June 19, 1975, listing six (6) violations, No. 3 being the only contest.
3. Proposed penalty for the violation was \$31.00 and the abatement date June 30, 1975.
4. Notice of Contest received July 1, 1975, contesting Item No. 3.
5. Notice of Contest with copy of Citations and proposed penalty transmitted to KOSH Review Commission July 3, 1975
6. Notice of Receipt of Contest mailed July 7, 1975.
7. Certification of Employer Form received July 9, 1975.
8. Complaint received July 9, 1975. No formal answer filed but no complaint is made of same by the Department.
9. Case assigned to Hearing Officer August 18, 1975; hearing scheduled and held September 9, 1975, at 10:00 A.M. (CDT) at the Henderson County Area Vocational and Educational Center at 2440 Zion Road, Henderson, Kentucky.

The aforesaid hearing was held under the provisions of KRS 338.071(4), one of the provisions dealing with the safety and

health of employees which authorizes the Review Commission to hear and rule on appeals from Citations, Notifications and variances issued under the provisions of this Chapter, and to adopt and promulgate rules and regulations with respect to procedural aspects of the hearings. Under the provisions of KRS 338.081, hearing was authorized by provisions of said Chapter and such may be conducted by a Hearing Officer appointed by the Review Commission to serve in its place. After hearing and appeal, the Review Commission may sustain, modify or dismiss a Citation or penalty.

After hearing the testimony of the witnesses, having considered same, together with the exhibits filed and the 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.

#### FINDINGS OF FACT

Jurisdiction of the Parties in the subject matter and due and timely notice of the hearings was stipulated by the Parties.

Respondent was in violation of Item No. 3, the only item contested herein, both by the facts introduced by the Department of Labor and by Respondent's own statements.

The penalty for Item No. 3 of \$31.00 appears to be reasonable and appropriate based on the facts and description of the admitted violation, and the described method by which the Compliance Officer arrived at the penalty amount.



CONCLUSIONS OF LAW

The Complainant has furnished the Hearing Officer with proof of the violation of the section reflecting the protested charge and such charge is not, in fact, denied by Respondent but rather, admitted.

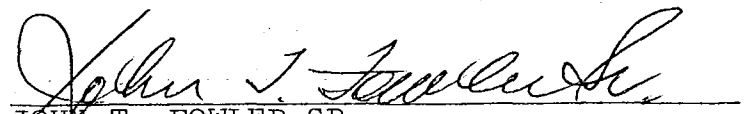
The Respondent's opinion is that the first offense violation should be by warning only and while the Hearing Officer appreciates this position, it is, nevertheless, not in accordance with the existing law and regulations and must, therefore, fail.

Off the record Respondent was advised of certain safety programs that exist and seemed anxious to receive help in this regard in further compliance with the regulations.

The Commissioner has met the burden of proof in the Citation and proposed penalty, and the proposed abatement date should stand.

RECOMMENDED ORDER

IT IS ORDERED that Item No. 3 in the original Citation, the only Citation protested, being a violation of 29 CFR 1910.212(a) (5) (as adopted by 803 KAR 2.020) and the proposed penalty for said Item, and the abatement date of June 30, 1975, shall be and the same are hereby sustained.

  
JOHN T. FOWLER, SR.  
Hearing Officer - KOSHRC

Dated: September 25, 1975.  
Frankfort, Kentucky

Decision No. 168