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JULIAN M. CARROLL

~~Wendell Ford~~

GOVERNOR

IRIS R. BARRETT

EXECUTIVE DIRECTOR

*KOSHRC
Decision +
Order no. 233*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 Bridge Street
FRANKFORT, KENTUCKY 40601
PHONE (502) 564-6892

February 24, 1976

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 169

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

INDUSTRIAL MACHINE AND TOOL CO.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Herbert B. Sparks, dated December 31, 1975, is before the Commission for review.

Upon thorough review of the entire record in this case, the findings of the Hearing Officer appear to be correct and consistent with the evidence herein. Therefore, it is the unanimous order of this Commission that the Hearing Officer's decision be and it hereby is AFFIRMED, and that the citations and penalties shall stand assessed as proposed by the Department of Labor.

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

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

Date: February 24, 1976
Frankfort, Kentucky

DECISION NO. 233

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

169(233)

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

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

Honorable Kenneth E. Hollis (Messenger Service)
General Counsel
Department of Labor
Frankfort, Kentucky 40601
Attention: Peter J. Glauber
Assistant Counsel

Mr. Robert G. Ping (Certified Mail # 456105)
Industrial Machine & Tool Company
206 South Richardson Drive
Somerset, Kentucky 42501

This 24th day of February, 1976.


Diane M. Schneider, Attorney
KOSH REVIEW COMMISSION

Decision #210



JULIAN M. CARROLL

GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

104 Bridge St.
CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

Dec. 31, 1975

KOSHRC # 169

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

INDUSTRIAL MACHINE AND TOOL COMPANY

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:

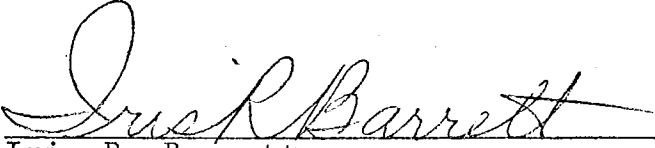
Commissioner of Labor
Commonwealth of Kentucky
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

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

Mr. Robert G. Ping
Industrial Machine & Tool Company
206 South Richardson Drive
Somerset, Kentucky 42501

(Certified) 456392

This 31st day of December, 1975.



Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC # 169

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

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

INDUSTRIAL MACHINE AND TOOL COMPANY

RESPONDENT

* * *

Hon. Peter Glauber, Assistant Counsel, Department of Labor,
Frankfort, Kentucky, for Complainant

Mr. Robert Ping, Owner, Industrial Machine and Tool Company,
Somerset, Kentucky, for Respondent

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 in Pulaski County at 206 South Richardson Drive, Somerset, Kentucky, and on the basis of the inspection, it was alleged in the citation dated June 27, 1975, that there were six (6) other than serious violations of the Acts and Standards, and two (2) repeated other than serious violations of the Acts and Standards. It was alleged that Respondent violated the pro-

visions of KRS Chapter 338 (Kentucky Occupational Safety and Health Act) in the following respects, which were alleged to be other than serious violations.

There were several citations issued against Respondent and four citations were herein in question, either as to violation and/or penalty. There was no protest as to the violation concerned with 29 CFR 1910.179 (e) (2) (i), "an overhead manually operated crane in the shop was not provided with bridge bumpers or stops to protect the crane from traveling into electrical equipment at the end of the bridge." All that was protested concerning this citation was the proposed penalty of \$44.00.

The citation and penalty of 29 CFR 1910.212 (a) (1) of "the rotating chucks and the hazard of flying chips were not shielded on the following machines: (1) South Bend precision lathe #6448; (2) Lodge and Shipley lathe #944H268A; and, (3) Le Blonde Regal lathe; all in the shop area." Only the citation was in issue here since there was no proposed penalty to this citation.

There were also two alleged repeated violations, one being 29 CFR 1910.252 (e) (2) (iii) in that "workers adjacent to arc welding operations in the shop were not protected against the rays by a noncombustible or flameproof screen, shield, or by appropriate goggles. This is a repeated violation of citation #1, item #24, of an inspection made on September 23, 1974." An additional repeated violation of 29 CFR 1910.22 (a) (i) in that "the entire shop area was cluttered with pieces of metal, paper cups, lubricant spills and stacks of materials, and was not kept clean and orderly and in a sanitary

condition. This was alleged to be a repeated violation of citation #1, item #14, of an inspection made on September 23, 1974."

The dates by which the alleged violations were to be corrected were July 9, 1975, excepting for the violation concerning 29 CFR 1910.212 (a) (1) in that the date by which the alleged violation was to be corrected was August 13, 1975.

The procedural pertinent information and dates are as follows:

- 1) An inspection of the premises mentioned above was June 4, 1975.
- 2) Citations issued June 27, 1975, listing six other than serious violations and two repeated other than serious violations.
- 3) Proposed penalty for the contested standards herein in question were \$44.00 for the violation concerning the crane, \$140.00 for each of the repeated violations and no proposed penalty for the violation concerning the unguarded machinery, said penalties to total \$324.00.
- 4) Notice of Contest was received July 2, 1975.
- 5) Notice of Receipt of Contest was mailed July 8, 1975.
- 6) Certification of Employer Form was received July 14, 1975.
- 7) The Complaint was received July 9, 1975. No formal answer was filed. No complaint was made of same by the Department, either prior to the proceedings or during the hearing.
- 8) Case was assigned to the Hearing Officer August 20, 1975; hearing was scheduled and held on Tuesday, September 30, 1975 at 10:00 a.m. (EDT) at Somerset State Vocational-Technical School, Conference Room, Building #1, Route 2, Somerset, Kentucky 42501.

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 authorized 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 the 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 hearing is found by the Hearing Officer.

Respondent admitted the violation concerning 29 CFR 1910.179 (e) (2) (i) (as adopted by 803 KR 2-020) in that an overhead manually operated crane in the shop was not provided with bridge bumpers or stops to protect the crane from traveling into electrical equipment at the end of the bridge.

There was testimony from the Compliance Officer that there was no bumpers at all (TE-19) and "it would be possible that wheel of the crane could hit the cable or some electrical fixtures in the shop area."

It is believed that in determining the amount of the proposed penalty of \$44.00, due consideration was given to the size of the business of the Respondent, the gravity of the violation, the good faith of the employer, and previous history of violations. The penalty would seem to be reasonable in all respects.

As to the alleged repeated violation of 29 CFR 1910.252 (e) (2) (iii) concerning the arc welding rays, there is adequate proof by a preponderance of the evidence that there were not screens, shields, or goggles used to protect employees in the area. There was proof that there were employees working within an area of twenty (20) to twenty-five (25) feet of the welding operation (TE-21) and that adjacent employees were not wearing goggles. This case can be distinguished from Hinkle Brothers, Inc. (16,673) where the judge vacated an item of a citation alleging that the employer violated this same standard by not protecting workers and other adjacent persons from welding rays by the use of a noncombustible or flameproof screen. In Hinkle, the secretary "failed to establish that non-welding personnel passed adjacent to the welding areas".

The record adequately reflects noncompliance, either by screens or goggles or other appropriate means, in this area and the citation is well founded. The proposed penalty would seem to be well founded in that this is a repeated violation of an earlier inspection and the Department of Labor has seen fit to duly take into account the size of the business of the Respondent, the gravity of the violation, the good faith of the employer and the previous history of the violations.

As to the citation concerning 29 CFR 1910.22 (a) (1) concerning the housekeeping violation, the record adequately reflects that there were papers and cups and pieces of steel, and perhaps pieces of the rear end of a car and other small items. The record reflected that general working area was cluttered up and that this housekeeping violation had taken place. Exhibits 1 and 2 support adequately this violation.

The other violation herein in question, 29 CFR 1910.212 (a) (1) is reflected not only by the Exhibit #3 that was introduced by the Complainant, but by the testimony of the Compliance Officer and the statements of Mr. Ping in that the machines were not shielded to prevent metal from coming back and hitting the operator of the three machines herein in question. It will be noted that there was no proposed penalty for this violation.

CONCLUSIONS OF LAW

The Complainant has furnished the Hearing Officer with proof of the violations of this section reflecting the protested charges.

The penalties proposed seem to be reasonable in light of the nature of the violations and all the factors that are to be considered by the Department of Labor and the Review Commission including the appropriateness of the penalty with respect to size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the history of previous violations.

RECOMMENDED ORDER


IT IS ORDERED AND ADJUDGED that the citation alleging a non-serious violation of 29 CFR 1910.179 (e) (2) (i) (as adopted by 803 KR 2-020) is sustained, and the proposed penalty of \$44.00 shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the violation asserting a repeated violation of 29 CFR 1910.252 (e) (2) (iii) (as adopted by 803 KR 2-020) shall be and the same is hereby sustained, and the proposed penalty of \$140.00 shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the citation herein in question charging a repeated violation of 29 CFR 1910.22 (a) (1) (as adopted by 802 KR 2-020) shall be and the same is hereby sustained and the proposed penalty of \$140.00 shall be and the same is hereby sustained.

IT IS ORDERED AND ADJUDGED that the citation herein in question charging a nonserious violation of 29 CFR 1910.212 (a) (1) shall be and the same is hereby sustained, and there is no penalty for this violation.

The above violations must be corrected without delay, but no later than thirty (30) days from the date of this Recommended Order.


HERBERT B. SPARKS
HEARING OFFICER - KOSHRC

Dated December 31st, 1975

Decision No. 210