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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

September 14, 1977

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

HERBERT L. STOWERS
MEMBER

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*KOSHRC
Decision +
Order no. 464*

KOSHRC # 331

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

INTERNATIONAL HARVESTER

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; STOWERS and UPTON, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer John T. Fowler, Sr., issued under date of May 26, 1977, is presently before this Commission for review, pursuant to a Petition for Discretionary Review.

Finding no error in the application of the law to the facts herein, and the evidence appearing to adequately support the findings and conclusions of the Hearing Officer, it is the unanimous ORDER of the Review Commission that the Recommended Order of the Hearing Officer be and it hereby is AFFIRMED, and the citation and no penalty provision involved are sustained.

Merle H. Stanton
Merle H. Stanton, Chairman

Dated: September 14, 1977
Frankfort, Ky.

/s/ H. L. Stowers
H. L. Stowers, Commissioner

DECISION NO. 464

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

KOSHRC #331
(Decision and Order of Review Commission)

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 (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
Capital Plaza Tower - 1st Floor
Frankfort, Kentucky 40601
Attention: Frederick G. Huggins
Assistant Counsel

Mr. C. R. Dean, Plant Manager (First Class Mail)
International Harvester Co. Foundry
5005 Crittenden Drive
Louisville, Kentucky 40213

Honorable Steven Schuster (Certified Mail #456846)
OGDEN, ROBERTSON & MARSHALL
1 Riverfront Plaza
Louisville, Kentucky 40202

Mr. Michael Devine (First Class Mail)
Health and Safety Chairman
Local 817, UAW
337 Mohawk Avenue
Louisville, Kentucky 40209

This 14th day of September, 1977.



Iris R. Barrett
Executive Director

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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

*To SHRC
Decision &
Order No. 419*

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

May 26, 1977

MERLE H. STANTON
CHAIRMAN

HERBERT L. STOWERS
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 331

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

INTERNATIONAL HARVESTER

RESPONDENT

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MICHAEL DEVINE, Health & Safety Chairman,
Local 817, UAW

INTERVENOR

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. Statements in opposition to petition for discretionary review may be filed during review period, but must be received by the Commission on or before the 35th day from date of issuance of the recommended order.

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 40 days of the date of this order, on its own order, or the granting of a petition for discretionary review, 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 directed 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 (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

Mr. C. R. Dean, Plant Manager (First Class Mail)
International Harvester Co. Foundry
5005 Crittenden Drive
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Honorable Steven Schuster (Certified Mail #114252)
OGDEN, ROBERTSON & MARSHALL
1 Riverfront Plaza
Louisville, Kentucky 40202

Mr. Michael Devine (Certified Mail #114253)
Health and Safety Chairman
Local 817, UAW
337 Mohawk Avenue
Louisville, Kentucky 40209

This 26th day of May, 1977.


Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION

KOSHRC NO. 331

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

INTERNATIONAL HARVESTER

RESPONDENT

VS.

UAW LOCAL 817

INTERVENORS

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

* * * * *

Hon. Peter J. Glauber, Assistant Counsel, Department of Labor,
801 West Jefferson Street, Louisville, Kentucky 40601, Counsel
for the Complainant.

Hon. Stephen F. Schuster, Attorney at Law, Ogden, Robertson &
Marshall, 1200 One Riverfront Plaza, Louisville, Kentucky 40270,
Counsel for Respondent.

Hon. Michael Devine, Health and Safety Chairman, For the Inter-
venors, Local 817, UAW, 337 Mohawk Avenue, Louisville, Kentucky
40209.

FOWLER, Hearing Officer.

As a result of a report of an imminent danger condition,
a priority inspection was conducted by representatives of the
Department of Labor, the Commonwealth of Kentucky of premises at
which Respondent's employees were working at 5005 Crittenden

Drive, Louisville, Kentucky, being the main local office of the Respondent Company.

The inspection took place on September 2, 3, 7 and 9, 1976. It was determined that on the original date of inspection that no imminent danger was present and a regular complaint inspection of the premises began on the following day or September 3, 1976 and continued on the days enumerated above.

As a result of that inspection two (2) citations were originally issued, however, citation number two (2) was deleted, leaving only citation number (1) as an alleged violation and that alleged violation was contested and is the only subject matter of this Hearing.

The Department alleged that the Respondent was in violation of 29 CFR 1910.179(f)(6)(i) as follows:

"The required bridge brake as specified under subparagraph (4) of this paragraph was defective on the P & H overhead crane, Serial Number 13205, (Number 1 yard crane), used in the yard area. The crane was cab-operated with the cab on the bridge. The abatement date was set for immediate and no penalty was proposed."

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.

The pertinent procedural information concerning the alleged violation is as follows:

1. The inspection was conducted on September 2, 3, 7 and 9, 1976 by the Department of Labor at 5005 Crittenden Drive, a place at which Respondent employees were working. The original citation was one of imminent danger and since no imminent danger was found, a routine complaint inspection was done.
2. The citation was issued September 15, 1976 listing the one (1) alleged violation.
3. Notice of Contest was received on October 12, 1976 contesting the one item charged.
4. Notice of Contest with copy of citations and proposed penalties was transmitted to the Review Commission on October 18, 1976.
5. Notice of Receipt of Contest was mailed October 19, 1976 and Certification of Employer Form was received on October 25, 1976.

6. The Complaint was received October 26, 1976 and Answer was filed November 10, 1976.

7. The case was assigned to a Hearing Officer on November 12, 1976 and the Hearing was scheduled for Hearing and held on December 13, 1976 at 10:00 A.M. at the Department of Labor, 801 West Jefferson Street, Louisville, Kentucky 40202.

8. On October 29, 1976 Local 817 UAW intervened in the action and such intervention was permitted.

9. Transcript of the Evidence was received January 25, 1975.

10. A Briefing schedule was set and extensions of time in which to file Brief were ordered by the Hearing Officer.

11. The Complainant's Brief was received February 28, 1977, and the Respondent's Brief was received April 13, 1977.

DISCUSSION OF THE CASE

Jurisdiction of the subject matter and the parties was stipulated and is not in question. The only determination to be made as a result of the Hearing was whether or not the crane, which is a cab-operated crane on a bridge, was in violation of 29 CFR 1910.179(f)(6)(i).

The evidence reveals that one Clarence Key who had

worked at International Harvester for approximately twenty-seven (27) years, some twelve (12) to fourteen (14) years as a crane operator, was working on a twelve (12) ton Gantry PH Overhead Crane on the north end of the foundry (TE 8 & 9). The crane had a dual system which operated both a magnet and also a bucket. The crane filled trucks with dirt and sand and such other lifting and moving operations as were necessary.

The crane operates and moves forward and back on tracks placed overhead and the crane is also capable of moving from side to side. A diagram of the crane is filed and shows that the crane is on a track which moves with the controls in the cab in a north to south direction and the trolley on the crane can move side to side or an east to west direction to a point desired to be reached for loading or unloading by the crane (TE 12). All controls were operated from the cab (TE 13).

Evidence reveals that there were alternate ways to stop the crane's motion and that these consisted of the following: (1) The crane had a hydraulic system to stop its motion which was controlled by a foot pedal. This is the brake which the Department contends was defective and the Respondent admits that the foot brake on the crane was not operable at the time of the inspection. (2) This method described for stopping the crane is what is known as a "clapper"-system, which is activated when the power to the crane is shut off. When the power is shut off on the crane the

brakes clamp automatically on to the metal track and operate similar to the brake shoes on an automobile. (3) The third method described as being a method capable of stopping the crane was a system known as "plugging". Plugging is a maneuver whereby the controls on the crane are put into reverse thereby causing a braking action, retardation and stopping of the movement of the crane from one direction by reason of the reverse mechanism of the motor. This would be similar to a ship, inasmuch as the only braking method for a ship or a water vehicle is by reversal of the motor thereby reversing the screw and, of course, bringing the boat to a stop.

The witness Key testified that plugging was, in his opinion, as a crane operator not advisable because it wore out the keyway and had a danger of snapping the shaft which control the crane.

Some explanation was obtained concerning an acceleration control, which was not present on the crane in question, whereby the operator could reverse the motor fast or slow and it would not throw the crane into a twist and it would not stop the crane dead, but that it would drift and automatically come back to the point where the acceleration control had been used. (TE 15). There was an explanation of the difference in plugging with an acceleration control device as opposed to one that had no acceleration control. Keeping in

mind that the crane in question did not actually have the acceleration control feature.

Proof indicates that the hydraulic brake was not available for use and was ineffective (TE 17). The witness, Key further testified that the clamping method or the turning off of the power of the crane would not stop this particular crane because the brake was not tight enough to engage and that to shut off power would not cause this particular crane to stop because the brake shoes were not tight enough to accomplish that. The essence of the testimony is that the only way by which the crane could be effectively stopped was by the plugging method which has been described above.

The testimony further reveals that for six (6) weeks the only way the crane could be stopped was by plugging and that the plugging device was wearing out the shaft between the motor and the gear box (TE 18). The witness, Key further states that about a year previous to the date of the inspection he wrote on a safety report that the shaft was worn out about a quarter of an inch and he advised the foreman, but that no correction was forthcoming. The testimony further reveals that the shaft was "wollered out" on each side of the keyway or the shaft which connects the motor and the gear box (TE 19).

There is also testimony that approximately three (3) weeks prior to the inspection the shaft was worn approximately

two (2) inches on each side and was approximately 3/16 of an inch of being worn all the way off and that if another 1/16 of an inch had been worn off it would not have connected and would have been unable to have been a means to stop the crane.

The evidence revealed that the clapper or holding brake was used primarily to get on and off the crane and was not intended to be an operational device and that the clapper system would not stop the crane at its slowest speed (TE 25 & 26). This fact was reported on a safety sheet to Jack Thurmond and Billy Van Meter, supervisors or persons in supervision of the Respondent's employees and that the operator was told to go ahead and use the motor as it was. Testimony indicates that this was reported many times and finally a complaint was made to the Union Safety Committee and the condition of the shaft was pointed out and that the Respondent did not shut the crane down until a report was made to the Labor Department.

There was testimony that parts were not available to fix the foot brake; that the clapper system would retard the motion of the crane, but would not stop it (TE 33 & 34). It was admitted that the plugging system is used part of the time even when the foot brake is operational (TE 36), and it is further admitted that the plugging system did work until the system was shut down by the complaint referred to

previously (TE 38). It is further testified that the condition had been abated and that the brakes, the foot brakes, were repaired and are now in good working condition.

Michael Devine, representative of the UAW Local 817 testified and stated that he worked at International Harvester for fourteen (14) years and was safety chairman of the Local 817 UAW, and was an intervenor in this action (TE 42 & 43). Mr. Devine states that he heard that the brakes were out on the crane and was shown the condition on the day of inspection. He further states that before Occupational Safety was called he inspected the crane and that as chairman of the local union he went to one, Dave Broadus, who is the boss of Billy Van Meter and asked them to shut the crane down until it was repaired. It is alleged that Broadus said that he would not shut down the crane and at that point the Occupational Safety and Health Labor Compliance Officers were contacted (TE 42-246).

Mr. Ralston, the Compliance Officer testified that the inspection was an alleged imminent dangerous inspection, but when he arrived the crane was not in operation and that no imminent danger was found and that a regular complaint inspection was made the next day. (TE 53-56). The evidence reveals that the opening, walk-around and closing conferences were held in accordance with the regulations.

Compliance Officer testified that the foot pedal brake

was not in operation and that the "plugging" method of stopping the crane does not fit the description of brakes as included in the regulation (TE 58). The definition of brake is contained at 29 CFR 1910.179(a)(18). The Compliance Officer testified that he climbed into the cab and pushed the brake to the floor and that the foot brake was inoperable and that the safety records showed that the brakes were bad (TE 62, 63 & 66).

Mr. Robert Harrison testified as a standard specialist for the Department of Labor and stated that it was his job to interpret the standards. (TE-67). Mr. Harrison testified that he was a graduate Electrical Engineer and that he was knowledgeable about cranes and their operations and that in his opinion plugging was not considered an acceptable means of braking a crane. He further testified that plugging is used for positioning and not braking (TE 68-78). It is further stated that plugging is a means of using electrical energy to reverse the motor and that the clapper system is a holding system only and not intended to be used for braking.

For the Respondent, Mr. Billy Van Meter testified that he had worked at International Harvester for twenty-two (22) years as a general foreman and that it was his responsibility to keep cranes in good repair. (TE 80).

Mr. Van Meter testified that the systems normally

for braking of a crane were as I have outlined previously:

1. The foot brake
2. Reversal of the engine or plugging
3. To cut off the power or de-energize and allow the spring brake to activate, and
4. Mr. Van Meter also says that the crane could be stopped by dropping the bucket or the magnet to the ground which would also stop the crane by dragging on the ground. (TE 83).

Mr. Van Meter stated that the most common method to stop cranes at the International Harvester Plant is to use the plugging or reversal of the gears. He says that the plugging system would have retarded the motion of the crane and that the brake item was not in stock and had to be gotten or ordered (TE 85 & 86). Mr. Van Meter states that he knew that the crane was being operated without a foot brake, and says that the shaft needed to be replaced (TE 86 & 89). There is a conflict in the testimony between Mr. Key and Mr. Van Meter on whether the crane had an accelerator reactor as has been previously described in this recommendation.

The Respondent produced Mr. Richard Moscato who is an employee of International Harvester and an Industrial Safety Manager and a member of the Board of ANSI (TE 97). Mr. Moscato says that he is familiar with cranes to a degree, but that he

never operated one. He states that the standard is based on ANSI B 30.2 which concerns Overhead and Gantry Cranes.

The Hearing Officer, as a result of the evidence heard, the brief's of the parties and research and examination of the regulations reaches the following findings of fact.

FINDINGS OF FACT

It is found as a matter of fact as follows:

1. That the Review Commission has jurisdiction of the subject matter and the parties to this action.
2. That an opening conference, a walk-around conference and a closing conference were afforded and were conducted in accordance with the regulations so provided.
3. That the foot brake on the crane in question was not operational or was defective.
4. That there are three (3) primary methods of retardation or stopping the progress of the crane in question and they are as follows:
 - a. hydraulic system with a foot pedal,
 - b. a clapper or shutting off the power so that the brake shoes will set automatically when the power is shut off,
 - c. plugging which is the reversal of the motor in order to bring about a retardation or stopping of the motion of the crane.

There is a secondary method which consists of dropping the magnet or bucket which the crane carries to the ground and thereby stopping the crane by dragging the bucket or magnet on the ground.

5. The crane in question was an Overhead Gantry Crane with a cab and operator on the bridge.

6. The foot pedal brake had been defective for some six (6) weeks before the inspection.

7. A notation had been made by an employee on the safety report that the shaft was wearing out, apparently because of the use of plugging as an operational device to stop the crane.

8. That the stipulation of the parties is correctly stated and that the question is whether the subject cab crane must have a foot brake or whether plugging or the clapping and holding brake would suffice under the regulations and the definitions of brakes as contained in the standards and regulations.

CONCLUSIONS OF LAW

Your Hearing Officer reaches the following conclusions of law:

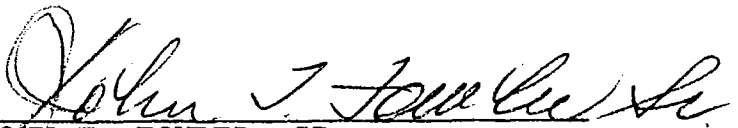
1. Under the facts of this case a foot brake must be provided and plugging or a holding brake neither are sufficient as an alternative method of stopping or controlling the crane in question.

2. The case is a case of first impression and there is no previous case in Kentucky and none is quoted in either Brief from any other jurisdiction or from the OSHA Decisions.

3. 29 CFR 1910.179(f)(6)(i), under the facts of this case, require an operational brake to be provided and that the defective foot brake in this case was a violation of that regulation.

RECOMMENDED ORDER

IT IS ORDERED that the citation herein is hereby affirmed and that the no-penalty provision recommended is sustained.


JOHN T. FOWLER, SR.
Hearing Officer

Dated: May 26, 1977
Frankfort, Kentucky

DECISION NO. 419