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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

104 BRIDGE ST.

CHARLES B. UPTON  
MEMBER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

JOHN C. ROBERTS  
MEMBER

March 14, 1978

KOSHRC #412

*KOSHRC  
Decision +  
Order No. 544*

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

POTLATCH CORPORATION

RESPONDENT

DECISION AND ORDER OF  
REVIEW COMMISSION

Before STANTON, Chairman, UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer Charles A. Goodman III, issued under date of January 23, 1978, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent.

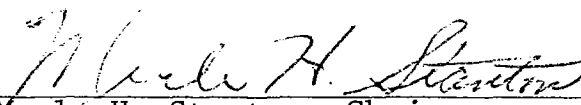
The item at issue in the case is an alleged nonserious violation of 29 CFR 1910.132(a) (as adopted by 803 KAR 2:020). The Hearing Officer has found that the company violated the standard and has affirmed the citation. We agree with this decision.

The Hearing Officer established an immediate abatement in his Recommended Order and the Respondent's Petition for Discretionary Review was held to take exception to this abatement date.

IT IS THE ORDER of this Commission that the Hearing Officer's decision sustaining a nonserious violation as alleged is AFFIRMED. The order of immediate abatement is REVERSED. Abatement shall be accomplished no later than thirty (30) days from date of this decision. All findings of the Hearing Officer

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not inconsistent with this decision are AFFIRMED.

  
Merle H. Stanton, Chairman

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

/s/ John C. Roberts  
John C. Roberts, Commissioner

DATED: March 14, 1978  
Frankfort, Kentucky

DECISION NO. 544


Copy of this 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

The Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Larry D. Hamfeldt  
Assistant Counsel

Mr. William O. Brittain, Gen. Mgr. (Certified Mail #783039)  
Potlatch Corporation  
Bluegrass Industrial Park  
Louisville, Kentucky 40299

This 14th day of March, 1978.

  
Iris R. Barrett  
Executive Director

*Agree*



*EV*

*412-526*

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL  
GOVERNOR

REVIEW COMMISSION

MERLE H. STANTON  
CHAIRMAN

IRIS R. BARRETT  
EXECUTIVE DIRECTOR

104 BRIDGE ST.  
FRANKFORT, KENTUCKY 40601

CHARLES B. UPTON  
MEMBER

PHONE (502) 564-6892

JOHN C. ROBERTS  
MEMBER

January 23, 1978

*KOSHRC  
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Order No 526*

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KOSHRC # 412

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

POTLATCH CORPORATION

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. 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.

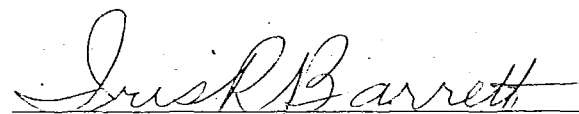
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Commissioner of Labor (Messenger Service)  
Commonwealth of Kentucky  
Frankfort, Kentucky 40601  
Attention: Honorable Michael D. Ragland  
Executive Director for  
Occupational Safety & Health

The Honorable Kenneth E. Hollis (Messenger Service)  
General Counsel  
Department of Labor  
Frankfort, Kentucky 40601  
Attention: Larry D. Hamfeldt  
Assistant Counsel

Mr. William O. Brittain, Gen. Mgr. (Certified Mail #783009)  
Potlatch Corporation  
Bluegrass Industrial Park  
Louisville, Kentucky 40299

This 23rd day of January, 1978.



Iris R. Barrett  
Executive Director

KENTUCKY OCCUPATIONAL SAFETY  
AND HEALTH REVIEW COMMISSION

KOSHRC DOCKET  
NUMBER 412

COMMISSIONER OF LABOR  
COMMONWEALTH OF KENTUCKY

COMPLAINANT

V. FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

POTLATCH CORPORATION

RESPONDENT

\* \* \* \* \*

FOR COMPLAINANT: Hon. Larry D. Hamfeldt  
Assistant Counsel  
Department of Labor  
801 West Jefferson Street  
Louisville, Kentucky 40202

FOR RESPONDENT: M. William O. Brittain  
Potlatch Corporation  
Bluegrass Industrial Park  
Louisville, Kentucky 40299

GOODMAN, HEARING OFFICER

On July 12, 13 and 14, 1977, an inspection was conducted by a Compliance Officer on behalf of the Commissioner of Labor (hereinafter referred to as "Commissioner"), said inspection being upon a manufacturing establishment at Bluegrass Industrial Park, Louisville, Kentucky. At that time and place employees of Potlatch Corporation (hereinafter referred to as "Potlatch"), were engaged in the manufacture of folding cardboard cartons.

As a result of that inspection, the Commissioner issued one (1) citation on July 26, 1977, charging Potlatch with sixteen (16) non-serious violations of

the Kentucky Occupational Safety and Health Act (hereinafter referred to as "Act"). Potlatch is contesting only the alleged non-serious violation contained in item No. 16 of the citation, which has an abatement date of October 1, 1977, and carries with it no proposed penalty.

The pertinent procedural information is as follows:

- 1) Inspection was conducted on July 12, 13 and 14, 1977, by the Commissioner at the above-mentioned address.
- 2) One (1) citation was issued on July 26, 1977, listing sixteen (16) non-serious violations of the Act.
- 3) Notice of Contest received November 1, 1977, contesting only the alleged non-serious violation contained in item No. 16 of the citation. Notice of Contest with copy of citation received by the Review Commission on November 12, 1977.
- 4) Notice of Receipt of Contest mailed September 13, 1977, and Certification of Employer Form received September 19, 1977.
- 5) Complaint received September 19, 1977, and Answer received September 30, 1977.
- 6) Notice of assignment to Hearing Officer and Notice of Hearing were mailed October 4, 1977.
- 7) Hearing was conducted on October 25, 1977, at the Department of Labor, 801 West Jefferson Street, Louisville, Kentucky.
- 8) Transcript of testimony at hearing was received by Hearing Officer on November 18, 1977. No briefs were requested by either party, and none were filed.

The above-mentioned hearing was held pursuant to KRS 388.071(4), which authorizes the Review Commission to hear and rule on appeals from citations, notifications and variances issued under the provisions of the Act, and to adopt and promulgate rules and regulations with respect to procedural aspects of the hearings. Under the provisions of KRS 388.081, the within hearing was authorized by the provisions of said Chapter and same may be conducted by a

Hearing Officer appointed by the Review Commission to serve in its stead. The decisions of said Hearing Officer are subject to review by the Review Commission upon appeal timely filed by either party, or upon its own Motion, subsequent to which the Review Commission may sustain, modify or dismiss a citation or penalty.

The standard alleged to have been violated by item No. 16 of the citation, as adopted by KRS Chapter 338, the description of the alleged violation, and penalty proposed for same, are as follows:

29 CFR 1910.132(a) (as adopted by 803 KAR 2:020)	Employees using hand dollies and employees working in 'shipping and receiving' with forklifts and handling palletized materials and large rolls of paper were not required to wear safety shoes meeting the requirements of 1910.136.	None.
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29 CFR 1910.132(a), as adopted by 803 KAR 2:020, reads as follows:

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards or processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation, or physical contact.

Jurisdiction of the parties and the subject matter and due and timely notice of the hearing is found by this Hearing Officer.

Upon review of the pleadings, testimony and evidence herein, the following Findings of Fact, Conclusions of Law, and Recommended Order are hereby made.



### FINDINGS OF FACT

On the day of the inspection, employees of Potlatch were engaged in the manufacture of folding cardboard cartons at Potlatch's plant located in Bluegrass Industrial Park, Louisville, Kentucky.

The Compliance Officer cited Potlatch for an apparent violation of the above-specified standard because employees of Potlatch using hand dollies and employees working in 'shipping and receiving,' with forklifts and handling palletized materials and large rolls of paper were not required to wear safety shoes, and that this constituted a potential hazard to employees, in the mind of the Compliance Officer, in that the employees were exposed to the possibility of having their feet injured by heavy palletized cardboard material being dropped upon them or of having them "run over" by hand dollies.

Testimony disclosed that, upon review of the injury and illness record of Potlatch, the Compliance Officer discovered two (2) foot injuries which had taken place in the last two and a half years. Both injuries were caused by the employees' feet being "run over" by hand dollies. The Compliance Officer observed four (4) employees working around hand dollies or around moving forklifts or around palletized material.

Testimony further disclosed that approximately ninety five percent (95%) of the employees of Potlatch are, at one time or the other, operating or in close proximity to the hand dollies/fork lifts. The Compliance Officer was informed by Potlatch that the pallets being lifted and carried by the hand dollies and forklifts could weigh from 1,000 to 2,000 pounds, and, in the area of shipping and receiving, the average weight of a roll of palletized cardboard is approximately 2,000 pounds.

Testimony by a representative of Potlatch disclosed that it used two (2) types of hand dollies, mechanical and electrical. The electric hand dolly weighs approximately 2,000 pounds, and the mechanical hand dolly weighs approximately 300 to 500 pounds. Laden with palletized cardboard, the weight of the hand dollies would range from approximately 2,500 pounds to approximately 4,000 pounds. There was testimony by a representative of Potlatch that hand dollies are in use from thirty percent (30%) to forty percent (40%) of the time during a normal working day.

#### CONCLUSIONS OF LAW

It is the opinion of this Hearing Officer that Potlatch was in violation of 29 CFR 1910.132(a).

Notwithstanding the documented record of foot injuries discovered by the Compliance Officer (although, admittedly, that record could hardly be considered as heavily damning), it should be obvious that personnel working around heavy moving machinery which may have a total weight of from 2,500 pounds to 4,000 pounds are definitely exposed to a potential hazard of foot injuries, either from the machinery itself or from the material which it transports. At the hearing, Potlatch made much ado about its safety program and awards and the fact that safety shoes are worn by its employees on a voluntary basis, with Potlatch contributing Five Dollars (\$5.00) toward the purchase of each pair of safety shoes. This is all very commendable. However, that does not negative the fact that employees of Potlatch not participating in the voluntary safety shoe program are exposed to the potential hazard of sustaining serious injury to their feet from the hand dollies, forklifts and palletized cardboard.


There was a question raised at the hearing by Potlatch as to how many of its employees would be required to wear safety shoes if a violation were to be found. Suffice to say that it is not the duty of the Commissioner nor of this Hearing Officer to establish which individual, specific employees should or should not be wearing safety shoes. Potlatch is charged with the knowledge of which its particular employees are or are not exposed to the hazard of foot injury, and therefore it is the responsibility of Potlatch to insure that all affected employees are provided the protection of safety shoes.

RECOMMENDED ORDER

NOW THEREFORE, IT IS HEREBY ORDERED:

That Item 16 of the citation charging a non-serious violation of 29 CFR 1910.132(a) is hereby affirmed.

That, if not already abated, said violation must be abated immediately upon receipt of this Recommended Order.

  
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CHARLES A. GOODMAN III  
HEARING OFFICER

CAG:dc

Dated: January 23, 1978  
Frankfort, Kentucky

DECISION NO. 526