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*Dismissal
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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

CAPITAL PLAZA TOWER

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

WENDELL H. FORD
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

H. L. STOWERS
CHAIRMAN

MERLE H. STANTON
MEMBER

CHARLES B. UPTON
MEMBER

KOSHRC # 48

COMMISSIONER OF LABOR,
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FORD CONSTRUCTION COMPANY

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STOWERS, Chairman; UPTON and STANTON,
Commissioners.

Respondent in this case was cited under the provisions of KRS 338 and rules and regulations promulgated thereunder relating to the safety and health of employees.

On May 17, 1974, a citation for violation of certain standards was issued to the respondent by the complainant wherein it was alleged that respondent had violated the following listed standards:

1. 29 CFR 1910.215 (a)(4) (as adopted by OSH 11):
The work rest on an abrasive wheel bench grinder was not adjusted to within one-eighth (1/8) inch of the wheel. (Bench grinder, shop).
2. 29 CFR 1910.219 (e)(1)(i) (as adopted by OSH 11):
Both runs of horizontal belt, forty-two (42) inches or less from the floor, were not fully enclosed. (Air compressor, yard area).
3. 29 CFR 1910.219 (d)(1) (as adopted by OSH 11):
Pulleys which were seven (7) feet or less from the floor or working platform were not guarded. (Air compressor, yard area).

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4. OSH 116, Section 5 (a): The Annual Summary of Occupational Injuries and Illnesses had not been compiled, (i.e., OSHA Form 102).
5. 29 CFR 1910.141 (c)(1)(i) (as adopted by OSH 11): A toilet facility was not provided in a place of employment. (No indoor or outdoor facilities).

A notification of proposed penalty in the amount of \$31.00 on item 3 was also issued on this same date. This citation and proposed penalty resulted from an inspection by a duly authorized compliance officer at respondent's place of business, West Court Street, Bardwell, Kentucky, on April 8, 1974, of respondent's ready mixed concrete manufacturing establishment.

By letter dated June 1, 1974, respondent stated he was contesting the fine on item 3. This letter was forwarded to this Commission together with a copy of the citation and penalty notice, and the Department of Labor filed complaint in this case on June 19, 1974. The Rules of Procedure of this Commission, Section 18 (b) provides that:

"Answer. (1) Within 15 days after service of the complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted."

On July 10, 1974, complainant filed a Motion to Dismiss and Enter Order, based on respondent's failure to file an answer as required.

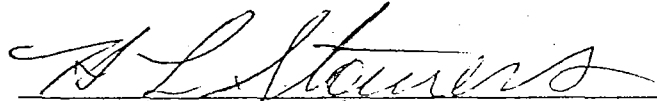
At the time Notice of Receipt of Contest was mailed to respondent, June 10, 1974, copy of Rules of Procedure together with a separate notice was forwarded to the respondent in which it was stated in part:

"..... This is to inform you that within FIFTEEN (15) DAYS of receipt of the complaint you MUST answer by either denying or admitting the allegations shown.

"Failure to follow these rules may result in DISMISSAL of this matter. You are referred to Sections 18 and 23, Rules of Procedure of the Kentucky Occupational Safety and Health Review Commission."

Further, on July 11, 1974, a Show Cause Order was mailed to respondent, stating respondent had until Monday, July 22, 1974, to show cause why this action should not be dismissed. The Commission has received no such showing by the respondent, and no further communication.

It is therefore ordered that this cause of action is dismissed; that the citations, penalty assessed and abatement dates designated are affirmed.


H. L. Stowers, Chairman

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

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

August 2, 1974

Decision No. 43