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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

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

IRIS R. BARRETT
EXECUTIVE DIRECTOR

May 15, 1979

KOSHRC #482

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BADGER PLANTS, INC.,
ELLIS D. HARMON

RESPONDENT
INTERVENOR

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

PER CURIAM:

A Recommended Order of Hearing Officer J. D. Atkinson, Jr., issued under date of January 16, 1979, is presently before this Commission for review, pursuant to a Petition for Discretionary Review filed by the Respondent and Intervenor.

The Petition takes exception to the Hearing Officer's decision regarding Citation 2, Item 1. A motion to amend the Recommended Order was also submitted regarding Citation 1, Item 11.

Regarding Citation 1, Item 11, it appears that the Respondent's Motion to Amend should be granted. Mr. Atkinson's Discussion of the Case states that this item must be vacated along with the proposed penalty of fifty (50) dollars. (R.O. 7). The Recommended Order, however, sustains Item 11 of Citation 1. (R.O. 11).

The text clearly indicates that the item is vacated. The Recommended Order contains a typographical or clerical error. Respondent's motion is hereby Granted and the Recommended Order is amended, Item 11 of Citation 1 is dismissed.

KOSHRC #482
Decision and Order
of Review Commission

This Review Commission has granted Discretionary Review to fully consider all the issues, and the Hearing Officer's disposition regarding Citation 2, Item 1 of the citation issued against the Respondent.

The Compliance Officer in this case observed four employees exposed to the hazard of a fall, an alleged serious violation of The Act and Standards. Two of the workers, as shown in Complainant's Exhibit "G," were engaged in a "bolting up" operation. The other two employees, pictured in Complainant's Exhibit "H," were engaged in a "connecting" procedure. The Hearing Officer has found that: "the letter of the standards has been violated in the case of the four ironworkers observed by Ms. Robinette." [emphasis added] (R.O. 10).

A review of the evidence indicates that two separate and distinct work procedures were involved. All four workers were apparently exposed to a fall, however, a specific and very limited exception from the applicability of the personal protective equipment standard is provided for "connectors" while actually engaged in the beam placement phase of the connecting procedure. This exception has been officially noted by the Complainant and recognized in various case decisions.

The aforementioned exemption does not automatically and fully apply to workers who are considered "connectors." The beam placement phase of the connecting procedure is the crucial consideration in determining applicability of the exemption.

From the evidence produced by the parties this Commission is unable to determine whether the standard has been clearly violated or whether the exemption applies to the workers shown in Complainant's Exhibit "H." The Hearing Officer's decision is therefore in error in stating that the standard has been violated in the case of the four ironworkers. A violation has not been established regarding the workers in Complainant's Exhibit "H."

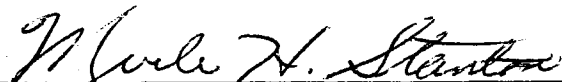
The employees pictured in Complainant's Exhibit "G" were involved in a "bolting up" operation. The evidence clearly establishes a violation of the standard as to these workers and since they have also been cited under Citation 2, Item 1, the Hearing Officer's decision sustaining a violation is hereby AFFIRMED.

The Hearing Officer, in sustaining a serious violation of Citation 2, has vacated the proposed penalty of \$800 based upon "substantial mitigating factors" or mitigating circumstances. This Commission granted Discretionary Review to consider the issues posed by the Respondent and Intervenor and to review this penalty disposition.

KOSHRC #48.
Decision and Order
of Review Commission

The penalty posed by the Department of Labor is merely a "proposal" to be modified, sustained or dismissed by the Commission in contested cases. Any modification or dismissal should be related to specific mitigating circumstances in the record while reflecting the classification of the violation. In this case a serious violation has been sustained. Mr. Atkinson has not specifically noted factors to justify totally vacating a penalty. This Commission finds that, considering the serious nature of the violation and the exposure of two employees at the time of inspection, a penalty of \$400 shall be imposed.

IT IS THE ORDER of this Commission that the Respondent's Motion to Amend be and it is hereby GRANTED. Item 11 of CITATION 1 is DISMISSED. IT IS FURTHER ORDERED that the Hearing Officer's decision sustaining a violation of Citation 2, Item 1 is AFFIRMED so far as it relates to the employees that were involved in the "bolting up" procedure. The vacating of the penalty proposed for Citation 2 is REVERSED and a penalty of \$400 is hereby imposed.


Merle H. Stanton, Chairman

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

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

DATED: May 15, 1979
Frankfort, Kentucky

DECISION NO. 722

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
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Honorable Michael D. Ragland
Executive Director for
Occupational Safety & Health

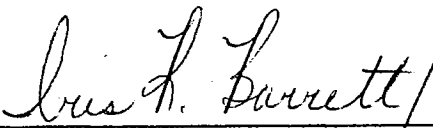
Honorable Kenneth E. Hollis (Messenger Service)
General Counsel
Department of Labor
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Hon. Frederick G. Huggins
Deputy General Counsel

Honorable Carl D. Edwards, Jr. (Certified Mail #678446)
VANANTWERP, HUGHES, MONGE & JONES
P. O. Box 1111
Ashland, Kentucky 41101

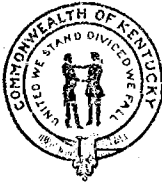
Mr. E. A. Denzel, Const. Mgr. (Certified Mail #678447)
Badger Plants, Inc.
P. O. Box 675
Catlettsburg, Kentucky 41129

Mr. Ellis D. Harmon, Business Agt. (Certified Mail #678448)
Local Union 769
P. O. Box 289
Ashland, Kentucky 41101

This 15th day of May, 1979.



Iris R. Barrett
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

JULIAN M. CARROLL
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

REVIEW COMMISSION

104 BRIDGE ST.

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

January 16, 1979

KOSHRC # 482

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

BADGER PLANTS, INC.,
ELLIS D. HARMON

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.

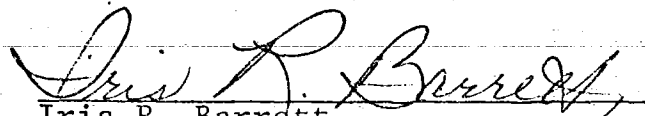
Parties will not receive further communication from the Review Commission unless a Direction for Review has been directed by one or more Review Commission members.

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
U. S. 127 South
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
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Hon. Frederick G. Huggins
Deputy General Counsel
- ✓ Honorable Carl D. Edwards, Jr., (Certified Mail #988969)
VANANTWERP, HUGHES, MONGE & JONES
P. O. Box 1111, 416 Winchester Ave.
Ashland, Kentucky 41101
- ✓ Mr. E. A. Denzel, Constr. Mgr. (Certified Mail #988970)
Badger Plants, Inc.
P. O. Box 675
Catlettsburg, Ky. 41129
- ✓ Mr. Ellis D. Harmon, Business Agt. (Certified Mail #988971)
Local Union 769
P. O. Box 289
Ashland, Kentucky 41101

This 16th day of January, 1979.

✓ Otis R.
✓ 3 Comm's
✓ H. H. O's
✓ Amador


Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION.

KOSHRC DOCKET No. 482.

COMMISSIONER OF LABOR,
COMMONWEALTH OF KENTUCKY,

COMPLAINANT.

VS: : : :

FINDING OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER.

BADGER PLANTS, INC.,
ELLIS D. HARMON,

RESPONDENT
INTERVENOR.

An inspection was conducted on or about April 19th. and 20th., 1978, at a coal liquifaction plant construction site near Catlettsburg, Kentucky, where Respondent is a contractor constructing said plant for Ashland Oil, Inc. As a result of said inspection, Respondent was issued two citations, the first alleging eleven (11) non-serious violations of the Act and Standards and the second citation alleging one (1) serious violation. Items five (5) and eight (8) of Citation No. 1 were later deleted by Complainant. The citations remaining in issue are as follows:

CITATION NO. ONE (1):

Item One (1) Violation of 29 CFR 1926.602(a)(9)(i) in that:

Two caterpillar dozers (bidirectional machines) were not equipped with a horn, to be operated as needed when the machine is moving in either direction.

~~No penalty for this alleged violation was proposed.~~

Item No. Two (2): Violation of 29 CFR 1926.602(a)(2)(i) in that:

A "catepillar" dozer D-6C with rollover protective structure, at the northwest site, was not equipped with seat belts.

No penalty for this alleged violation was proposed.

Item No. Three (3): Violation of 29 CFR 1926.350(d)(2) in that:

The special wrench required to close the valve on fuel gas cylinders was not left in position on the stem of the valve while four (4) separate acetylene cylinders were in use.

No penalty for this alleged violation was proposed.

Item No. Four (4): Violation of 29 CFR 1926.213 (h)(1) in that:

The sides of the lower exposed portion of the blade on a "DeWalt" radial arm saw in the saw shop were not guarded to the full diameter of the blade by a device that automatically adjusted itself to the thickness of the stock and remained in contact with the material being cut.

No penalty for this alleged violation was proposed.

Item No. Five (5): (Deleted)

Item No. Six (6): Violation of 29 CFR 1926.450(a)(9) in that:

The sides of two (2) wooden ladders did not extend at least thirty-six (36) inches above the landings.

No penalty for this alleged violation was proposed.

Item No. Seven (7): Violation of 29 CFR 1926.501(c) in that:

The landing of the stairway leading to the vacuum flash structure was not free of projections. Eight (8) reinforcement rods were protruding approximately four (4) inches above the concrete surface.

No penalty for this alleged violation was proposed.

Item No. Eight (8): (Deleted)

Item No. Nine (9): Violation of 29 CFR 1926.215(b)(9) in that:

The abrasive wheel of a "Milwaukee" bench grinder in the warehouse was not equipped with a safety guard constructed so that the peripheral projecting member could be adjusted to within one-fourth (1/4) inch of the decreasing diameter of the wheel.

No penalty for this alleged violation was proposed.

Item No. Ten (10): Violation of 29 CFR 1926.303(c)(2) in that:

The work rest on a "Milwaukee" bench grinder in the warehouse was not adjusted to within one-eighth (1/8) inch of the decreasing diameter of the wheel.

No penalty for this alleged violation was proposed.

Item No. Eleven (11): Violation of 29 CFR 1926.500(d)(1) in that:

Four (4) work platforms three of which were approximately four (4) feet by six (6) feet and twenty feet high and the fourth which was approximately One Hundred (100) feet long and six (6) feet wide and twenty-five (25) feet high were not equipped with standard railings in that the intermediate rail and toe boards were missing.

A penalty of Fifty (\$50.00) Dollars was proposed for this alleged violation.

CITATION NO. TWO (2): Violation of 29 CFR 1926.28(a) in that:

Personal protective equipment such as lifelines, safety belts and lanyards, or other adequate safety equipment was not provided for two (2) employees performing "bolting up" operations on metal beams approximately thirty (30) feet above ground level and for two (2) employees performing "connecting" operations approximately twenty (20) feet above ground level.

(or in the alternative):

Violation of 29 CFR 1926.105(a) in that:

Two employees were not protected against falls of approximately Thirty (30) feet by the use of safety nets or appropriate protective equipment.

A penalty of \$800.00 was proposed for violation of Citation Number Two (2).

The pertinent procedural information is as follows:

(1) Inspection was conducted on April 19th. and April 20th., 1978, by the Commissioner at the above location.

(2) Two citations were issued as above mentioned on April 27, 1978.

(3) Items Five (5) and Eight (8) of Citation No. One (1) were deleted by amendment dated May 18, 1978.

(4) Notice of contest was received on May 18, 1978.

(5) Ellis D. Harmon, as business agent for Local Union No. 769, The International Association of Bridge, Structural and Ornamental Ironworkers, filed a "Notice of contest" of a portion of Citation No. Two (2) (the serious citation) on May 19, 1978.

(6) Notice of Receipt of contest was mailed on May 25, 1978, and Certification of Employer form was received on June 1, 1978.

(7) Complaint was filed on June 7, 1978, and Respondent's answer was filed on June 15, 1978.

(8) Notice of Hearing was issued on July 7, 1978, and the case was assigned to the Hearing Officer on that date.

(9) On motion of Complainant, the case was rescheduled for hearing on August 3, 1978, and the hearing was held as re-scheduled on that date.

(10) Transcript was received on September 1, 1978, and Briefing Order was issued on that date.

(11) Complainant's Brief was filed on September 29, 1978, and Respondent's Brief was filed on October 31, 1978, and the case stood submitted on that date.

DISCUSSION OF THE CASE.

The non-serious violations will first be discussed in the order set out in Citation No. One(1). Item One of this citation alleged that two bulldozers were not equipped with operable horns. The Compliance Officer testified that she asked Respondent's safety director, who accompanied her on her walk-around inspection, to operate these horns. He tried, but could not make either one blow. The Standard requires not only that the machines be equipped with horns, but that they be operable. It is the opinion of the Hearing Officer that this violation was established.

Item Two (2) alleged the lack of seat belts on one of the caterpillar bulldozers. The Compliance Officer stated that both Mr. Montana, the Safety Director, and the machine operator, endeavored to locate the seat belts on this machine for her, even lifting the seats, and that they declared in her presence that there were no seat belts on the machine. Mr. Montana testified that after the inspection he ordered seat belts for this machine, and that when the mechanic went to install the belts, he informed Montana that the machine already had belts attached. However this may be, the Hearing Officer is of the opinion that if the belts were so difficult to find that the Safety Director and the machine operator could not locate them, they were in effect not available for the protection of the operator, and thus that this violation is sufficiently established.

Item No. Three (3) involves the alleged absence of a special wrench on four acetylene gas cylinders. The Standard states in part: "When a special wrench is required, it shall be left in position on the stem of the valve while the cylinder is in use so that the fuel gas glow can be shut off quickly in case of an emergency". The Standard fails to state when a special wrench is required, except in case of manifold or coupled cylinders, when it is required. The cylinders in question were not manifolded or coupled since they were in four separate locations. The four cylinders in question were operated by valves attached to the tops of the cylinders. Although the Compliance Officer states that these valves could be knocked off and broken should a heavy object fall on them, it is not clearly shown that the Standard has been violated in this case. The nature of the alleged violation is vague and the Hearing Officer finds that Complainant has failed to maintain its burden of proof on this item.

Item Four (4) involved a radial saw that did not have a guard covering the lower portion of the blade that would adjust to the thickness of the material being cut.

A photograph of this saw was introduced into evidence. Apparently the guard had been removed in order to cut thick material that could not be cut using the guard. The Compliance Officer testified that the guard could not be found at the time of the inspection. The Safety Director and several employees looked around for it. The person in charge of the saw shop was not there at the time. Respondent's witness testified that the guard was removed from time to time to cut heavy material. The fact that the guard could not be found at the time of inspection is a strong indication that it would not have been available when needed to cut any type of material, and Respondent's employees were exposed to this hazard.

Item Six (6) involved two wooden ladders that the Compliance Officer stated failed to extend more than thirty-six (36) inches above the landing. However from Respondent's testimony the ladders were not used to gain access to the pipe rack on which they were resting, but to a lower platform only. The Compliance Officer agreed that if this were the case, there was no violation. There being no proof that Respondent's employees used the ladders as alleged in the Complaint, this item of the citation must be vacated.

Item Seven (7) involved concrete reinforcing rods projecting approximately four inches above the concrete on a landing of a stairway. Apparently, when the stairway is completed, these will be incorporated into concrete to be poured. Temporarily, the projections had been covered by a wooden box-like form to avoid a hazard to employees. However, at the time of inspection, the projections were not covered. Respondent's testimony to the effect that these rods had been covered several days prior to the inspection is not sufficient to avoid the finding that a violation existed on the inspection date.

Items Nine and Ten are essentially the same, Nine alleging that the abrasive wheel on a "Milwaukee" bench grinder was not adjusted to the proper tolerance required in the Standard, and Ten alleging that the work rest on the same grinder was not adjusted to the tolerance required by the Standard. Respondent pointed out that the grinder was not in use, that upon being used, each user adjusted the wheel and rest according to work requirements. The Hearing Officer finds that Complainant has failed to meet the burden of showing employee experience to a hazard in these instances, since the grinder was capable of being properly adjusted and no employee was observed using it out of proper adjustment.

Item Eleven - involving work platforms; the Compliance Officer testified that several platforms had a top rail but no intermediate rail and no toe board. On cross-examination, Respondent's Counsel called attention to the fact that needle-beam scaffolds are exempt from the Standard railing requirement. He questioned the Compliance Officer concerning what constitutes a needle-beam scaffold and apparently she admitted that the platforms in question met the definition of a needle-beam scaffold as defined in the regulations, but she declined to admit that the platforms in question were in fact needle-beam scaffolds, because as she kept repeating, "I'm not real familiar with it". The Hearing Officer finds that the Compliance Officer's unfamiliarity with the subject matter of this citation and the applicable regulations renders her testimony too vague and uncertain to maintain the Complainant's burden of proof on this question. This citation and the proposed penalty of Fifty Dollars (\$50.00) must be vacated.

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We now come to the alleged serious violation of the Act and Standards.

This case is unusual in that the representative of the Ironworkers Local Union has intervened in the contest to the serious citation on behalf of the Union and on the side of Respondent-employer. Basically, the Union's position is that Ironworkers must be permitted to exercise a measure of their own judgment as to how and when to use their safety equipment, belts and lifelines. The statement by the Union representative, Ellis Harmon, appears at pages 10 through 15 of the Transcript of the Hearing.

The Compliance Officer testified she saw several ironworkers engaged in connecting and bolting up operations. These were basically described to the effect that the employees were on a metal structure made up of steel beams. A crane would bring a beam up and the ironworkers doing the connecting operation would handle it into place and make a temporary connection, then go on to the next one. The bolting up men then came in and permanently bolt the beam into place. The Compliance Officer testified that she saw two ironworkers doing bolting up, approximately thirty feet above ground level. When photographed by her, they were sitting on the beams, but she stated she had seen them moving around, not tied off. She was told by Mr. Montana, Respondent's Safety Director, that these men were Jerry Rankin and Gregg Hatfield, employees of Badger. The Compliance Officer testified further that she observed two other ironworkers performing connecting operations approximately twenty feet above the ground level. She observed these men moving around during the connecting operation, and stated they did not tie off, either during or after the connection was made. She stated they do not have to be tied off while making the connection, but should tie off as soon as a connection is made and they are moving to another location. On Cross-examination, the Compliance Officer admitted there was nothing to tie off to in this particular

instance, but she said wooden poles, like telephone poles, could have been installed, and a horizontal line stretched between them to snap lines on to. When questioned as to the feasibility of installing such poles for an operation taking a few minutes to complete, she replied: "Well now, I know that is Departmental policy and I have seen it done. It's not Department policy to tell you how to do these things".

Respondent's Safety Director, Mr. Montana, testified that Badger had approximately 50 ironworkers on this job and that lanyards and safety belts were furnished to all of them, that they are instructed to use them where feasible. He stated that in the particular instance described there was no possibility of using a net and that there was nothing to attach safety lines to. He further mentioned the difficulty of disciplining ironworkers for failure to follow safety instructions because of the tight labor market.

Mr. Harmon, the Union representative, testified at length concerning the history of ironworkers practices, and said historically connectors do not tie off. He said many times men who are tied off are more vulnerable to accidents than those free to move. Mr. Harmon's testimony covers pages 208 to 224 in the Record. The Hearing Officer will not attempt to summarize all this testimony, but the gist of it, as Mr. Harmon says is that the connector is "a peculiar duck". "Now, he must either walk out that beam or he's got to coon out that beam - - he's got to crawl out that beam, and to ask any connector to crawl out that beam, you'll never get the first connector. In other words, we'd just be out of the connecting business, because they just won't do it, a connector will not do it. Because they, in the first place, they have unique and special skills to say the least, and for one to do that, it takes a few years experience and they've got to work from the ground up. But a connector

that has any pride about himself, as Mr. Hall has indicated, certainly is not going to coon out that beam. He's going to get up on that beam and he's going to walk out there and he's going to unhook it and throw that choker to the ground and then go back, and when he throws that choker to the ground, he will -- they will immediately be awaiting another structural member to be hoisted. So, there's really not that much time in between, Ms. Robinette, there's not really much time between, so therefore he's going to be receiving another structural member". (TR. Pages 216-217).

Mr. Harmon went on to relate the hazards to ironworkers of being tied off in connecting work. He stated that rigid enforcement of rules concerning use of personal safety equipment in case of ironworkers creates a really difficult proposition to accomplish not only from the employer's standpoint, but also from the Union's standpoint.

The Hearing Officer must find that the letter of the Standards has been violated in the case of the four ironworkers observed by Ms. Robinette. He is also well aware of the independent attitude of ironworkers most forcefully expressed by their Union representative. Because of great local demand for their skills, an ironworker could quit work for his employer and hire out of his local on another job the next day. Thus they are very independent and feel little particular loyalty to their current employer. The only means an employer has to discipline an ironworker who will not wear safety belts is to fire him. These circumstances make it very difficult for employers to control the compliance of ironworkers in instructions to use safety belts. While the Hearing Officer must find Respondent technically at fault in failure to enforce the use of safety belts, the penalty should be vacated because of the mitigating circumstances.

FINDING OF FACT AND CONCLUSIONS OF LAW.

(1) Jurisdiction of the subject matter and parties exists.

(2) That opening, walk-around, and closing conferences were held in accordance with the provisions of the Act.

(3) That the evidence is sufficient to show that Respondent committed the non-serious violations, as set forth in Item No. One, Item No. Two, Item No. Four, Item No. Seven and Item No. Eleven, of Citation No. One.

(4) That the evidence is not sufficient to support a finding that Respondent committed the non-serious violations of Item No. Three, Item No. Six, Item No. Nine, and Item No. Ten of Citation No. One.

(5) That the proposed penalty for violation of Citation No. One, Item No. Eleven (11) in the amount of Fifty (\$50.00) Dollars should be vacated.

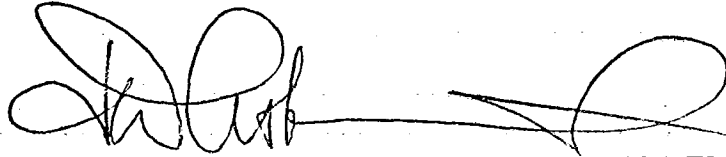
(6) That the evidence shows a violation of Citation No. Two (2), but that substantial mitigating factors exist which require that the proposed penalty therefor be vacated.

RECOMMENDED ORDER.

IT IS ORDERED that Citation No. One (1), alleging nine non-serious violations, be sustained as to Items Numbers One, Two, Four, Seven and Eleven, of said Citation No. One, and dismissed as to the remaining items of said Citation. It is further ordered that the proposed penalty of Fifty (\$50.00) Dollars for violation of Citation No. One (1) be vacated.

IT IS FURTHER ORDERED, that Citation No. Two (2), alleging one serious violation be sustained, but that the penalty proposed therefor be abated because of mitigating circumstances set forth herein.

IT IS FURTHER ORDERED AND ADJUDGED that abatement of the Citation shall be within Thirty (30) days of the effective date of this order.

A handwritten signature in black ink, appearing to read 'J. D. Atkinson, Jr.', written over a horizontal line.

J. D. ATKINSON, JR.,

- HEARING OFFICER.

Dated: January 15, 1979
Frankfort, Kentucky

DECISION NO. 662