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John Y. Brown, Jr.
GOVERNOR

IRIS R. BARRETT
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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

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MERLE H. STANTON
CHAIRMAN

CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

February 15, 1980

KOSHRC #630

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

NORTH CENTRAL PALLETS COMPANY

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman, UPTON and ROBERTS, Commissioners.

By the Commission:

A Recommended Order in this action by Hearing Officer Paul Shapiro, released under date of December 13, 1979, is currently before this Commission for review pursuant to an Order of Direction for Review issued on January 22, 1980.

Review was directed to consider the appropriateness of the penalty assessment totaling \$950. The parties were afforded an opportunity to file briefs with the Commission concerning the limited issue on review, but apparently they have opted for review on the record as developed below.

We concur with the Hearing Officer's determination that the conditions cited are serious violations of the Act. We are, therefore, fully in agreement with that portion of the Recommended Decision sustaining the violations as charged.

The penalties sustained by the Hearing Officer's decision are in the amounts originally proposed by the Department of Labor. The Complainant's proposals are within the penalty range provided by the statute and were calculated in conformance with their own administrative procedures or guidelines.

The decision below details the Complainant's calculation process in this particular case and correctly explains that their guidelines, or procedures, are intended to assure appropriate assessments in the individual instance as well as uniformity and fairness on a statewide basis. We believe, however, that the Hearing Officer's conclusions of law manifest an unwarranted deference to the Complainant's penalty proposals.

As we have previously indicated, in contested cases it is the statutory power and duty of the Review Commission, and its Hearing Officers, to hear and rule upon contested citations and determine an appropriate penalty assessment, if any. While the Complainant's proposals are calculated in conformance with a set of rules or procedures, and possess some inherent reasonableness, they are advisory only before the Review Commission.

The Complainant's proposals are made prior to a hearing and are therefore calculated without the benefit of mitigating factors or circumstances revealed during the review procedure. The Review Commission, in fulfilling its duty under the Act to ultimately set the penalty amount, has the benefit of all relevant considerations disclosed in the record.

After careful review of the record in this case and consideration of factors such as, but not limited to: size and scope of the Respondent company and operation, age and condition of the equipment involved, possible abatement costs and attitude and cooperation of the employer, we believe that an aggregate penalty of \$500 is fair, appropriate and consistent with the intent and purpose of the Act.

THEREFORE IT IS ORDERED that the Hearing Officer's decision is REVERSED as to the penalty assessment of \$950. A reduced penalty total of \$500 is hereby ordered and imposed. Abatement shall take place immediately upon issuance of this order.


Merle H. Stanton

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

DATED: February 15, 1980
Frankfort, Kentucky

DECISION NO. 832

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


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: Hon. Michael D. Ragland
Executive Director for
Occupational Safety & Health

Hon. Cathy Cravens Snell (Messenger Service)
Assistant Counsel
Department of Labor
U. S. 127 South
Frankfort, Kentucky 40601

Mr. Pat Dineen, Partner (Cert. Mail #P04 3613952)
North Central Pallets Company
P. O. Box 241
Anchorage, Kentucky 40223

This 15th day of February, 1980.



Iris R. Barrett
Executive Director