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KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

John Y. Brown, Jr.
GOVERNOR

REVIEW COMMISSION

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CHARLES B. UPTON
MEMBER

JOHN C. ROBERTS
MEMBER

July 18, 1980

KOSHRC #649

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

W. L. HARPER CONSTRUCTION CO.

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before STANTON, Chairman; UPTON and ROBERTS, Commissioners.

BY THE COMMISSION:

A Recommended Order of Hearing Officer L. Stanley Chauvin, Jr., issued under date of March 17, 1980, is presently before this Commission for review pursuant to a Petition for Discretionary Review filed by the Respondent.

Summary of the Case

The case below involved alleged serious violations of 29 CFR 1926.550(a)(15)(i) and 1926.550(a)(15)(iv) and a proposed penalty of \$400.

Three of the Respondent's employees engaged in the task of placing traffic control barrels at specified intervals along southbound I-75 by use of a truck-mounted crane. The truck faced northward and slowly backed southward with the boom extended. The truck driver also operated the crane while an employee on the truck bed attached the line to the barrels and a third employee on the roadway spotted and disengaged the load.

As the truck backed with boom extended, contact was made between the boom tip and overhead wires and the truck became energized. Jeffrey Dinn, the employee on the roadway, was initially clear of the vehicle but apparently returned, made contact and was fatally injured.

The Recommended Order of Mr. Chauvin finds a serious violation of 1926.550(a)(15)(i) based upon the Respondent's admission in its answer and the facts introduced in the record. Further, a serious violation of 1926.550(a)(15)(iv) is sustained along with the proposed penalty of \$400. This latter disposition is based upon the Hearing Officer's finding that the requirements of the cited standard were violated because Mr. Dinn had duties in addition to observing the mandated clearance and giving timely warning. The mandatory term, "shall," as employed in the standard, is interpreted to exclude any duties other than observing and warning in those instances in which an observer is required.

Decision of the Commission

We unanimously affirm the finding of a serious violation of 29 CFR 1926.550(a)(15)(i). The record and pleadings clearly establish a violation as charged. The Respondent does not appear to have questioned this issue on review, but we felt it necessary to distinctly address the point since the Hearing Officer finds a violation but does not separately set forth and affirm the item in the Recommended Decision.

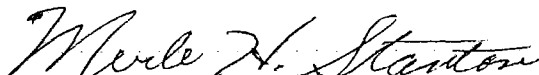
The major portion of the case below concerns the alleged serious violation of 29 CFR 1926.550(a)(15)(iv). After careful and thorough review of the record below, we unanimously affirm the Hearing Officer's finding on this item. We find that the Hearing Officer's interpretation of the standard is fair and reasonable and the record establishes that the duty set forth therein was violated.

Even if we were to accept a more liberal interpretation of the standard, which would allow an observer to handle additional duties, the Respondent herein would still be in violation of the requirement that "a person shall be designated to observe clearance of the equipment and give timely warning . . ." (emphasis added).

The Respondent did not clearly "designate," indicate, set apart or specifically charge either Mr. Moore or Mr. Dinn with a clear obligation and duty to observe and warn. Diffusion of responsibility resulted in the failure of anyone to perform the mandated functions. The Respondent's own safety manual, Respondent's exhibit 3, recognizes the danger of diffusion of responsibility and states (at p. 18) that, "Only one person should be designated to give signals to the crane operator."

ORDER

IT IS THE UNANIMOUS ORDER of this Commission that the Recommended Order, sustaining a serious violation of 29 CFR 1926.550 (a)(15)(1) and 1926.550(a)(15)(iv) along with a proposed penalty of \$400, is hereby AFFIRMED. All findings and conclusions of the Hearing Officer not inconsistent with this order are incorporated herein.


Merle H. Stanton, Chairman

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

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

DATED; July 18, 1980
Frankfort, Kentucky

DECISION NO. 888

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. Frederick G. Huggins (First Class Mail)
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This 18th day of July, 1980.


Iris R. Barrett
Executive Director