



JOHN Y. BROWN, Jr.
GOVERNOR

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

AIRPORT BLDG., LOUISVILLE RD., (U.S. 60-WEST)

FRANKFORT, KENTUCKY 40601

PHONE (502) 564-6892

JOHN C. ROBERTS
CHAIRMAN

CARL J. RUH
MEMBER

CHARLES E. BRADEN
MEMBER

August 24, 1981

KOSHRC #801

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DICKERSON LUMBER COMPANY

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before ROBERTS, Chairman; RUH and BRADEN, Commissioners.

BY THE COMMISSION:

A Recommended Order of Hearing Officer Paul Shapiro, issued under date of April 24, 1981, is presently before this Commission for review pursuant to an Order of Direction for Review issued on May 27, 1981.

Decision of the Commission

The Recommended Order below sustains all the nonserious violations with the exception of the alleged violation of the National Electrical Code, Article 250-42(b), as adopted by 1910.309(a) (as adopted by 803 KAR 2:020).

After reviewing the record, we affirm the Hearing Officer's disposition of the nonserious items.

Two serious items are in contest: an alleged violation of 1910.265(c)(3)(i) as referenced to 1910.23(c)(1) and an alleged violation of 1910.265(c)(22) as referenced to 1910.219(f)(3).

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The initial serious item was cited due to a seven-foot unguarded opening along a work platform above the shaker channel. An employee drops material from the platform level to the channel and is thereby exposed to a fall of eight to eleven feet.

The Hearing Officer has sustained this violation along with the proposed penalty of \$560.

The second serious item involves unguarded chains and sprockets on the kwik kut multi-band rip saw. These chains and sprockets are depicted in the photograph introduced as Complainant's Exhibit #4. The testimony indicates that the unguarded chains and sprockets are on the wall side of the machine and are actually across the machine from the normal position of the operator.


This violation is sustained in the Recommended Order along with the penalty proposal of \$560.

We agree with the Hearing Officer's decision which sustains the serious items as charged. After consideration of the testimony and other evidence we find, however, that the penalties as sustained are excessive. Due to the minimal employee exposure to the serious conditions, we find that a penalty of \$160 for each of the serious items is fair and appropriate.

ORDER

IT IS THE UNANIMOUS ORDER of this Commission that: the penalty for Citation Two, item 1 is hereby reduced to \$160; the penalty for Citation Two, item 2 is hereby reduced to \$160.

All other findings of the Hearing Officer not inconsistent with this opinion are adopted and incorporated herein.


John C. Roberts, Chairman

s/Carl J. Ruh
Carl J. Ruh, Commissioner

s/Charles E. Braden
Charles E. Braden, Commissioner

DATED: August 24, 1981
Frankfort, Kentucky

DECISION NO. 1035

Copy of this Decision and Order has been served by mailing or personal delivery on the following parties:

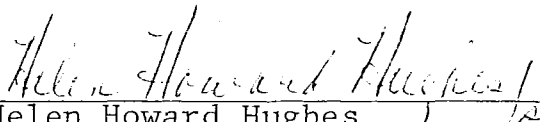
Commissioner of Labor (Messenger Service)
Commonwealth of Kentucky
U. S. 127 South
Frankfort, Kentucky 40601
Attention: Hon. Michael D. Ragland
Executive Director for
Occupational Safety & Health

Hon. Kenneth J. Costelle (First Class Mail)
Assistant Counsel
Department of Labor
620 South Third Street
Louisville, Kentucky 40202

Hon. Danny J. Basil (Cert. Mail #P321865027)
RIHERD, RICHARDSON & PATTON
117 E. Washington Street
Glasgow, Kentucky 42141

Mr. David Dickerson (First Class Mail)
Mr. Mack Dickerson
Dickerson Lumber Co.
Route #5
Glasgow, Kentucky 42141

This 24th day of August, 1981.


Helen Howard Hughes
Executive Director



KENTUCKY OCCUPATIONAL SAFETY AND HEALTH

REVIEW COMMISSION

AIRPORT BLDG., LOUISVILLE RD., (U.S. 60-WEST)

FRANKFORT, KENTUCKY 40601

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JOHN Y. BROWN, Jr.
GOVERNOR

IRIS R. BARRETT
EXECUTIVE DIRECTOR

JOHN C. ROBERTS
CHAIRMAN

CARL J. RUH
MEMBER

CHARLES E. BRADEN
MEMBER

April 24, 1981

KOSHRC # 801

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

DICKERSON LUMBER COMPANY

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.

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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.

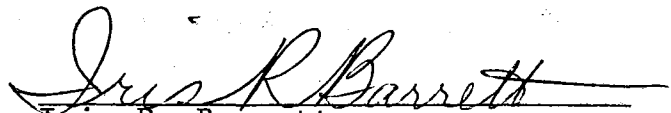
Copy of this Notice and Order has been served by mailing or personal delivery on the following:

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

Hon. Frederick G. Huggins (First Class Mail)
Deputy General Counsel
Department of Labor
801 West Jefferson Street
Louisville, Kentucky 40202

Mr. David Dickerson (Cert. Mail #P27 9171700)
Mr. Mack Dickerson
Dickerson Lumber Co.
Route #5
Glasgow, Kentucky 42141

This 25th day of April, 1981.


Iris R. Barrett
Executive Director

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH
REVIEW COMMISSION
KOSHRC #801

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
RECOMMENDED DECISION

DICKERSON LUMBER COMPANY

RESPONDENT

This matter arises out of two citations issued against Dickerson Lumber Company, hereinafter referred to as "Dickerson", by the Commissioner of Labor, hereinafter referred to as the "Commissioner", for violation of the Kentucky Occupational Safety and Health Act, hereinafter referred to as the "Act".

On July 15, 1980, a Compliance Safety and Health Officer, hereinafter referred to as the "CSHO", made an inspection of Dickerson's sawmill near Glasgow. As a result of that inspection the Commissioner issued two citations on August 7, 1980, charging Dickerson with 11 nonserious violations and two serious violations of the Act, and proposing a total penalty therefor of \$1120.00.

On August 25, 1980, and within 15 working days from receipt of the citation, Dickerson served notice on the Commissioner contesting the citation. Notice of the contest was transmitted to this Review Commission on September 2, 1980, and notice of receipt of the contest was then sent by the Review Commission to the parties. Thereafter, on September 10, 1980, the Commissioner filed its Complaint and on October 14, 1980, this matter was assigned to a Hearing Officer and scheduled for Hearing to be held November 12, 1980.

The hearing was held in Bowling Green on November 12, 1980, pursuant to KRS 378.080(4). That section of the statute authorizes this Review Commission to rule on appeals from citations, notifications and variances to the Act, and to

adopt and promulgate rules and regulations concerning the conduct of those hearings.

KRS 378.081 further authorizes this Review Commission to appoint Hearing Officers to conduct its hearings and represent it in this manner. The decision of hearing officers are subject to discretionary review by the Review Commission on appeal timely filed by either party, or upon the Review Commission's own motion.

The standards allegedly violated (as adopted by 803 KAR 2:020) the description of the alleged violations under contest, and the penalties proposed for same are as follows:

1910.265(c)(10) referenced to 1910.25(d)(2)(i)	A portable wood ladder was not tied, secured or otherwise held in position to prevent movement (outside Kiln Building).	-0-
1910.265(i) referenced to 1910.157(a)(1)	A portable fire extinguisher was not kept in the designated place at all times when not being used, a sign indicating extinguisher which was not present, Pallet Mill near exit, and a General portable fire extinguisher located under stacker platforms was not kept in a fully charged and operable condition as indicated by the needle gauge.	-0-
1910.212(a)(5)	Fan blades less than seven (7) feet above the floor were not provided with a guard having openings no larger than one-half (1/2) inch in that the blades were exposed on back side of fan. (Mill House, Upstairs)	-0-
1910.215(a)(2)	An abrasive wheel bench grinder was not equipped with a safety guard to cover the spindle end, nut and flange projections. (Old Maintenance Shop)	-0-
1910.215(a)(4)	Abrasive wheel bench grinders were not provided with work rests adjusted to within one-eighth (1/8) inch of the wheels. (Grinders located in the Old and New Maintenance Shops)	-0-
1910.215(b)(9)	Abrasive wheel bench grinders were not provided with adjustable tongue guards adjusted to within one-fourth (1/4) inch of the wheel (Grinders located in the Old and New Maintenance Shops).	-0-
1910.265(c)(22) referenced to 1910.219(e)(1)(i) 1910.219(d)(1)	Horizontal belts and pulleys approximately twenty-one (21) inches above the floor were not fully guarded in accordance with standards specified in paragraphs M and O of this section. (Motor drive belts and pulleys on Kwik Kut machine; Pallet Mill)	-0-

1910.265(c)(22) Vertical and inclined belts seven (7) feet or -0-
referenced to less from the floor level were not fully enclosed
1910.219(e)(3)(i) by guards conforming to standards in paragraphs
M and O of this section.
(a) Kwik Kut Machine; Pallet Mill
(b) Portable fan; Mill House, Upstairs

1910.265(c)(30) Forklift trucks were not equipped with audible -0-
(ii) warning signals in that the horns were inoperable
(a) Yellow towmotor forklift truck, N. 1208;
Kiln Area.
(b) Two (2) Taylor forklift trucks; Yard Area.

803 KAR 2:015 The following instructions were not posted at -0-
Section 2(7) each battery charging installation and on each
battery charger:

WEAR FACE SHIELD
(Battery may explode)
TURN OFF CHARGER
TO
CONNECT OR DISCONNECT BATTERY.
WASH ACID SPILLS IMMEDIATELY.
FIRST AID FOR ACID IN EYES OR ON SKIN
"QUICKLY FLUSH WITH WATER FOR TEN (10) MINUTES"
("Solar battery charger; New Maintenance Shop)

National Electrical The exposed noncurrent carrying metal parts of a -0-
Code Article 250- powermatic abrasive wheel bench grinder, Serial
42(b) (as adopted No. 1270 were not grounded in that the equipment
by 1910.309(a) grounding conductor prong was missing from the
attachment plug of the power supply cord (New
Maintenance Shop)

1910.265(c)(3)(i) An open sided platform approximately eleven \$560.00
referenced to (11) feet above the adjacent floor level was
1910.23(c)(1) not guarded by a standard railing (or the
equivalent as specified in paragraphs (e)(3)
of this section) on all open sides (Employees
exposed to falling approximately eight (8)
feet to a shaker channel leading to chipper
at the off bearing-area of the edger: Mill
House).

1910.265(c)(22) Chains and sprockets less than seven (7) feet \$560.00
referenced to from the floor were not enclosed. Employees
1910.219(f)(3) work within approximately one (1) floor of the
unguarded chains and sprockets, feed drive
mechanism on Kwik Kut Multi-rip-saw (Pallet
Mill)

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

FINDINGS OF FACT

Dickerson operates a sawmill where it processes and manufactures hardwood lumber and logs. Although the company began operations in 1946, the present sawmill was not constructed until 1976 and was not in operation until 1977. The sawmill is a double band mill and is equipped with machinery designed to minimize the physical labor necessary to manufacture the wood products produced by the mill and to make the maximum use of the logs which form the raw material of the mill.

During the course of his inspection of the sawmill, the CSHO observed eleven conditions which he cited as being in violation of the Act. Because of the number cited, each condition will be discussed separately.

PORTABLE WOOD LADDER

A portable wood ladder was observed leaning against the wall of the kiln building. This ladder is used approximately once a day, and when observed by CSHO it was not tied or secured to the building or other stationary object to prevent its falling or moving. An employee using this ladder could fall from a height of up to 18 feet if the ladder were to move or fall. The CSHO did not determine whether the ladder was at such a pitch that the horizontal distance from the top support to the post of the ladder was one quarter of the working length. *whose proof?*

PORTABLE FIRE EXTINGUISHERS

This item involved two portable fire extinguishers. The first extinguisher was apparently being recharged at the time of the inspection and it was not in its designated place, as evidenced by a sign in the mill house indicating its location. The second fire extinguisher was in place, but was not fully charged. In the event of a fire, both extinguishers would have been of limited or no use. *7*
*Not
c/abl.
1st
The
proof*

PORTABLE FAN

The blade of a portable box fan, approximately 24 inches wide by 24 inches tall, located in the mill house, was guarded on the front but not on the back. The fan observed was on the floor of the building and was in use approximately four feet from an area where employees of the company were working.

BENCH GRINDERS

The citation of this item involved two bench grinders, one in the old maintenance shop, and the other in the new maintenance shop. The spindle end, nut, and flange projecting from the axle of the grinding wheel on the grinder located in the old maintenance shop was not guarded. In addition, this same grinder was not equipped with a work rest to support the materials being ground.

Neither grinder was equipped with an adjustable tongue designed to contain the grinding wheel if it disintegrated while in use.

Employees of the company used both grinders. However, the grinder in the old maintenance shop was used only infrequently, about once a year. The lack of guards on the bench grinder in the Old Maintenance Shop exposed employees using the grinder to the hazard of catching their clothing or hands in the machines. The lack of an adjustable tongue on both grinders exposed the employees using them to the hazard of flying objects if the wheels disintegrated while the grinders were in use.

UNGUARDED BELTS AND PULLEYS

This condition related to the horizontal and vertical belts and pulleys on a "Kwik Kut" machine in the Pallet Mill and the vertical belts and pulleys on a fan in the Mill House. The horizontal belts and pulleys on the Kwik Kut machine were approximately 28 inches above the floor. The vertical belts and pulleys on the Kwik Kut machine, at their highest point, were approximately 54 inches above the floor.

The "Kwik Kut" machine in the Pallet Mill is a multi-ripsaw used in the manufacturing of pallets. One man stands at one end of the machine feeding blocks of wood into an automatic feeder on the machine. Two men stand at the other end taking the cut material out. The machine is 11 feet long. The men work about 15 feet apart from each other and about eight feet from the belts and pulleys.

The machine is located near a wall, and the belts and pulleys cited as being in violation of the Act are next to the wall away from the working area. Their location next to the wall apparently limits, but does not eliminate, the employees access to the belts and pulleys.

There was also a portable fan in the Mill House which was apparently driven by a vertical belt and pulley. The height of the upper pulley was not given, but it was stated that the upper "pinch point" was 24 inches above the floor, and the lower "pinch point" was only "18 inches" above the ground.

The hazard presented by the unguarded belts and pulleys was that an employee's hand or article of clothing could get caught in them. This was a particular hazard at the "pinch points" where the moving belt first makes contact with the pulleys.

FORKLIFT TRUCKS

Forklift Trucks used in the mill were not equipped with horns or other devices to give audible sound warnings to employees working or walking near them. A defect in the brakes, however, caused them to squeak when they were engaged.

BATTERY CHARGERS

The maintenance shop was equipped with a battery charger which was used approximately twice a year to charge the company's old batteries. There was no sign on the charger warning persons using it that batteries could explode while being charged and that a face mask should be worn during charging operations, and further instructing employees using the charger on what they should do if they suffered an acid spill. Such a sign or warning had not been furnished with the charger by the seller or manufacturer when it was purchased by Dickerson.

BENCH GRINDER - NEW MAINTENANCE SHOP

The bench grinder in the new maintenance shop was also cited because the grounding prong on the electrical cord was missing. There was no showing that the grinder was in a wet or damp location.

OPENSIDED PLATFORM

There is a work platform in the Mill House constructed approximately 11 feet above the adjacent floor. A conveyor, carrying lumber out of the mill passes across one side of the platform, and an employee is stationed on the platform to facilitate the movement of material along this conveyor. This same employee also culls out substandard material. The employee drops the substandard material onto a shaker channel which conveys it to a chipper machine. This channel passes beneath the platform and there is a seven (7) foot section of the platform, in the area above the channel, which is unguarded.

Because material must be dropped onto the shaker from the unguarded area of the platform, a standard guardrail at that point would probably not be feasible unless a chute or other device was installed over the rail to direct the material to the shaker. A taut chain could also be used in place of a standard guardrail.

Because employees exposed to the condition were subject to a hazard of falling up to 11 feet to the ground, this condition was cited as a serious violation of the Act and a penalty of \$560 was proposed.

In proposing the penalty for the violation, the CSHO followed elaborate guidelines established by the Commissioner for all CSHO's to use. Under the guidelines, the CSHO first determines the gravity of the violation in terms of the probability of injury or illness which may result from it. Factors taken into consideration are the number of employees exposed, the frequency and duration of exposure, the proximity of employees to the point of danger, the speed of an operation and the resulting stress upon the employees, and any other factor which

the CSHO believes may significantly affect the probability of an accident. Each factor is measured on a scale of one to eight and the average of all these factors is taken. This average is referred to as the "Probability Quotient".

For serious violations, the severity of the injury or illness is taken into consideration. A value of one to eight is also assigned for severity. The value assigned is based upon the type of treatment which would be required if an employee was injured as a result of the violation. Where the injury would only require a doctor's treatment, a value of one to two is assigned. Where hospitalization could result, a value of three to six is assigned. Where chronic illness or injury, permanent disability or death could result, a value of seven or eight is assigned. The Severity Quotient is averaged with the Probability Quotient and the resulting value is known as the "Probability-Severity Quotient". The Probability-Severity Quotient is then converted into a "Gravity Based Penalty" according to a table adopted by the Commissioner.

The Gravity Based Penalty can then be adjusted downward as much as 80% depending on the employers "good faith", "size of business" and "history". Up to 40% reduction may be permitted for size, up to 30% for good faith, and up to 10% for history.

In calculating the "Probability Quotient", the CSHO assigned a value of two for the "number of employees exposed". This was the number of employees who worked on the platform. For "duration of exposure" he assigned a value of six for lengthy daily exposure. For "proximity to danger" he also assigned a six because the employees worked in close proximity to the danger zone. For speed and stress, the CSHO assigned a value of three, because he felt that the working conditions provided little stress to the employees. This resulted in a Probability Quotient of four.

For the "Severity Quotient" the CSHO assigned a value of seven, because he believed a fall from the scaffold at the height that it was being used would result

in serious physical injury or death. The two quotients averaged out to a Probability-Severity Quotient of five, which was converted by the appropriate table into a Gravity Based Penalty of \$700.00.

The Gravity Based Penalty was then reduced by 20%. The CSHO made no allowance for good faith, because Dickerson had been cited more than two years earlier for violation of some of the same standards included in the nonserious citation. However, because these citations were more than two years old, under department policy, they were not cited as repeat violations. He also made no allowance for history, because of the repeat violations. The CSHO did allow 20% for size, because the company had approximately 42 employees. This reduced the penalty to \$560.00, the amount proposed in the citation.

CHAINS AND SPROCKETS

This citation involved the chains and sprockets on the Kwik Kut multi-band ripsaw, cited in the first citation for unguarded belts and pulleys. Like the belts and pulleys, the chains and sprockets were located behind the machine next to the wall, were unguarded and were all less than seven (7) feet above the floor. However, the CSHO was of the opinion that the chains and sprockets, because they were of metal construction presented a greater hazard than the belts and pulleys since there was a likelihood that contact with them could result in serious injury, such as amputation of a finger.

Because of the serious nature of the hazard, the CSHO proposed a penalty of \$560.00, using the same guidelines that he used for the other serious citation. In calculating the "number of employees" exposed, he assigned a value of three, the number of employees who worked on the machine. For "duration of exposure" he assigned a value of six for lengthy daily exposure. For "proximity to danger" he assigned a value of three, and for "speed and stress" a value of two, because conditions of work were good. This averaged out to a probability quotient of three.

For the severity quotient, the CSHO assigned a value of seven, because of the serious nature of the probable injury which could result from the hazard. The two quotients again averaged out to a Probability-Severity Quotient of five, which converted into a Gravity Based Penalty of \$700.00. Using the same adjustment factors that were used in computing the other penalty, the CSHO reduced the proposed penalty to \$560.00.

CONCLUSIONS OF LAW

29 CFR 1910.265(c)(10) provides:

Ladders shall be installed and maintained
as specified in 1910.25, 1910.26 and 19.10.27.

29 CFR 1910.25 Provides

Portable Wood Ladders. . . .

(d) Care and use of ladders.

(2) Use. The following safety precautions shall be
observed in connection with the use of ladders:

(i) Portable rung and cleat ladders shall, where possible, be used at such a pitch that the horizontal distance from the top support to the foot of the ladder is one-quarter of the working length of the ladder (the length along the ladder between the foot and the top support). The ladder shall be so placed as to prevent slipping, or it shall be locked, or held in position. . . .

Although the portable ladder used outside the Kiln Building was not locked or secured in position, Dickerson maintains that no violation has been proven because the CSHO did not determine whether the pitch of the ladder conformed to the standard. Dickerson contends that if the pitch of the ladder is in accord with the standard, then the ladder has been placed so as to prevent its slipping within the meaning of the standard. Dickerson's position, however, is not supported by the plain meaning of the standard itself.

The obvious purpose of the standard is to prevent ladders from falling while an employee is on them by requiring that they be firmly secured in place. As a further precaution the standard prescribes the pitch at which ladders must be used to prevent their falling. Therefore, the wood ladder, since it was not secured, was in violation of the standard and the citation should be sustained.

29 CFR 1910.265(i) provides:

Fire protection: The requirements of Subpart L of this part shall be complied with in providing the necessary fire protection for sawmills.

29 CFR 1910.157(a) of Subpart L provides:

Portable Fire Extinguishers General Requirements Operable Condition. Portable extinguishers shall be maintained in a fully charged and operable condition, and kept in their designated place at all times when they are not being used.

This item involved two fire extinguishers, one of which was not in its designated place, the other of which was not fully charged. With respect to the extinguisher missing from its designated place, Dickerson contends that it was not in violation of the standard because the extinguisher was being recharged, an operation which apparently required it to be removed from its regular location.

The standard specifically requires that all portable fire extinguishers be kept in their designated places at all times. It further requires in subsection (3)(ii) that "extinguishers removed from the premises to be recharged shall be replaced by spare extinguishers during the period they are gone". Thus, the removal of the extinguisher for the purpose of recharging it is no defense to the citation.

Concerning the second fire extinguisher, no reason is given for its not being fully charged. Therefore, the condition of both fire extinguishers violated the Act and the citation of this item should be sustained.

29 CFR 1910.212(a)(5) provides:

Machine Guarding. . . .When the periphery of the blades of a fan is less than seven (7) feet above the floor or working level, the blades shall be guarded. The guards shall have openings no larger than one-half (1/2) inch.

The fan observed by the CSHO was clearly in violation of the standard.

It was standing on the floor and one side was completely unguarded. Therefore, the citation of this item should be sustained. ✓

29 CFR 1910.215(a)(2) provides in part as follows:

Abrasive wheel machinery. . . .General requirements
. . . .Guard Design. The safety guard shall cover the
spindle end, nut and flange projections. . . .

The spindle end, nut and flange on the bench grinder in the Old Maintenance Shop was completely exposed in violation of the standard. Therefore, the citation of this item should be affirmed. ✓

29 CFR 1910.215(a)(4) provides:

Abrasive wheel machinery. . . .General requirements
. . . .Work rests. On offhand grinding machines, work
rests shall be used to support the work.

This item also involved the grinder in the Old Maintenance Shop. This grinder was not equipped with work rests to support the work in violation of the standard, and the citation of this item should be sustained. ✓

29 CFR 1910.215(b)(9) provides in part:

Guarding of abrasive wheel machinery. . . .Exposure
adjustment. Safety guards. . . where the operator stands
in front of the opening, shall be constructed so that
the peripheral protecting member can be adjusted to
the constantly decreasing diameter of the wheel. . . .

This item involved not only the bench grinder in the Old Maintenance Shop, but a bench grinder in the new. Neither was equipped with a safety guard conforming to the standard and both were in violation of the standard. The citation of this item should, therefore, be sustained. ✓

The next two items are cited as being in violation of 1910.265(c)(22). That standard provides:

Mechanical power-transmission apparatus. The construction
operation and maintenance of all mechanical power-transmission
apparatus shall be in accordance with the requirements of
1910.219.

The first of these items cited a violation of 1910.219(e)(1)(i) and 1910.219(d)(1).

29 CFR 1910.219(e)(1)(i) provides in part:

Belt, rope and chain drives. . . .Horizontal belts and ropes. . . . (W)here both runs off a horizontal belts are 42 inches or less from the floor, the belt shall be fully enclosed in accordance with paragraphs (m) and (o) of this section.

29 CFR 1910.219(d)(1) provides:

Pulleys. . .Guarding. Pulley, any parts of which are seven (7) feet or less from the floor or working platform shall be guarded in accordance with standards specified in paragraphs (m) and (o) of this section.

The second item cited as being in violation of 1910.265(c)(22) referred to 1910.219(e)(3)(i) which provides:

Vertical and inclined belts. . . .Vertical and inclined belts shall be enclosed by a guard conforming to the standards of paragraphs (m) and (o) of this section.

These three standards require guarding of all horizontal and vertical belts and all pulleys to which employees are exposed or have access. The purpose of the standard is to prevent employees working near such belts and pulleys from coming in contact with them and sustaining an injury as a result.

Two of Dickerson's machines, the Kwik Kut saw in the Pallet Mill and the portable fan in the Mill House, were driven by belts and pulleys. These belts and pulleys were unguarded in violation of the standard.

Dickerson maintains, however, that the unguarded belts and pulleys did not present a hazard to its employees. The most serious of these items involved the belts and pulleys used to drive the Kwik Kut machine. Because of their location, adjacent to a wall, and because the employees who worked on the machine stood approximately eight feet from the belts and pulleys, Dickerson contends that employees could not come in contact with the belts and pulleys and, therefore, could not be injured by them.

In order to prove a violation of the Act, it is not necessary to prove that employees are actually exposed to a violative condition. If it is proven that employees had access to the hazard, then a violation is proved. Brown-McKee, Inc. 1980 OSHD, \$24,409. Although, Dickerson employees normally worked no closer than approximately eight feet from the belts and pulleys, they had access to them. Thus, the belts and pulleys presented a hazard to the employees in violation of the Act, and the citation of these items should be sustained.

29 CFR 1910.265(c)(30)(ii) provides in part:

Vehicles. . . .Warning Signals. . . .All vehicles shall be equipped with audible warning signals.

This item involved fork lift trucks, used in the sawmill, which did not have operable horns or other sound warning devices. Although the squeaking brakes on the truck did provide some warning, they were not an adequate substitute for conventional warning devices. Thus, the citation of this item should be sustained.

803 KAR 2:015 Section 2(7) provides;

The following instructions shall be posted at each charging installation and on each battery charger:

WEAR FACE SHIELD
(Battery may explode)
TURN OFF CHARGER
TO
CONNECT OR DISCONNECT BATTERY

WASH ACID SPILLS IMMEDIATELY
FIRST AID FOR ACID IN EYES OR SKIN
"Quickly Flush with Water for Ten (10) Minutes"

The "Solar Battery Charger" used by Dickerson to charge its older batteries did not have this warning on it, nor was the warning posted in an area where the charger was used. Dickerson maintains that such a warning was not furnished by the manufacturer where Dickerson bought the machine and, therefore, Dickerson should not be held responsible for its absence.

The Act imposes upon each employer the obligation of furnishing a safe place of employment for its employees. The Act imposes no duty on the manufacturer of machinery and equipment used in places of employment to furnish machinery and equipment which meet the safety standards adopted under the Act. Thus, the full responsibility, in so far as the Act is concerned, is on the employer to see that the equipment used by its employees do not expose them to hazardous conditions. Therefore, the failure to post the warning is a violation of the standard and the citation should be sustained.

29 CFR 1910.309(a) provides in part:

National Electrical Code. . . .The requirements contained in the following articles and sections of the National Electrical Code, NFPA 70-1971: ANSI CI-1971 (Rev of CI - 1968) shall apply to all electrical installation and utilization equipment. . . .250-42 (a), (b), (c) and (d). Fixed Equipment, Grounding General.

National Electrical Code 250-42(b) provides:

The exposed noncurrent carrying metal parts of fixed equipment that are likely to become energized under abnormal conditions shall be grounded under any of the following conditions:

(b) Where located in a wet or dry location and not isolated.

The machine cited in violation of the standard was the bench grinder in the New Maintenance Shop. The basis for the citation was that the grounding prong on the electrical cord was missing. However, there is no evidence in the record that the machine was located in a wet or damp location. Thus, all of the elements of the standard were not proven, and the citation of this item should be dismissed.

29 CFR 1910.265(c)(3)(i) provides:

Building facilities and isolated equipment. . . .
Floor and wall openings. All floor and wall openings shall be protected as prescribed in §1910.23.

29 CFR 1910.23(c)(1) provides in part:

Protection of open-sided floors, platforms and runways. Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides. . . .

The open side of the platform cited was approximately 11 feet above the adjacent floor. At least two employees worked on the platform and they were exposed to the hazard of falling that distance. Such a fall could cause serious injury or death and the citation of this condition as a serious violation should be sustained. Furthermore, the penalties proposed were appropriate under the circumstances. ✓

29 CFR 1910.265(c)(22) provides;

Mechanical power-transmission apparatus. The construction, operation and maintenance of all mechanical power-transmission apparatus shall be in accordance with the requirements of §1910.219.

29 CFR 1910.219(f)(3) provides in part:

Sprockets and chains: All sprockets, wheels and chains shall be enclosed unless they are more than seven (7) feet above the floor or platform. . . .

These chains and sprockets and were part of the power-transmission apparatus used to drive the Kwik Kut saw and presented the same hazard as the belts and pulleys which were part of the same apparatus. However, because both the chains and sprockets were of metal construction, they presented a likelihood of serious injury and their citation as a serious violation should be sustained. Furthermore, the penalty proposed for the violation was appropriate under the circumstances. ✓

RECOMMENDED DECISION


NOW, THEREFORE, upon the basis of the foregoing Findings of Fact, Conclusions of Law and upon the entire record, the following Recommended Decision is hereby made:

1. That the citation alleging a nonserious violation of 1910.265(c)(10) as referenced to 1910.25(d)(2)(i); 1910.265(i) as referenced to 1910.157(a)(1); 1910.212(a)(5), 1910.215(a)(2), 1910.215(a)(4); 1910.215(b)(9); 1910.265(c)(22) as referenced to 1910.219(e)(1)(i) and 1910.219(d)(1); 1910.265(c)(22) as referenced to 1910.219(e)(3)(i); and 1910.265(c)(30)(ii) (as adopted by 803 KAR 2:020); and 803 KAR 2:015, Section 2(7) is hereby sustained.

2. That the citation alleging the nonserious violation of Natinoal Electrical Code 250-42(b) as adopted by 1910.309(a) (as adopted by 803 KAR 2:020) is hereby vacated.

3. That the citation alleging the serious violation of 1910.265(c)(3)(i) as referenced to 1910.23(c)(1) and proposing a penalty of \$560.00 therefo, and 1910.265(c)(22) as referenced to 1910.219(f)(3), and proposing a penalty therefor of \$560.00 (as adopted by 803 KAR 2:020) is hereby sustained.

4. The citations sustained shall be abated and the penalties paid without delay, but no later than 30 days from the date hereof.



PAUL SHAPIRO
HEARING OFFICER
KOSHR

DATED: April 25, 1981
Frankfort, Kentucky

DECISION NO. 993