



Written by [unclear] to [unclear] [unclear] [unclear] [unclear]
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CARL J. RUH
MEMBER

CHARLES E. BRADEN
MEMBER

March 17, 1983

KOSHRC #859

COMMISSIONER OF LABOR
COMMONWEALTH OF KENTUCKY

COMPLAINANT

VS.

S & T INDUSTRIES
MY BUDDY DIVISION

RESPONDENT

DECISION AND ORDER OF
REVIEW COMMISSION

Before COBB, Chairman; RUH and BRADEN, Commissioners.

A Recommended Order of Hearing Officer Charles A. Goodman III, issued under date of December 3, 1982, is presently before this Commission for review pursuant to a petition for discretionary review filed by the Complainant.

Summary of the Case

The case below involved an alleged serious violation of 29 CFR 1910.217(c)(3)(iv)(d) with a proposed penalty of \$500 and a repeated violation of 29 CFR 1910.217(b)(3)(i) with a penalty proposal of \$1000. At the outset of the hearing the Complainant moved to delete the alleged serious violation and the accompanying penalty proposal; therefore, the proceeding was limited to consideration of the repeated violation charge and its proposed assessment.

Appendix A

859

The Hearing Officer's decision grants the Complainant's motion, deleting the alleged serious violation and the proposed penalty of \$500. A repeated serious violation of 29 CFR 1910.217(b)(3)(i) is affirmed, but the penalty proposal of \$1000 is reduced to \$100. The Hearing Officer notes several factors in the record of the case which allegedly necessitate the penalty reduction. (R.O., 14-15.)

Decision of the Commission

We have consistently held, as the Hearing Officer notes, that the Complainant's penalty proposals are merely advisory in contested cases. Although the Complainant's proposals are calculated in conformance with a set of objective procedures and thereby possess a modicum of reasonableness, they do not take into consideration aggravating or mitigating factors and circumstances revealed during the course of the review process. It is the duty of this Commission and its hearing officers to set the appropriate penalty in contested cases after hearing and weighing all relevant aspects of the case. See North Central Pallets Company, KOSHRC #630 (1980).

After reviewing the entire record in this case, we agree with the recommended reduction of the proposed penalty from \$1000 to \$100. As noted by the Hearing Officer, there are significant factors in the record supporting the substantial reduction.

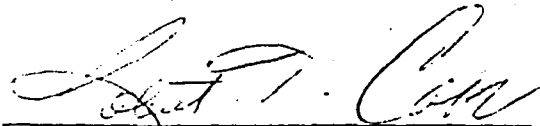
The machine upon which this citation was based is equipped with pullbacks, eliminating operator exposure. (T.R. 12.) Employee exposure to the alleged hazard is extremely limited. (T.R. 15, 35.)

The originally cited condition was rapidly addressed by the Respondent's purchase and installment of limiting devices at significant cost. The improper adjustment of such device, rather than its absence, on one of many machines was apparently the basis for the citation. (T.R., 39, 46.)

In light of the above factors and our position as enunciated in North Central Pallets Company, supra, we find that the Hearing Officer's decision below is a just and appropriate disposition of this action.

ORDER

IT IS HEREBY ORDERED that the reduced penalty of \$100 for the repeated serious violation of 29 CFR 1910.217(b)(3) (i) is AFFIRMED.



Robert T. Cobb
Chairman

s/Carl J. Ruh
Carl J. Ruh
Commissioner

s/Charles E. Braden
Charles E. Braden
Commissioner

DATED: March 17, 1983
Frankfort, KY

DECISION NO. 1199


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

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This 17th day of March, 1983.


Kenneth Lee Collova
Executive Director