# FINAL ORDERS OF THE VIRGINIA

# GENERAL DISTRICT COURTS

# AND

# CIRCUIT COURTS

# IN

# CONTESTED CASES ARISING UNDER THE

# VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT

JULY 1, 1979 - JUNE 30, 1980

VOLUME I

ISSUED BY THE VIRGINIA DEPARMENT OF LABOR AND INDUSTRY

P. O. BOX 12064

RICHMOND, VA 23241-0064

VOLUME I

TABLE OF CONTENTS

Part III: Continued

# PART I

# OCCUPATIONAL HEALTH

COMMONWEALTH

V.

DANIEL CONSTRUCTION COMPANY

SURRY PROJECT

No. 79-FL-1

CIRCUIT COURT FOR THE COUNTY OF SURRY

Leonard Vance, Assistant Attorney General, Richmond, Virginia, for Plaintiff.
Paul G. Turner, Esquire, Richmond, Virginia, for Defendant.
Before the Honorable L. Jones, Circuit Court Judge.

NATURE OF THE CASE:

GENERAL DUTY CLAUSE, Va. Code Ann. Section 40.1-51.1

1. Particularity of Citation

When a specific standard addresses an alleged hazard, general duty clause citations are improper.

2. Proof of Specific Standards

Inability to prove a violation of the specific standard does not give rise to the use of the general duty clause.

ORDER

THIS 2nd day of May, 1980, came defendant Daniel Construction Company, Surry Project ("Daniel"), and plaintiffs, Commonwealth of Virginia, Robert F. Beard and James B. Kenley, M.D., upon defendant's motion for summary judgement pursuant to Rule 3:18 of the Rules of the Supreme Court of Virginia, and the matters of law arising thereunder being argued by counsel for the defendant and plaintiffs and considered by the Court, it is hereby ADJUDGED AND ORDERED in accordance with the following findings of fact and conclusions of law, that defendant's motion for summary judgement is sustained and the citation asserted against defendant dismissed.

This matter involved an alleged violation of the Virginia Occupational Safety and Health Law, Title 40.1 of the Code of Virginia. There was no material issue as to the facts upon which the Court reached its decision. The citation issued by the commonwealth alleged a violation of the general duty clause provision of Section 40.1-51(a). The hazard to which Daniel's employees had been allegedly exposed was excessive levels of copper , nickel and zinc fumes. There was a specific occupational safety and health standard which had been adopted by the Commonwealth which regulated permissible employee exposure to these fumes.

The Commonwealth maintained it was impossible to prove a violation of this standard and elected to charge Daniel with a violation of the general duty clause.

It is well settled by both the federal circuit courts of appeal and the Occupational Safety and Health Review Commission that when a specific standard addresses an alleged hazard, general duty clause citations are improper. See, e.g., Usery v. Marquette Cement Manufacturing Co., 568 F. 2d 902 (2nd Cir. 1977); Brennen v. OSHRC and Underhill Construction Corporation, 513 F. 2d 1032 (2nd Cir. 1975); Brennen v. Butler Lime & Cement Co., 520 F. 2d 1011 (7th Cir. 1975); American Smelting & Refining Co., v. OSHRC, 501 F. 2d 504 (8th Cir. 1974); Brennen v. OSHRC and Gerosa, Inc., 489 F. 2d 1257 (D.C. Cir. 1973); Mississippi Power and Light Co., OSHRC Docket No. 76-2044, BNA 7 OSHC 2036, CCH 1979-1980 OSHD7124, 146 (R.C. 1979); Claude Neon Federal Co., OSHRC Docket No. 13810, BNA 5 OSHC 1546, CCH 1977-1978 OSHD7124, 877 (R.C. 1977); Central Kansas Power Co., Inc. OSHRC Docket No. 77-3127, BNA 6 OSHC 2118, (J.D. 1978); Kaiser Aluminum & Chemical Corp., OSHRC Docket No. 3685, CCH 1975-1976 OSHD7121,692 (R.C. 1976); Goodwin Bevers, Inc., OSHRC Docket No. 1362, BNA 2 OSHC 1470, CCH 1974-1975 OSHD 7119,206 (R.C. 1974); Brisk Waterproofing Company, Inc., OSHRC Docket No. 1046, BNA 1 OSHC 1213 CCH 1973-1974 OSHD7116,345 (R.C. 1973). Because a specific standard addressed the hazard allegedly involved in this matter, use of the general duty clause was precluded.

The Commonwealth maintained that because it was unable to prove a violation of the specific standard, it should be allowed to use the general duty clause. Such use would emasculate the provisions dealing with the promulgation of standards and give far too wide an effect to the general duty clause. The substantial authority cited above commands that this attempted use of the clause be rejected.

WHEREFORE, the citation issued by the Commonwealth improperly relies upon the general duty clause, defendant's motion for summary judgement is hereby granted and this appeal is dismissed.

# PART I

# INDUSTRIAL SAFETY

COMMONWEALTH

V.

E. A. CLORE SONS, INC.

Docket No. C79-98

August 7, 1979

GENERAL DISTRICT COURT FOR THE COUNTY OF MADISON

Martin J. McGetrick, Commonwealth's Attorney, for Plaintiff
J. Thomas Province, for Defendant
Before the Honorable Basil Burke, General District Court Judge

NO FINAL ORDER RECEIVED FROM THE COURT

Nature of the case: Alleged violations of woodworking machine requirements, record keeping deficiencies, lack of stair railings, exits improperly marked, lack of guards on machinery, improper grounding of electrical equipment.

Synopsis: Citations were issued following a general schedule safety inspection. Specifically those issued are:

CITATION NO.

1. 1910.37(q)(2) - Doors which were not an exit or way of exit access, and which were so located as to be likely to be mistaken for an exit, were neither identified by a sign reading NOT AN EXIT or similar designation nor identified by a sign indicating their actual character.

2. 1910.212(a)(5) - Fan blade guards, where the periphery of the blades was less than seven feet above the floor or working level, had openings larger than one-half inch.

3. 1910.213(c)(2) - Hand-fed circular ripsaws were not furnished with a spreader to prevent material from squeezing the saw or being thrown back on the operator.

4. 1910.213(c)(3) - Hand-fed ripsaws did not have nonkick-back fingers or dogs so located as to oppose the thrust or tendency of the saw to pick up the material or to throw it back toward the operator.

5. 1910.213(p)(4) - Belt sanding machinery was not provided with a guard at each nip point where the standing belt ran onto a pulley, to prevent the operator's hands or fingers from coming into contact with nip points.

6. 1910.219(c)(4)(i) - Unguarded projecting shaft ends did not present a smooth edge and end and projected more than one-half the diameter of the shaft.

7. 1910.309(b) Sec. 210-7, Nat. Electrical Code, NFPA 70-1971- Receptacles or cord connectors equipped with grounding contacts did not have these contacts effectively grounded.

8. 1910.213(c)(1) - Circular hand-fed ripsaws were not guarded by an automatically adjusting hood which completely enclosed that portion of the saw above the table and above the material being cut.

9. 1910.215(a)(2) - Abrasive wheels used on grinding machinery were not provided with safety guards which covered the spindle end, nut and flange projections.

10. 1910.219(d)(1) - Pulleys with parts seven feet or less from the floor or work platform were not guarded in accordance with the requirements specified at 29 CFR 1910.219.

11. 1900.35(2) - A log of all recordable occupational injuries and illnesses was not maintained at the establishment.

12. 1900.35(7)(a) - The annual summary of occupational injuries and illnesses was not posted in a conspicuous place or places where notices to employees are customarily posted.

13. 1910.23(d)(1)(ii) - Flights of stairs with 4 or more risers, less than 44 inches wide and having one side open, were not equipped with a standard stair railing on the open side.

14. 1910.37(q)(1) - Exits or access to exits were not marked by readily visible signs.

Disposition: Judge Burke determined that defendant's consent to the administrative inspection of his place of employment was invalid as defendant was not informed that, as a result of the inspection, his company might be cited for violation of administrative regulations. Therefore the citations and attached penalties were dismissed. This decision was affirmed by Judge David F. Berry, Circuit Court of Madison County.

APPEALED.

COMMONWEALTH

V.

COURT CABINETS, INC.

No. C79-457

October 11, 1979

GENERAL DISTRICT COURT FOR THE COUNTY OF PAGE

John McCune, Commonwealth Attorney, Luray, Virginia, for Plaintiff.
J.T. Hennessy, Esquire, Luray, Virginia, for Defendant.
Before the Honorable R. E. Hayes, District Court Judge.

CONSENT ORDER

On this 14th day of September, 1979, appeared both the corporate defendant herein, Court Cabinets Incorporated, by counsel, and also appeared the Attorney for the Commonwealth.

Thereupon, said counsel represented unto the Court that all serious violations under the rules and regulations promulgated by the Department of Labor and Industry as abated by the corporate defendant, and that said counsel had further agreed that an appropriate disposition of this amount of $100.00 by said corporate defendant for all of the alleged violations herein.

Upon consideration thereof, it is accordingly adjudged, ordered and decreed that the aforesaid corporate defendant shall pay to the Clerk of this Court the amount of $100.00 on or before the 10th day of December, 1979, as a total civil penalty for all violations alleged in the pleadings filed herein.

Nothing further remaining to be done in this matter, it is the further order of this court that this action be, and the same is hereby dismissed.

COMMONWEALTH

V.

CLOVEN MILL INCORPORATED

No. 740

November 12, 1979

CIRCUIT COURT FOR THE COUNTY OF RAPPAHANNOCK

George H. Davis, Jr., Commonwealth's Attorney, Washington, Virginia, for Plaintiff.
David Konick, Esquire, Washington, Virginia, for Defendant.
Before the Honorable Rayner V. Snead, Circuit Court Judge.

ORDER

ON THIS DAY came the parties, by counsel, whereupon plaintiff, by counsel, moved the Court for a nonsuit herein pursuant to Section 8.01-380 of the Code of Virginia of 1950, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that plaintiff is entitled to a nonsuit as a matter of right, it is therefore,

ORDERED that plaintiff be and he is hereby nonsuited, and the Clerk of the Court is hereby ordered to remove this case from the docket.

ENTERED this 12th day of November, 1979.

COMMONWEALTH

V.

BOND LUMBER & MILLWORK CORPORATION

No. C79-3933

January 17, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF ROCKINGHAM

David Heilberg, Assistant Commonwealth's Attorney, Harrisonburg, Virginia, for Plaintiff.
T.J. Wilson, Esquire, Harrisonburg, Virginia, for Defendant.
Before the Honorable J.A. Paul, District Court Judge.

ORDER

This matter involved 8 citations issued by the Virginia Department of Labor and Industry against Bond Lumber & Millwork Corporation, citation #1 containing 9 items, citations #5 containing 2 items, and citations #2, 3, 4, 6, 7 and 8 each containing 1 item.

Bond Lumber & Millwork Corporation, hereinafter referred to as "BOND", contested only the items hereinafter referred to.

A hearing was held on this matter on Tuesday, November 13, 1979. Appearing on behalf of the Virginia Department of Labor & Industry, hereinafter referred to as "DEPARTMENT", was David Heilberg, Esquire, Assistant Commonwealth's Attorney for Rockingham County. Appearing for Bond was T.J. Wilson, IV, of Harrisonburg.

In light of the evidence produced before the Court, the Court makes the following findings of fact:

a) Bond conducts its business in an extremely old plant that was originally used as a cannery in the early 1920's.

b) This plant is in need of numerous capital improvements due to its age.

c) Employment at Bond is the source of income for many unskilled laborers.

d) Bond is a small family-owned wood working business.

e) Bond was recently the victim of fire, and as a result of said fire, is in the process of making some capital improvements. These improvements will include the construction of a new building. As a further result of the fire, business has been interrupted to some degree and some areas of the plant have been serving two functions.

f) The Court is of the opinion that Bond indeed made good faith efforts to correct and abate all violations for which it was cited.

g) All violations have been satisfactorily abated unless otherwise stated hereinafter.

The Court finds as follows:

a) Citation number 1, item #2, reads: "toilet facilities, in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with Table J-1 of this section. Water closets are not provided for male employees". Bond contested the citation and the abatement. Bond provided water closet for its female employees and a privy for male employees. Bond contested this violation on the belief that, so far as the local health regulations were concerned, it was in compliance. However, the Court recognizes that the Department's regulations require a water closet for the male employees, and so orders that one be provided. Bond is given until December 31, 1980, to do so.

b) Bond contested the abatement period in citation number 1, item #8. The only reason that Bond contested the abatement period was that it was not possible for Bond to correct the problem within the five days allowed. However, because the violation was corrected prior to November 16, 1979, the Court grants Bond's request for a continuance of the abatement period until November 16, 1979.

c) Bond contested the citation abatement period, and penalty in citation #2, item #1, which reads: "spray rooms used for production spray finishing operations did not conform to the requirements for spray booths: paint spray room: flammable and combustible materials reference: 1910.107: It appears to the Court that Bond made an effort to correct this item, thinking that the item was referring to only one spray booth located within the plant. The Court finds that Bond's efforts to correct the spray booth were, in fact, made in good faith, and that there was a misunderstanding on Bond's part. The Court finds that Bond is in violation, and orders compliance by December 31, 1980. The Court further imposes a penalty of $420.00, suspending 85% of said penalty upon the condition that $357.00 be invested in capital improvements by December 31, 1980.

d) Citation #3, item #1, of "swing cut-off saws were not provided with an automatically adjusting hood that completely enclosed the upper half of the saw, the arbor end, and the point of operation at all positions of the saw: swing cut-off saw. Midway Shop #1". Bond contested only the penalty, admitting the violation. The Court finds that the violation has, in fact, been abated. In light of the items earlier mentioned, it is ordered that the penalty proposed of $240.00 be imposed with 85%d thereof suspended upon the condition that $204.00 be invested in capital improvements by December 31, 1980.

e) Citation #4, item #1, "hand-fed jointers with horizontal cutting heads did not have guards that covered the section of the head back to the cage or fence: 6 inch 2". Here, Bond contested only the penalty, which was recommended at $350.00. The Court finds that the violation was abated within the period allowed, and imposes the recommended penalty of $350.00,

with 85% thereof suspended upon the condition that $297.50 be invested in capital improvements by December 31, 1980.

f) Citation #5, items #1 and 2, involved violations concerning electrical equipment. Bond contested the penalty, which was recommended to be $420.00 and the abatement period which, in each case, was five days from the receipt of the citation. The Court finds that the abatement period was contested solely because Bond believed that it could not abate the violation within the five days allowed, although it immediately began efforts to abate said violation. The Court finds that, at the date of the hearing, the violations were abated, and thus Bond's motion to extend the abatement period until November 16, 1979. The court imposes the recommended penalty of $420.00 and suspends 85% thereof, upon the condition that $357.00 be invested in capital improvements by December 31, 1980.

g) Citation #6, item #1, "protective eye equipment was not required where there was a reasonable probability of injury that could be prevented by such equipment: exposed to flying splinters and sawdust throughout plant". Bond contested the citation, abatement period and penalty. The proposed penalty was $297.00. The rationale behind Bond's contest of this citation was the fact that Bond has continuously attempted to enforce protective eye equipment measures with little success. The Court finds that the exposure to flying splinters and sawdust does not exist throughout the plant, but only in certain areas.However, the Court is of the opinion that it is incumbent upon Bond to increase its efforts, and to enforce the wearing of protective eye equipment where there is, in fact, a reasonable chance of injury that could be prevented by such eye equipment. The Court therefore orders that Bond place signs reminding the workers to wear their protective eye equipment when needed, and it orders Bond to continue good faith efforts to enforce this regulation. The Court further imposes the proposed penalty of $297.00, and hereby suspends 85% thereof upon the condition that $252.45 be invested in capital improvements by December 31, 1980.

h) Citation #7, item #1, "circular hand fed rip saw was not guarded by an automatically adjusting hood which completely encloses that portion of the saw above the table and above the material being cut: Rockweld Table Saw, Midway Shop Number 1". Here, Bond contested only the proposed penalty of $720.00. The Court finds that the required hood was present but had been removed by workers to aid in the ease of cutting certain materials. The workers then cast it aside. The Court finds that Bond has now attached the hood to the saw in the manner that it cannot be removed, but still can be lifted aside to enable the workers to cut certain items. The Court imposes the proposed penalty of $720.00, and hereby suspends 85% thereof, upon the condition that Bond invest $612.00 in capital improvements by December 31, 1980.

i) Citation #8, item #1, involved the placing of guards on exposed radial saw blades. Bond contested only the proposed penalty of $900.00. Although there was only a one day abatement period given, Bond was able to correct the matter within said one day time period. The Court hereby imposes the penalty of $900.00 and hereby suspends 85% thereof, upon the condition that Bond invest $765.00 in capital improvements by December 31, 1980.

The total of the penalties imposed in this opinion are $3,347.00, 85%, $2,844.95, is suspended upon the condition that Bond use the suspended

amount for capital improvements no later than December 31, 1980. That portion of the penalties not suspended, $502.05, shall be paid within thirty days of the date of this opinion.

The Court, in suspending 85% of the penalties herein imposed recognizes that Bond Lumber and Millwork Corporation is a source of employment to many persons within the community including unskilled and relatively uneducated laborers. The Court also takes notice of the financial hardship that has been imposed by the recent fire at their place of business. The Court is of the opinion that the ends of justice and the welfare of the workers, will best be served by a suspension of the majority of penalties herein imposed, and requiring said suspended portion to be utilized at the place of business for the purpose of improving the health and safety conditions of the plant.

COMMONWEALTH

V.

E. A. CLORE SONS, INC.

No. 7-737

February 8, 1980

(Appeal pending in the Virginia Supreme Court)

CIRCUIT COURT FOR THE COUNTY OF MADISON

Martin J. McGetrick, Commonwealth's Attorney, Madison, Virginia, for Plaintiff.
Thomas Province, Esquire, Madison, Virginia, for Defendant.
Before the Honorable D.F. Berry, Circuit Court Judge.

FINAL ORDER

This matter having been previously set for hearing, was heard in open Court on this 8th day of February, 1980, at which time the Court heard the evidence of the Commonwealth and the evidence of the defendant, and argument of counsel, on the issues raised by the defendant in its Motion to dismiss, previously filed herein.

Upon consideration of which, the Court sustains such motion on the ground that there was no valid consent by the defendant to the inspection of its premises on February 28, 1979, all of which is stated in the record of the proceedings of such hearing, the transcript of which is hereby made a part of the record in this case.

The Commonwealth notes its objections and exceptions of the ruling by the Court

COMMONWEALTH

V.

EBERWINE BROTHERS, INC.

No. C80-436

February 15, 1980

GENERAL DISTRICT COURT FOR THE CITY OF SUFFOLK

Herman T. Benn, Assistant Commonwealth's Attorney, Suffolk, Virginia, for Plaintiff.
George Eberwine, General Manager of Eberwine Brothers, Inc., for defendant
Before the Honorable Blair Harry, District Court Judge.

ORDER

This matter was heard on February 5, 1980 upon the Petition of the plaintiff, the Commonwealth of Virginia specifically, the Virginia Department of Labor and Industry, and upon the appearance and response of the defendant, Eberwine Brothers, Inc., by Mr. George Eberwine, Jr., General Manager.

Upon consideration of the evidence presented and the applicable law, the Court makes the following findings of fact, conclusions of law and order:

1. The defendant, Eberwine Brothers, Inc., operates in the City of Suffolk, Virginia.

2. The six citations by the Plaintiff against the Defendant designated as non-serious and more specifically categorized in documents filed with the Court as citation one (1) including items one through six have been supported by the evidence and the law. No proposed penalties were assessed.

3. The eight citations by the Plaintiff against the Defendant designated as serious violations and more specifically categorized in documents filed with the Court as citation numbers 2, 3, 4, 5, 6, 7, 7a, and 8, are supported by the Plaintiff.

4. The proposed penalties for said serious violations by the Plaintiff were as follows:

| | |
|---|---|
| Citation No. 2 | $ 90.00 |
| Citation No. 3 | 90.00 |
| Citation No. 4 and 5 | 160.00 |
| Citations No. 6, 7, 7a, and 8 | 200.00 |
| TOTAL | $ 540.00 |

5. The Court upon due consideration of the matter is of the opinion that the following penalties are appropriate:

| | |
|---|---|
| Citation No. 2 | $ 30.00 |
| Citation No. 3 | 30.00 |
| Citation No. 4 and 5 | 60.00 |
| Citation No. 6, 7, 7a, and 8 | 100.00 |
| TOTAL | $ 220.00 |

It is, therefore, adjudged, ordered, and decreed that the violations cited hereinabove have been proven, and the total civil penalty as a result thereof is hereby assessed in the sum of $220.00.

There being nothing further to be done in this matter, it is ordered stricken from the docket and filed among the ended causes.

COMMONWEALTH

V.

SMITHFIELD PACKING COMPANY, INC.

No. C79-38-630

February 19, 1980

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Michael B. Salasky, Assistant Commonwealth's Attorney, Norfolk, Virginia, for Plaintiff.
H. Woodrow Crook, Jr., Esquire, Norfolk, Virginia, for Defendant
Before the Honorable F. E. Martin, Jr., District Court Judge.

NATURE OF THE CASE:

POWERS AND DUTIES OF THE DEPARTMENT OF LABOR AND INDUSTRY, Va. Code Ann. Section 40.1-1.

(1) Section 40.1-1 provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health activities.

MEANS OF EGRESS

(1) EXITS

Employee exposure to the possibility of human or mechanical failure where no emergency lighting was provided when normal lighting is interrupted or lost is a violation of 29 CFR 1910.36(b)(1)P

(2) FUNDAMENTAL REQUIREMENTS

Employee exposure to exits which are locked, thereby preventing free escape from inside of the building is a violation of 29 CFR 1910. 36(b)(4).

GENERAL REQUIREMENTS FOR MACHINES

(1) MACHINE GUARDING

Employee exposure to hazards created by rotating screw conveyor or without machine guarding is a violation of 29 CFR 1910.212(a)(1).

(2) MACHINE GUARDING

Employee exposure to rotating screws at unguarded sausage screw conveyor is a violation of 29 CFR 1910.212(a)(1).

NATIONAL ELECTRICAL CODE

(1) LIVE PARTS

Employee exposure to unguarded live parts of electrical equipment operating by 50 volts or more is a violation of 29 CFR 1910.309(a).

## OPINION

The Code of Virginia Title 40, Section 40.1-1, provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health violations as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) in accordance with the State Plan for enforcement of that Act.

This action was initiated by the Commissioner of the Virginia Department of Labor and Industry on a summons returnable to this court on November 9, 1979. There are 4 citations against the defendant alleging serious violations of standards on inspections made on August 21-24, 1979, at 435 E. Indian River Rd., Norfolk, Virginia, where the principal business is curing of country hams (dry cure) and sausage manufacturing. On the basis of the inspection, it was alleged that the safety and health laws of the Commonwealth were violated wherein these
violations are described in the citations. These citations were contested by the defendant causing the Commissioner to issue the summons.

A hearing was held in this court where evidence of violations was received as well as evidence offered by the defendant. Before concluding the case, the undersigned sent a further notice dated November 9, 1979, to the defendant addressed to the employees and required the defendant to post a notice to give the employees an opportunity to be present and to be heard at a later hearing set on December 3, 1979, at 2:30 p.m. No employees appeared. The defendant testified and the Commonwealth agreed that notice had been properly posted by the defendant.

After argument, penalties totaling $800.00 were imposed on the defendant. There was no written opinion prepared or filed at that time. This opinion is in connection with the written judgment order dated December 3, 1979, imposing the $800.00 in penalties.

## CITATION #2

I find additional safeguards were not provided for life safety in case any single safeguard was ineffective due to some human or mechanical failure in that no emergency lighting was provided when normal lighting was interrupted or lost due to power outage throughout plant. This was a violation of standard 1910.36(b)(1). This citation is affirmed, but I gave credit because the employer provided flashlights to certain leading employees in connection with the emergency lighting of exits in the event that the main power failed. A penalty of $300.00 is assessed.

## CITATION #2

I find exits were locked, preventing free escape from inside the building:

(a) exit door main entrance locked by electrical lock

(b) exit door employees' entrance south side locked by door key lock

(c) exit door 2nd floor dry storage west wall locked by key activated padlock

This was a violation of standard 1910.36(b)(4). There was no additional penalty for this citation which is affirmed because this citation was grouped under the one above. The exits were in fact locked to prevent theft by employees, but at the same time, endangering their lives in case of fire or other emergency.

CITATION #3

I find machine guarding was not provided to protect operators and other employees from hazards created by rotating screw conveyor and employees exposed to the rotating screw at unguarded sausage screw conveyor, west side of sausage room. This is a violation of 1910. 212(a)(1). Citation is affirmed and I assess a penalty of $240.00.

CITATION #4

I find live parts of electrical equipment operating at 50 volts or more were not guarded against accidental contact by approved cabinets or other forms of approved enclosures or any other approved means. Flexible electrical 3 conductor cord in use as 110 VAC service, containing exposed live parts and not guarded against accidental contact at doorway on Room 106, north wall in back storage dock. This is a violation of 1910.309(a) National Electrical Code, NFPA 70-1971, as adopted by 1910.309(a). This citation is affirmed and I assess penalty at $360.00.

Before assessing penalties, the defendant offered evidence of complete, rapid and efficient correction in connection with each citation. Before proposing penalties, the Commissioner had given credit in each category of credit claimed by defendant. The Commonwealth filed the Commissioner's work-sheet at my request. The worksheet and the citations are attached and made a part of this opinion.

COMMONWEALTH

V.

SMITHFIELD PACKING COMPANY, INC. - PLANT #17

No. L79-2275

March 13, 1980

CIRCUIT COURT FOR THE CITY OF NORFOLK

Michael B. Salasky, Assistant Commonwealth's Attorney, Norfolk, Virginia, for Plaintiff.
H. Woodrow Crook, Jr., Esquire, Norfolk, Virginia, for Defendant.
Before the Honorable W. Stewart, Circuit Court Judge.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's attorney of the City of Norfolk and the defendant, Smithfield Packing, Inc., by counsel, in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

| Alleged Violation | Type | Demand Penalty | Recommended Penalty |
|---|---|---|---|
| 1910.36(b)(1) | Serious Maximum | $1000 | $100 |
| 1910.36(b)(4) | Serious Maximum | $1000 | None |
| 1910.212(a)(1) | Serious Maximum | $1000 | $120 |
| 1910.309(a) | Serious Maximum | $1000 | $80 |

In making this recommendation, the plaintiff has considered the gravity of the alleged violation, as well as defendant's good faith, size, knowledge of the existence of the violation and history of previous violations.

2. Defendant agrees and stipulates to the following:

a. That the recommended penalties amounting to $400.00 will be paid in full pursuant to this Order:

b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is longer.

3. If a Notice of Contest was filed, defendant stipulates:

d. That defendant has posted its Notice of Contest; and

e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties it is

ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of $400.00, together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of Section 40.1-40.2H of the Code of Virginia (1950), as amended, the Clerk of this court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of $400.00 to the Treasury of the Commonwealth as provided for by statute.

Plaintiff and defendant further stipulate that this Order is based on the findings of the fact and conclusions of law as expressed in the written opinion of the Judge of the General District Court of the City of Norfolk, dated February 19, 1980, and that said opinion shall hereby be made a part of the record.

Defendant's posted bond shall be refunded forthwith.

COMMONWEALTH

V.

ALLEGHENY PEPSI-COLA BOTTLING CO.

No. C8012-394

April 4, 1980

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Robert C. Slaughter, III, Assistant Commonwealth's Attorney, Norfolk, Virginia, for Plaintiff.
Gayle Swecker, Loss Control Director, Southern Division, Allegheny Pepsi-Cola Bottling Co., appeared for Defendant.
Before the Honorable F.E. Martin, Jr., District Court Judge.

NATURE OF THE CASE:

POWERS AND DUTIES OF THE DEPARTMENT OF LABOR AND INDUSTRY, Va. Code Ann.
Section 40.1-1.

(1) Section 40.1-1 provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health activities.

ABRASIVE WHEEL MACHINERY

(1) Guarding of Abrasive Wheel Machinery - Exposure Adjustment

29 CFR 1920.215(b)(9) requires that the distance between safety guards and the abrasive wheel periphery not exceed one-fourth inch.
(2) Mounting-Surface Condition

29 CFR 1910.215(d)(3) requires that all contact surfaces of wheels...shall be flat and free of foreign matter.

OPINION

The Code of Virginia Title 40, Section 40.1-1, provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities for enforcing occupational health violations as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) in accordance with the State Plan for enforcement of that Act.

This action was initiated by the Commissioner of the Virginia Department of Labor and Industry on a summons returnable to this court on March 26, 1980. There are 4 citations against the defendant alleging serious violations of standards on inspections made on January 25-28, 1980, at 1194 Pineridge Road, Norfolk, Virginia, where the principal business is Soft Drink Warehouse and Distribution Center. On the basis of the inspection, it was alleged that the safety and health laws of the Commonwealth were violated wherein these

violations are described in the citations. These citations were contested by the defendant causing the Commissioner to issue the summons.

A hearing was held in this court where evidence of violations were received as well as evidence offered by the defendant. Before concluding the case, the undersigned sent a further notice dated March 13, 1980, to the defendant addressed to the employees and required the defendant to post a notice to give the employees an opportunity to be present and to be heard at a later hearing set on March 26, 1980, at 10:00 a.m. No employees appeared. The defendant testified and the Commonwealth agreed that notice had been properly posted by the defendant.

CITATION #2

I find the distance between the abrasive wheel periphery(ies) and the adjustable tongue or the end of the safety guard peripheral member at the top exceeded one-fourth inch, and that the adjustable tongue guard was missing on the right hand side of abrasive wheel of Black and Decker 8-inch bench grinder S/N 802106 - Allegheny #A-2301. Unit located Bay #2 of Automotive Repair Shop. This was a violation of standard 1910.215(b)(9).

CITATION #2

I find the contact surface(s) of Wheel(s), blotter(s) or flange(s) on grinding machine(s) were not flat and free of foreign matter. The abrasive wheel right side of Black & Decker 9-inch bench grinder S/N 802106 located in Automotive Repair Bay #2 was in service having a damaged wheel face. Wheel contained chipped section approximately 1 inch in length and 1/4 inch in depth along face and side of wheel. This was a violation of standard 1910.215(d)(3).

Treating pages one and two of citation two as one, I affirm the citation and I assess a penalty of $180.00. Before assessing the penalty, the defendant offered evidence of complete, rapid and efficient correction in connection with each citation. Before proposing a penalty, the Commissioner had given credit in each category of credit claimed by the defendant. The Commonwealth filed the Commissioner's work-sheet at my request. The worksheet and the citations are attached and made a part of this opinion.

COMMONWEALTH

V.

BURTON LUMBER CORPORATION

No. C-80-4882

June 26, 1980

GENERAL DISTRICT COURT FOR THE CITY OF CHESAPEAKE

Robert F. Haley, II, Assistant Commonwealth's Attorney, Chesapeake, Virginia, for Plaintiff.
Before the Honorable Russell I. Townsend, District Court Judge.

NATURE OF THE CASE:

ABRASIVE WHEEL MACHINERY

1. General Requirements - Guard Design

29 CFR 1910.215(a)(2) requires that the safety guard covering the spindle end, nut and flange projection of an abrasive grinding wheel must be attached at all times when the wheel is ready for use.

ORDER

CAME THIS day the Commonwealth of Virginia by the Assistant Commonwealth's Attorney and the defendant and the matter was heard ore tenus and the Court doth find that the defendant did fail to comply with regulation 1910.215(a)(2) of the Regulations of the Virginia Department of Labor and Industry in requiring that the safety guard covering the spindle, and nut and flange projection of an abrasive grinding wheel be attached at all times when the said wheel was ready for use and the Court doth

ORDER that the defendant be found guilty of the aforesaid violation and the Court doth further suspend imposition of any fine which may be imposed pursuant to Section 40.1-1, et seq. of the Code of Virginia of 1950, as amended.

# PART III

# CONSTRUCTION SAFETY

COMMONWEALTH

V.

F. RICHARD WILTON, JR., INC.

No. 79C-1052

July 16, 1979

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

John R. Alderman, Assistant Commonwealth's Attorney, Richmond, Virginia, for Plaintiff.
Edward S. Dentor, for Defendant.
Before the Honorable D.R. Howren, District Court Judge

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of Henrico County and the defendant, F. Richard Wilton, Jr., Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

| Alleged Violation | Type | Demand Penalty | Recommended Penalty |
|---|---|---|---|
| 1926.451(d)(10) | Serious | $1000 | $240 |
| 1926.500(b)(8) | Nonserious | 0 | 0 |
| 1926.451(a)(13) | ---------- | ----- | ----- |
| | TOTAL | $1000 | $240 |

In making this recommendation, the plaintiff has considered the gravity of the alleged violation, as well as defendant's good faith, size, knowledge of the existence of the violation and history of previous violations.

2. Defendant agrees and stipulates to the following:

a. That the recommended penalties amounting to two-hundred and forty dollars will be paid in full pursuant to this Order:

b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

c. That a copy of this Order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is longer.

3. If a Notice of Contest was filed, defendant stipulates:

d. That defendant has posted its Notice of Contest; and

e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of Two-hundred and forty dollars, together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of two-hundred and forty dollars to the Treasury of the Commonwealth, as provided for by statue.

COMMONWEALTH

V.

KRAFFT PLUMBING COMPANY, INC.

No. C79-10515

July 27, 1979

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

William J. Schewe, Jr., Assistant Commonwealth's Attorney, Fairfax, Virginia, for Plaintiff
Carl R. Jackson, Vice-President of Krafft Plumbing Company, Inc., for Defendant.
Before the Honorable Mason Grove, District Court Judge.

ORDER

Plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, the Commonwealth's Attorney of the County of Fairfax and the defendant, Krafft Plumbing Company, Inc., in order to conclude this matter without the necessity of further litigation, hereby agree and stipulate as follows:

1. Plaintiff agrees to recommend the civil penalties as set forth below:

| Alleged Violation | Type | Demand Penalty | Recommended Penalty |
|---|---|---|---|
| 1926.652(a)<br>1926.650(e)<br>1926.651(i)(1)<br>1926.652(e)<br>1926.652(h) | Serious | $1000 | $1000 |
| TOTAL | | $1000 | $1000 |

In making this recommendation, the plaintiff has considered the gravity of the alleged violation, as well as defendant's good faith, size knowledge of the existence of the violation and history of previous violations.

2. Defendant agrees and stipulates to the following:

a. That the recommended penalties amounting to One thousand dollars will be paid in full pursuant to this Order:

b. That complete abatement of the violative conditions noted in the citation accompanying the summons incorporated herein by reference will be or have been, as the case may be, accomplished by the dates specified in the citation unless such dates are extended by the Commissioner of the Department of Labor and Industry.

c. That a copy of this order will be posted at the site of the violation for three working days or until abatement of the violation, whichever period is the longer.

3. If a Notice of Contest was filed, defendant stipulates:

d. That defendant has posted its Notice of Contest; and

e. That the defendant hereby withdraws its Notice of Contest.

In accordance with the terms of the aforesaid agreement between the parties and upon motion of the parties, it is ADJUDGED, ORDERED AND DECREED that the defendant pay forthwith unto the Clerk of this Court the sum of one thousand dollars, together with the costs of this proceeding.

It is further ORDERED that pursuant to the provisions of Section 40.1-49.2H of the Code of Virginia (1950), as amended, the Clerk of this Court shall, within ten days from the date of entry of this Order, transmit a certified copy of this Order to the Commissioner of Labor and Industry. It is also ordered that the Clerk shall forward the sum of one thousand dollars to the Treasury of the Commonwealth, as provided for by statute, upon receiving said monies from said defendant.

COMMONWEALTH

V.

WORSHAM SPRINKLER COMPANY, INC.

No. C-11982

September 11, 1979

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

Carol Breit, Assistant Commonwealth's Attorney, Richmond, Virginia, for Plaintiff.
Barry A. Hackney, Esquire, Richmond, Virginia, for Defendant.
Before the Honorable Lawrence A. Belcher, District Court Judge.

NATURE OF THE CASE:

FLOOR AND WALL OPENINGS AND STAIRWAYS.

1. Guardrails, Handrails, and Covers

Employee exposure to an elevator shaft without standard railings is a serious violation of 29 CFR 1926.500(b)(1).

2. Guardrails, Handrails, and Covers

Employee exposure to floor openings above an elevator shaft and trash chutes not covered or closed as evidenced by falling and fallen debris is a serious violation of 29 CFR 1926.500(b)(1).

ORDER

This matter having come before the Court on Motion of the plaintiff, the Commonwealth of Virginia, specifically, the Virginia Department of Labor and Industry, and upon response of defendant, Worsham Sprinkler Company, Incorporated, by counsel, the Court makes the following findings of fact and law.

1. That the defendant was the employer, at the 14th and Franklin Street Towers, of Harry Crews, pipe fitter, from January 29, 1979, through February 6, 1979;

2. That the employee Harry Crews was installing pipes in the core area of the elevator shaft on the eleventh floor of the building on February 1, 1979;

3. That said area was without standard railings, including top railings, intermediate railings, and toeboards around said elevator shaft. Furthermore, floor openings above said shaft and trash chutes were not covered or closed as evidenced by falling and fallen debris;

4. Employee Harry Crews was exposed to above hazard;

5. Said hazard is a serious violation of 29 CFR 1926.500(b)(1).

6. Defendant failed to show proper supervision of employee Harry Crews and adequate safety instruction to him;

7. Said serious violation is chargeable to the defendant for failure to comply with 29 CFR 1926.500(b)(1);

8. That the plaintiff has failed to show a non-serious violation of 29 CFR 1926.25(a).

The Court further finds that the defendant be assessed $160.00 in civil penalty for the above serious violation, and that the non-serious violation be dismissed.

COMMONWEALTH

V.

JAMES T. WHARTON, JR., CONTRACTOR, INC.

No. C798967

November 13, 1979

GENERAL DISTRICT COURT FOR THE CITY OF CHESAPEAKE

Robert F. Haley, II, Assistant Commonwealth's Attorney, Chesapeake, Virginia, for Plaintiff.
James E. Bradberry, Esquire, Newport News, Virginia, for Defendant.
Before the Honorable William L. Forbes, Circuit Court Judge.

ORDER

CAME THIS DAY, the Commonwealth of Virginia by the Assistant Commonwealth's Attorney for the City of Chesapeake, and the defendant, in person and by counsel, on a civil summons alleging violations by the defendant of the Virginia Occupational Safety and Health Standards promulgated pursuant to the provisions of Title 40.1 of the Code of Virginia of 1950, as amended, and the matter was heard ore tenus.

Upon conclusion of the evidence, the Court found that the defendant was in violation of one of the three alleged violations listed in the summons and the citations attached hereto. The violation sustained by the evidence was violation of standard or regulations 1926.652(b) of Subpart P of Title 29 Code of Federal Regulations, which said regulations are to be administered and enforced under Title 40.1, Section 1 of the Code of Virginia of 1950, as amended, by the Virginia Department of Labor and Industry.

Upon conclusion of the evidence, this Court affirms the findings of the Virginia Commissioner of the Department of Labor and Industry and hereby modifies the total recommended penalty of One-hundred sixty ($160.00) dollars for the three (3) alleged violations to a civil penalty of fifty ($50.00) dollars for the one violation sustained by the evidence herein presented and it is hereby so ORDERED.

COMMONWEALTH

V.

ANDREWS AND PARRISH COMPANY

No. C41757

December 3, 1979

GENERAL DISTRICT COURT FOR THE CITY OF RICHMOND

Carol Breit, Assistant Commonwealth's Attorney, Richmond, Virginia, for Plaintiff.
Before the Honorable L.A. Belcher, District Court Judge.

ORDER

This day came the plaintiff, by the Attorney for the Commonwealth, and the defendant, Andrews & Parrish Company, upon the plaintiff's motion for judgement against the defendant, according to Section 40.1-49.2B of the Code of Virginia, 1950, as amended, to which the defendant offered no contest or denial.

Wherefore, it is considered by the court that judgement be entered in favor of the Commonwealth of Virginia against the defendant, Andrews & Parrish Company, in the amount of Four-Hundred eighty dollars ($480.00).

Let the Clerk of this Court mail a certified copy of this order to the Commissioner of Labor and Industry within 10 working days after the entry of this order.

COMMONWEALTH

V.

THE CAFARO COMPANY

No. C79-1287

December 17, 1979

GENERAL DISTRICT COURT FOR THE COUNTY OF SPOTSYLVANIA

Morris R. Reamy, Assistant Commonwealth's Attorney, Spotsylvania, Virginia, for Plaintiff.
Kevin Jones, Esquire, Fredericksburg, Virginia, for Defendant.
Before the Honorable Joseph L. Savage, Jr., District Court Judge.

## FINAL ORDER

This case was heard December 13, 1979, on the citation issued by the Commonwealth of Virginia, Department of Labor and Industry, alleging that the Cafaro Company did violate on or about September 24, 1979, Sections 1926.651(c) and 1926.651(j) of the regulations promulgated under the Federal Occupational Safety and Health Act of 1970, administered and enforced under Title 40.1 of the Code of Virginia, 1950, as amended, the defendant having requested the hearing in order to contest the citation and proposed penalty. The violations alleged arise out of a certain excavating procedure at the northeast corner of the jobsite known as Spotsylvania Mall, Spotsylvania County, Virginia.

Upon consideration of the evidence offered by both parties, the argument of counsel and the applicable law, the Court finds in favor of The Cafaro Company. Therefore, it is ADJUDGED, ORDERED and DECREED under Section 40.1-49.4(E) of the Code of Virginia, 1950, as amended, that the citation issued by the Commonwealth of Virginia, Department of Labor and Industry, and the penalty proposed therein, be and they hereby are vacated.

And this case is stricken from the docket of this Court.

APPEALED, AFFIRMED.

COMMONWEALTH

V.

CENTRAL CONTRACTING CO., INC.

No. 7913

January 30, 1980

CIRCUIT COURT FOR THE COUNTY OF PRINCE GEORGE

Edward M. Eakin, Jr., Assistant Commonwealth's Attorney,
Prince George, Virginia, for Plaintiff.
Thomas O. Bondurant, Jr., Esquire, Richmond, Virginia,
for Defendant.
Before the Honorable L.L. Jones, Circuit Court Judge.

ORDER

This day came Edward M. Eakin, Jr., Assistant Commonwealth's Attorney, for the County of Prince George for the plaintiff and Thomas O. Bondurant, Jr. Attorney for Central Contracting Co., Inc., a Virginia Corporation and state that an agreement has been reached as follows:

1. Central Contracting Co., Inc., a Virginia Corporation, hereinafter referred to as "Defendant", hereby agrees to plead guilty to a nonserious violation for an inspection made on July 20 through August 21 of 1978, at U.S. 301, Carson, Virginia, on proposed I-95, North and South Bound lanes approximately one hundred (100) feet of U.S. 301. Defendant further agrees to pay the sum of One-Hundred Forty Dollars ($140.00)
to the Treasurer of Virginia as a fine in this citation and subsequent
plea to nonserious violation.

2. The record shall reflect that the defendant abated the violation within forty-eight (48) hours of notice to it by the Virginia Occupational Safety and Health Administration.

3. The case has now been dismissed and placed among the ended causes.

COMMONWEALTH

V.

PHILLIP MOSSER CO.

No. C806-517

February 25, 1980

GENERAL DISTRICT COURT FOR THE CITY OF NORFOLK

Susan L. Watt, Assistant Commonwealth's Attorney, Norfolk, Virginia, for Plaintiff.
Before the Honorable F.E. Martin, Jr., District Court Judge.

NATURE OF THE CASE:

POWERS AND DUTIES OF THE DEPARTMENT OF LABOR AND INDUSTRY, Va. Code Ann. Section 40.1-1

1. Section 40.1-1 provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities and for enforcing occupational health activities.

SCAFFOLDING

1. UPRIGHTS

Employee exposure to upright members of scaffolds which are not plumb is a violation of 29 CFR 1926.451(a)(15)

2. TUBULAR WELDED FRAME SCAFFOLDS

Employee exposure to tubular welded frame scaffolds which were not set in a foundation adequate to support the maximum rated load is a violation of 29 CFR 1926.451(d)(4).

ORDER

The Code of Virginia Title 40, Section 40.1-1, provides that the Virginia Department of Labor and Industry shall be responsible for administering and enforcing occupational safety activities for enforcing occupational health violations as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596) in accordance with the State Plan for enforcement of that Act.

This action was initiated by the Commissioner of the Virginia Department of Labor and Industry on a summons returnable to this court on February 22, 1980. There are 3 citations against the defendant alleging serious violations of standards on inspections made on December 7, 1979 at 331 Newtown Road, Norfolk, Virginia 23505, a two-story brick church which was under construction. On the basis of the inspection, it was alleged that the safety and health laws of the Commonwealth were violated wherein these violations

are described in the citations. These citations were contested by the defendant causing the Commissioner to issue the summons.

A hearing was held in this court where the defendant agreed to pay a penalty of $120.00 and the Commonwealth agreed to accept this in full payment of the summons. I announced that I would have to write an opinion and make findings of fact and conclusions of law; that these would generally follow the citations and the defendant who was not represented by counsel agreed.

There was no further argument by either side. A penalty of $120.00 is imposed on citation #2. No penalty was imposed on citation #1 by agreement of the parties. No findings of fact and conclusions of law are made on that citation, which was not treated as serious by the Commissioner.

I find upright members of scaffolds were not plumb. Tubular welded frame scaffold at south wall of building used for stucco operation was tilted back away from building. This was a violation of 1926.451(a)(15). This citation is affirmed.

I further find tubular welded frame scaffolds were not set on a foundation adequate to support the maximum rated load. Two employees working on top of tubular welded frame scaffold (approx. 21' high) on south wall of building, which needed to be set on mud sills as rain had washed the ground from under part of footing. This was as violation of standard 1926.451(d)(4).

COMMONWEALTH

V.

THE CAFARO COMPANY

CIRCUIT COURT FOR THE COUNTY OF SPOTSYLVANIA

Mark S. Gardner, Commonwealth Attorney, Spotsylvania, Virginia, for Plaintiff.
Kevin Jones, Esquire, Fredericksburg, Virginia, for Defendant.
Before the Honorable J.A. Jamison, Circuit Court Judge.

FINAL ORDER

This case was heard April 9, 1980, on the citation issued by the Commonwealth of Virginia, Department of Labor and Industry, alleging that the Cafaro Company did violate on or about September 24, 1979, Sections 1926.651(c) and 1926.651(j) of the regulations promulgated under the Federal Occupational Safety and Health Act of 1970, administered and enforced under Title 40.1 of the Code of Virginia, 1950, as amended, the defendant contests the citation and proposed penalty. The violations alleged arise out of a certain excavating procedure at the northeast corner of the jobsite known as Spotsylvania Mall, Spotsylvania County, Virginia.

1. The Court finds, with respect to the alleged violation of Section 1926.651(c), that The Cafaro Company was conducting an excavation in the area alleged; that the Cafaro Company was conducting the excavation in accordance with the accepted engineering and safety standards; and that employees were not exposed to danger from moving ground as alleged.

2. The Court finds, with respect to the alleged violation of Section 1926.651(j), that the testimony offered by the defendant to the effect that special attention had been given to the area in question was credible; and that the plaintiff failed to rebut this evidence and therefore failed to carry its burden of proof.

Therefore, the Court finds in favor of the Cafaro Company on both alleged violations, and it is ADJUDGED, ORDERED and DECREED UNDER Section 40.1-49.5 of the Code of Virginia, 1950, as amended, that the citation issued by the Commonwealth of Virginia, Department of Labor and Industry, and the penalty proposed therein, be and they hereby are vacated.

And this case is stricken from the docket of this Court.

COMMONWEALTH

V.

WILLIAMS ENTERPRISES, INC.

No. C80-222

April 28, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF SPOTSYLVANIA

Mark S. Gardner, Commonwealth's Attorney, Spotsylvania, Virginia, for Plaintiff.
David R. Clarke, Esquire, Fairfax, Virginia, for Defendant.
Before the Honorable J.L. Savage, Jr., District Court Judge.

ORDER

This case was tried in this court on March 27, 1980, at which time the court affirmed the Commissioner's citation and penalized the defendant, Williams Enterprises, Inc., Three-Hundred Dollars ($300.00) and court costs of $5.00.

The above decision of the court became final on April 26, 1980, to which final order of the court the defendant noted its appeal to the Circuit Court of Spotsylvania County. The appeal is granted and the case will come before the Circuit Court at its next term day, July 21, 1980.

The defendant shall forthwith post an appeal bond of $400.00 as provided by law.

COMMONWEALTH

V.

FLINT CONSTRUCTION COMPANY

No. C79-245

May 8, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF CUMBERLAND

James B. Baber, Assistant Commonwealth's Attorney, Cumberland, Virginia, for Plaintiff.
Robert G. Woodson, Jr., Esquire, Cumberland, Virginia, for Defendant.
Before the Honorable B. Spencer, Jr., District Court Judge.

NATURE OF THE CASE:

SPECIFIC TRENCHING REQUIREMENTS

1. BANKS

Employee exposure to soil banks more than five feet high, not shored, laid back to a stable slope or protected by some other equivalent means is a violation of 29 CFR 1926.652(a).

2. TRENCHES

Employee exposure to trenches with sides of eight feet deep not sloped, shored or provided with equivalent protection is a violation of 29 CFR 1926.652(a).

SPECIFIC EXCAVATION REQUIREMENTS

1. TRENCHES

Employee exposure to overburden stored along the edge of an eight-foot deep trench is a violation of 29 CFR 1926.651(i)(1).

ORDER

This day came the Parties the Commonwealth of Virginia, Department of Labor and Industry and Flint Construction Company and came also the Attorney for the Commonwealth for Cumberland County, Virginia, and Robert G. Woodson, Jr., Attorney for the Defendant and represented to the Court that the matters in controversy have been resolved by agreement, upon the following stipulation of fact, herewith made findings of fact of the Court;

That on September 21, 1979, at a place of employment located off State Route 610 in Cumberland County, Virginia, on a jobsite constructing an addition to existing Colonial Pipeline Pump Station, Flint Construction Company;

1. Had soil banks which were more than five feet high and where employees may be exposed to moving ground or cave-ins, were not shored, laid back to a stable slope or protected by some other equivalent means;

(a) Sides of eight-foot deep trench, eight-foot four inches wide housing main take-off in south section of site were not sloped, shored or provided with equivalent protection.

(b) Sides of eight-foot deep trench approximately ten feet wide located just east of parking lot were not sloped, shored or provided with equivalent protection in violation of Standard 1926.652(a).

2. That on the same date and at the same site overburden was stored along the east edge of eight-foot deep trench with vertical sides located just east of parking lot in violation of Standard 1926.651(i)(1).

3. All other citations in controversy are withdrawn by the plaintiff and dismissed with prejudice.

WHEREUPON, the Court concludes that the Defendant Flint Construction Company did on September 21, 1979, engage in a serious violation as defined in Virginia Code Section 40.1-49.3(5) of Standard 1926.652(a) and 651(i)(1), and the Court herewith assesses a penalty of Four-Hundred Dollars ($400.00) for such serious violation.

COMMONWEALTH

V.

MILLER AND LONG COMPANY, INC.

No. 79-19105

and

No. 80-559

May 19, 1980

GENERAL DISTRICT COURT FOR THE COUNTY OF FAIRFAX

Kelly Dennis, Assistant Commonwealth's Attorney, Fairfax, Virginia, for Plaintiff
Donald Savelson, Esquire, Washington, D.C., for Defendant.
Before the Honorable G. William Hammer, District Court Judge.

FINDING OF FACT AND CONCLUSIONS OF LAW

THIS CAUSE came on to be heard on the 15th day of May, 1980, upon the civil warrant, the evidence adduced in open court, and was argued by counsel.

AND IT APPEARING TO THE COURT that both of the above cases represented the same alleged violation; Case Number 79-1905 was filed on November 9, 1979, and during the time it was pending the Commonwealth filed Case Number 80-559; both of them representing the same cause of action; the Commonwealth, by her attorney, moved to terminate one of the cases, and Case Number 79-19105 was dismissed without prejudice.

The Commonwealth's evidence indicated that on the 19th day of July, 1979, the safety representative inspecting the site observed an employee disassembling a crane, who was at the top of the boom and was not wearing a safety belt. His position was approximately ninety (90) feet in the air. The safety inspector observed this from the street, and took a photograph, which was introduced into evidence. The violation further indicated that there were no safety nets. Thereafter, when the the inspector spoke with the foreman on the job and called the employee down, the employee retrieved a belt from the shop and returned to the position on the top of the crane.

Subsequently, a conference was held and a penalty was proposed of $480.00, and the case was set for trial. Credit was given at the hearing because of good faith, resulting from quick cooperation and immediate compliance.

The defendant's evidence introduced that the employee involved was experienced in this type of work, and that he had worked as a crane erector and disassembler for eight (8) years. He had a safety belt with him which was on a catch platform, approximately eight (8) feet below where he was working on the crane. These catch platforms are staggered so that there is

one below the hole of the platform above. These are not visible in the photograph taken by the safety inspector.

The defendant's evidence further indicated that the employee was working on the inner tower at the time of the alleged violation. He was inside of the tower doing the disassembling, and although he was above the end of the tower, only his shoulders and his arms and head projected over.

The Court makes the following findings of fact: that the defendant took action to cooperate with the inspector when informed of the alleged violation; that the defendant has an on-going safety program, including safety lectures, with annual re-execution of safety rules by each employee; that the crane tower had catch platforms at each section which were 11 feet, 6 inches in length; that catch platforms are alternated from side to side so that the opening for the ladder is opposite the opening above or below; that the disassembly of the crane that the employee was engaged in did not require him to be outside the tower; that nets would not be required because distance would not exceed twenty-five (25) feet, even if the employee fell through the stair hold on the platform below; that a safety belt was not required as the employee was not in a position of peril; and that the Commonwealth has failed to carry its burden of proof. It is, by the Court, ADJUDGED, ORDERED and DECREED that the Commonwealth's citation be, and the same hereby is, vacated.

AND THIS CAUSE IS DISMISSED.

COMMONWEALTH

V.

DANIEL CONSTRUCTION COMPANY

No. A-1155

June 3, 1980

CIRCUIT COURT FOR THE COUNTY OF HENRICO

John R. Alderman, Assistant Commonwealth's Attorney, Richmond, Virginia, for Plaintiff.
Paul G. Turner, Esquire, Richmond, Virginia, for Defendant.
Before the Honorable E. W. Hening, Jr., Circuit Court Judge.

ORDER

This day came the Plaintiff and the Defendant, by counsel, and it being represented to the Court that the Defendant desires to withdraw its appeal of this matter from the General District Court, thereby reinstating the judgement entered below on May 7, 1979, and that the Plaintiff is agreeable to such withdrawal of appeal and reinstatement of judgement, on the joint motion of Plaintiff and Defendant it is ORDERED that this appeal be, and hereby is, dismissed and that the General District Court's judgement of May 7, 1979, be, and hereby is reinstated. It is further ORDERED that Defendant's $100 cash bond shall be refunded to it.

COMMONWEALTH

V.

BABCOCK & WILCOX CONSTRUCTION CO.

No. C-80-921

June 10, 1980

GENERAL DISTRICT COURT FOR THE CITY OF HOPEWELL

M.D. Aldridge, Jr., Commonwealth's Attorney, Hopewell, Virginia, for Plaintiff.
Austin Graff, Assistant Attorney General, Richmond, Virginia, for Plaintiff.
Charles E. Wilson, Esquire, New York, New York, for Defendant.
Before the Honorable J.A. Luke, Circuit Court Judge.

NATURE OF THE CASE:

GENERAL DUTY CLAUSE: Va. Code Ann. Section 40.1-51.1(a)

1. SAFE EMPLOYMENT

It is the duty of every employer to furnish his employees safe employment and a place of employment free from recognized hazards causing or likely to cause death or serious physical harm.

ORDER

This day came the Commonwealth of Virginia, Department of Labor and Industry by counsel, Assistant Attorney General Austin Graff and Commonwealth's Attorney for the City of Hopewell, M.D. Aldridge, Jr., and the Respondent Employer Babcock & Wilcox Construction Co. by its counsel, Charles E. Wilson, and presented unto this Court evidence heard ore tenus relative to the citation served upon said Employer charging "Code of Virginia 40.1-51(a); Employment and a place of employment which were free from recognized hazards causing or likely to cause death or serious physical harm to employees were not provided, in that: One-fourth mile south of Main Plant (B & O Gondola Car #368075) Employees were permitted to hook-up and unload panels that had all tie-downs cut loose. Panels weighing 13,000 lbs. plus and measuring 46' X 12' X 1' were left free standing, tilted and fell in a domino effect causing injuries of two employees".

Whereupon, having carefully considered the applicable sections of the Code of Virginia and the testimony of the various witnesses who were called by the Commonwealth, it is the opinion of the Court that the evidence presented is not sufficient to prove that the Employer violated its duty to furnish employees a safe place of employment free from recognized hazards causing or likely to cause death or serious physical harm to its employees required by the provisions of Section 40.1-51.1(a), Code of Virginia 1950, as amended, and the Court so finds.

For the reasons stated the Court concludes that the citation served upon the Employer by the Commonwealth should be vacated and it is so ORDERED.

SUBJECT INDEX

SUBJECT INDEX

SUBJECT INDEX

## STANDARDS INDEX

## GENERAL INDUSTRY STANDARDS

## CONSTRUCTION STANDARDS INDEX