FINAL ORDERS OF THE VIRGINIA GENERAL DISTRICT COURTS AND CIRCUIT COURTS IN CONTESTED CASES ARISING UNDER THE VIRGINIA OCCUPATIONAL SAFETY AND HEALTH ACT

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Carol A. Amato, Commissioner

PREFACE

This publication contains the orders of the Virginia General District and Circuit Courts in contested cases from July 1, 1985, through June 30, 1986, arising under Title 40.1 of the Code of Virginia, 1950, as amended. The Department of Labor and Industry is responsible for publishing the final orders by virtue of Section 40.1-49.7 which states: "The Commissioner of Labor shall be responsible for the printing, maintenance, publication and distribution of all final orders of the general district or circuit courts. Every Commonwealth's Attorney's Office shall receive at least one copy of each such order."

The Table of Contents provides an alphabetical listing of the reported cases for the fiscal year. The full texts of decisions are categorized as Health, Industrial Safety, Construction Safety or Retaliation and are arranged and indexed in chronological order within each of these categories.

Reference is made to Title 29 of the Code of Federal Regulations, Parts 1910 and 1926. These regulations were adopted by the Virginia Safety and Health Codes Commission (now Board) pursuant to Section 40.1-22 of the Code of Virginia, as amended. The Standards Index provides a reference to cases which involved these regulations. The Subject Index provides an alphabetical listing of the matters involved.

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PART I

OCCUPATIONAL HEALTH

COMMONWEALTH

v.

C & R BATTERY COMPANY, INC.

Docket No. __________

October 2, 1985

GENERAL DISTRICT COURT FOR CHESTERFIELD COUNTY

David Hauck, Assistant Commonwealth's Attorney, for the Plaintiff.

Before the Honorable William R. Shelton, Judge.

Disposition: Final, by Default Judgment.

Nature of the Case: A citation was issued for failure to abate certain violations consented to in a court order dated June 11, 1984. The defendant contested the failure-to-abate citation and all related penalties.

ORDER

This day came the plaintiff, Commonwealth of Virginia, at the relation of the Department of Labor and Industry, by counsel, pursuant to a summons, to be heard upon the defendant's contest of Virginia Occupational Safety and Health citations issued by plaintiff.

FINDINGS OF FACT

1. Subsequent to an inspection by the plaintiff of the defendant's workplace in this jurisdiction, the plaintiff issued timely citations (VOSH Nos. 15235781 and 17380692) to the defendant, alleging violations of the Virginia occupational safety and health laws, standards and regulations; requiring abatement of those violations, and proposing civil penalties for the violations.

2. The defendant filed a timely notice of contest.

3. No employee or representative of employees of the defendant has appeared to seek party status in this matter.

4. The plaintiff applied on April 29, 1985, to the Circuit Court of Chesterfield County and was granted an order enjoining the defendant from further operation of its battery breaking plant on the grounds that such operation constituted a hazardous health and safety condition.

5. Defendant's workplace is shut down and will not reopen.

6. Defendant failed to appear before this court on the return date to answer to the summons.

7. The Commonwealth, taking into account the need for judicial economy, has agreed to the dismissal of the "Failure to Abate" penalty of $44,000.00 (citation no. 15235781) and the "#2 Willful" penalty of $10,000.00 (citation no. 15235781) in lieu of having a further hearing on the punitive nature of those penalties and because of the following considerations: (a) the hazardous workplace in question has been shut down and will not reopen, and (b) the Commonwealth deems the penalties uncollectable in light of the defendant's financial condition.

CONCLUSIONS OF LAW

1. The Court finds the defendant in default of judgment and finds for the plaintiff and hereby ADJUDGES, ORDERS and DECREES that the citations be modified as follows:

Citation Number	Type	Penalty Recommended	Penalty Imposed
15235781	Failure to Abate	$44,000.00	Dismissed Agreed
15235781	#1 Serious	810.00	$810.00
15235781	#2 Willful	10,000.00	Dismissed Agreed
15235781	#3 Repeated	1,620.00	1,620.00
17380692	#1 Serious	990.00	990.00
17380692	#2 Repeated	2,880.00	2,880.00
17380692	#3 Other	0.00	0.00

The violations in the "Failure to Abate" and "#2 Willful" citations (nos. 15235781) are affirmed, but the penalties are dismissed agreed.

Judgment is hereby granted to plaintiff against the defendant for $6,300.00 as civil penalties.

PART II

INDUSTRIAL SAFETY

COMMONWEALTH

v.

CRYSTAL CLEAR, INC.

Docket No. GV85-14213

October 10, 1985

GENERAL DISTRICT COURT FOR THE CITY OF ROANOKE

Eugene Cheek, Assistant Commonwealth's Attorney, for the Plaintiff.

Christopher F. Miller for the Defendant.

Before the Honorable David A. Melesco, Judge.

Disposition: Final, by trial.

Nature of the Case: A citation was issued for a serious violation of VOSH Standard 1910.28(j)(4) as a result of an unprogrammed inspection conducted as part of an accident investigation. The employer contested the citation and the related penalty.

ORDER

This matter came to be heard on October 10, 1985. Present were Charles H. Ferguson of the Virginia Department of Labor and Industry, Eugene Cheek of the Commonwealth's Attorney's Office for the City of Roanoke, Christopher F. Miller, President and Registered Agent of Crystal Clear, Inc., and defense counsel Harry F. Bosen. The court hearing the matter, pursuant to Section 40.1-49.4(E) of the Code of Virginia, does find that the defendant was in violation of the Virginia Occupational Safety and Health code as charged in the original citation. It does further find that the violation was inadvertent, not intentional, and that the accident of July 9, 1985, was caused in great part by the employee's own negligence and that the lifeline attached to a safety belt was not present at the time of the accident.

The court does therefore find as a matter of law that the citation is proper but does modify the assessed penalty to the sum of $100.00. The request of the defense counsel to suspend imposition of the penalty, and upon objection of such request by the plaintiff's counsel, is denied and will not be granted.

COMMONWEALTH

v.

WOODWORKING SPECIALIST CO., INC.

Docket No. ________

March 21, 1986

GENERAL DISTRICT COURT FOR HENRICO COUNTY

Gary K. Aronhalt, Assistant Commonwealth's Attorney, for the Plaintiff.

Before the Honorable D. R. Howren, Judge.

Disposition: Final, by Agreement.

Nature of the Case: Two citations for serious violations and one citation for other-than-serious violations were issued as a result of a planned inspection. The employer contested all three citations and related penalties.

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 Henrico and the defendant, Woodworking Specialist Co., 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
1910.213(b)(3)	Serious	$ 400.00	$ 200.00
1910.213(h)(3)	Serious	320.00	160.00
1910.213(h)(4)	Serious	320.00	160.00
1910.213(p)(4)	Serious	320.00	160.00
1910.22(a)(1)	Serious	400.00	200.00
1910.212(a)(5)	Serious	240.00	120.00
1910.213(h)(1)	Serious	400.00	200.00
1910.213(i)(1)	Serious	400.00	200.00
1910.213(i)(1)	Serious	400.00	200.00
1910.213(i)(3)	Serious	400.00	200.00
1910.219(c)(4)(i)	Serious	320.00	-0-
1910.219(d)(1)	Serious	400.00	200.00
1910.303(g)(1)(ii)	Serious	-0-	-0-
1910.305(b)(2)	Serious	-0-	-0-
		$3,920.00	$2,000.00

4. Defendant agrees that the Department of Labor and Industry can conduct an inspection of its premises without an inspection warrant upon reasonable advance notice to the defendant. [NOTE: Section 40.1-51.3:1 of the Code of Virginia strictly prohibits the giving of advance notice of any safety or health inspection to be conducted under the provisions of Title 40.1 without authority of the Commissioner of the Virginia Department of Labor and Industry or his representative.]

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 $2,000.00.

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 $2,000.00 to the Treasury of the Commonwealth, as provided for by statute.

COMMONWEALTH

v.

INTERNATIONAL CIRCUIT TECHNOLOGY

Docket No. V85-8476

April 16, 1986

GENERAL DISTRICT COURT FOR THE CITY OF LYNCHBURG

Leigh Drewery, Assistant Commonwealth's Attorney, for the Plaintiff

John Alford, for the Defendant

Before the Honorable J. C. Crumbly, Judge

Disposition: Final, by trial

Nature of the Case: A citation was issued for violation of the VOSH general duty clause, Virginia Code 40.1-51.1(a). The employer contested the citation.

FINDINGS OF FACT

(1) In June, 1985, Mr. Tom Beasley, defendant's employee, was severly injured in the course of his employment when trapped under the "head" of a Svecia Screen Machine located at defendant's place of business in the City of Lynchburg.

(2) On July 30, 1985, plaintiff issued a "Citation and Notice of Penalty", under Va. Code Sec. 40.1-49.4(A)(1), finding reasonable cause to believe that defendant violated Va. Code Sec. 40.1-51.1(A) by failing to furnish a place of employment free from recognized hazards likely to cause death or serious physical injury to employees, and assessing a civil penalty against defendant.

(3) Defendant had no knowledge or notice of any previous similar malfunction of the machine or danger of injury to its employees therefrom.

(4) By its design, the "head" of the machine by which Mr. Beasley was injured should not lower in the manner which it did unless someone continuously pressed a spring-loaded switch.

(5) The evidence did not disclose whether the "head" lowered because the machine malfunctioned or some unknown outside agency intervened.

(6) The injury would not have occurred had a positive means of making the machine inoperative been in use.

(7) Relevant safety standards, as adopted by the American National Standards Institute, require such a positive means of making the machine inoperative during adjustment or maintenance.

(8) Defendant reasonably relied upon the machine's manufacturer's assurances that the machine's design precluded any substantial probability of serious physical harm resulting from customary use of the machine by employees.

(9) Defendant did not, and could not by the use of reasonable diligence, know that any substantial probability of serious physical harm could result during normal operation of the machine.

CONCLUSIONS OF LAW

(1) I find that defendant did not commit a serious violation, as defined by Va. Code Sec. 40.1-49.3(5), of its duty, under Va. Code Sec. 40.1-51.1(a), to provide its employees safe employment and a place of employment free from recognized hazards likely to cause serious physical harm to them.

(2) I vacate plaintiff's citation against defendant.

PART III

CONSTRUCTION SAFETY

COMMONWEALTH

v.

THE WHITING-TURNER CONTRACTING COMPANY

Docket No. V85-04858

July 5, 1985

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Assistant Commonwealth's Attorney, for the Plaintiff

L. E. Thorp, for the Defendant

Before the Honorable George F. Tidy, Judge

Disposition: Final, by Trial

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.500(d)(2) and 1926.402(a)(8). The employer contested both citations.

ORDER

After hearing arguments from both sides the court dismissed the case without findings of fact or conclusions of law.

NOTE

The Commonwealth filed a timely notice of appeal on July 12, 1985.

COMMONWEALTH

v.

J. T. CASTLE CONSTRUCTION

Docket No. V85-6566

August 26, 1985

GENERAL DISTRICT COURT FOR FAIRFAX COUNTY

Raymond Morrough, Assistant Commonwealth's Attorney, for the Plaintiff.

Frank E. Holland for the Defendant.

Before the Honorable Michael P. McWeeney, Judge.

Disposition: Final, by Agreement.

Nature of the Case: A citation was issued for a serious violation of the VOSH General Duty Clause (Section 40.1-51.1 (a) of the Code of Virginia) as a result of a referral inspection. The employer contested the citation and the penalty.

ORDER

This day came plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, by counsel, and, in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The defendant is before this court pursuant to Section 40.1-49.4.E. contesting a citation VOSH No. M3044-042-84 issued to it by the plaintiff. A copy of the citation, the summons in this matter, and the draft of this order were each posted at the defendant's workplace for three working days or longer.

No employee or employee representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed to the schedule of abatement and penalties set forth in the citation.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the citation. Each violation cited is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant for $100.00 as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of violation for three working days or until abatement of the violation, whichever period is longer.

COMMONWEALTH

v.

POTOMAC CONCRETE CONSTRUCTION

DOCKET No. V85-10453

October 19, 1985

GENERAL DISTRICT COURT OF ARLINGTON COUNTY

Barbara L. Walker, Assistant Commonwealth's Attorney, for the Plaintiff.

Lester R. Miller, for the Defendant.

Before the Honorable Eleanor S. Dobson, Judge.

Disposition: Final, by agreement.

Nature of the Case: A citation was issued for the serious violations of VOSH Standards 1926.500(b)(7), 1926.500 (c)(1), 1926.500(d)(1), and 1926.500 (e)(1), discovered during a planned inspection of a construction site. The employer contested the citation and the related penalty.

AGREED ORDER

THIS DAY came the Commonwealth of Virginia, by its Attorney, and the Defendant, and, in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4.E. of the Code of Virginia, contesting a citation, VOSH No. 3348299 issued by the plaintiff. A copy of the citation, the summons in this matter, and the draft of this order were each posted at the Defendant's workplace for three working days of longer.

No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and Defendant have agreed that the Defendant has abided by the schedule of abatement and further agreed to reduce the proposed penalty of $420.00 to $105.00.

By entering into this agreement, the Defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purpose of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that each such violation cited is hereby affirmed. The violation having been abated, judgment is hereby granted for the plaintiff against the Defendant for $105.00 as civil penalties for these violations.

Let the Clerk forthwith transmit certified copies of this order to the Defendant and to the Commissioner of Labor and Industry. The Defendant shall post a copy of the Order at the site of violation for three (3) working days.

COMMONWEALTH

v.

GLASS SYSTEMS, INC.

Docket No. V85-10605

October 29, 1985

GENERAL DISTRICT COURT FOR ARLINGTON COUNTY

Barbara L. Walker, Assistant Commonwealth's Attorney, for the Plaintiff.

Ronald C. Green for the Defendant.

Before the Honorable Eleanor S. Dobson, Judge.

Disposition: Final, by Agreement.

Nature of the Case: A citation was issued for violation of VOSH Standard 1926.500(d)(1) following a programmed inspection of the worksite. The employee contested the citation and the related penalty.

AGREED ORDER

THIS DAY came the Commonwealth of Virginia, by its Attorney, and the Defendant, and, in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed;

The Defendant is before this Court pursuant to Section 40.1-49.4.E. of the Code of Virginia, contesting a citation, VOSH No. 10605, issued by the Plaintiff. A copy of the citation, the summons in this matter, and the draft of this order were each posted at the Defendant's workplace for three (3) working days or longer.

No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and Defendant have agreed that the Defendant has abided by the schedule of abatement and further agreed to reduce the proposed penalty of $640.00 to $160.00.

By entering into this agreement, the Defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purpose of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED, and DECREED that each such violation cited is hereby granted for the plaintiff against the Defendant for $160.00 as civil penalties for these violations.

Let the Clerk forthwith transmit certified copies of this order to the Defendant and to the Commissioner of Labor and Industry. The Defendant shall post a copy of the Order at the site of violation for three (3) working days.

COMMONWEALTH

v.

BREAKELL, INC.

Docket No. V85-0735

November 12, 1985

CIRCUIT COURT FOR THE CITY OF SALEM

M. Frederick King, Commonwealth's Attorney, for the Plaintiff.

R. Beasley Caldwell for the Defendant.

Before the Honorable K. B. Trabue, Judge.

Disposition: Final, by trial.

Nature of the Case: A citation was issued for violation of VOSH Standard 1926.451 (x)(5)(v). The employer contested the citation and the related penalty and the case was heard in General District Court for the City of Salem. The District Court dismissed the case without findings of fact and the Commonwealth appealed.

ORDER

This day came Plaintiff, by counsel, the Attorney for the Commonwealth for the City of Salem, and Defendant, pursuant to Plaintiff's appeal of the General District Court for the City of Salem's Order dismissing a Virginia occupational safety and health citation numbered 3353356, issued by Plaintiff. Upon consideration of the evidence and the arguments of the parties:

FINDINGS OF FACT

1. Subsequent to an inspection by Plaintiff of Defendant's work place located in the City of Salem, Plaintiff issued a timely citation, Virginia Occupational Safety and Health Number 3353356, to Defendant alleging violations of the Virginia Occupational Safety and Health laws, standards or regulations requiring abatement of those violations, and proposing civil penalties for the violations.

2. Defendant filed a timely notice to contest.

3. The matter was heard before the General District Court in the City of Salem on the 17th day of September, 1985, at the conclusion of which the Court dismissed the citation, to which dismissal Plaintiff, by counsel, noted a timely appeal.

4. That in an inspection conducted on June 4, 1985, Plaintiff's inspector noted a violation of standard, regulation or section of the law violated numbered 1926.451(x)(5)(v); metal bracket form scaffolds were not equipped with wood guard rails, intermediate rails, toe boards and scaffold planks meeting the minimum dimensions shown in Table L-18: (a) Employees working on concrete form work-platform approximately 12 feet above ground level without fall protection provided. No guard rails provided. Located on south end of west wall at construction site, Texas Street, Salem, Virginia 24153.

5. After said citation was noted, Defendant corrected the violation in an expeditious manner.

CONCLUSIONS OF LAW

1. The Court finds for the Plaintiff and Orders that the citation be affirmed but modified in that the penalty proposed by the Plaintiff's administrative guidelines be reduced to the sum of $50.00, and the Defendant placed on probation for a period of six months from the date of entry of this Order. The citation is affirmed in that it is a serious violation within the regulations and standards of the Virginia Occupational Safety and Health standards. The reason for the reduction of the fine and period of probation is that the Defendant's past history of compliance with the Virginia Occupational Safety and Health standards as well as the Defendant's showing of his historical and ongoing cooperativeness with the inspectors of the Virginia Department of Labor and Industry enforcing the Virginia Occupational Safety and Health Standards Act, the penalty imposed herein is a civil penalty for violation of the Act. It is further Ordered that the Clerk of this Court shall forthwith mail certified copies of this Order to each of the parties. The Defendant having completed construction at the site of the citation's issuance, the Defendant shall not be Ordered to post a copy of this Order at its job site.

COMMONWEALTH

v.

THOMAS ROOFING AND GUTTERING COMPANY, INC.

Docket No. V85-16116

November 14, 1985

GENERAL DISTRICT COURT FOR THE CITY OF HAMPTON

Reginald M. Harding, Assistant Commonwealth's Attorney, for the Plaintiff.

Robert Dely for the Defendant.

Before the Honorable Wilford Taylor, Jr., Judge.

Disposition: Final, by trial.

Nature of the Case: A citation was issued for a serious violation of VOSH Standard 1926.450(a)(11) as a result of an unprogrammed inspection as a part of a fatal accident investigation. The employer contested the citation and the $480.00 penalty.

ORDER

THIS DAY came the plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, by counsel, pursuant to a summons, to be heard upon the defendant's contest of a Virginia Occupational Safety and Health citation issued by the plaintiff:

FINDINGS OF FACT

1. Subsequent to an inspection by the plaintiff of the defendant's workplace in this jurisdiction, the plaintiff issued a timely citation, VOSH No. W2065-024-85, to the defendant, alleging violations of the Virginia Occupational Safety and Health Law, standards or regulations, requiring abatement of those violations, and proposing civil penalties for the violations.

2. The defendant filed a timely notice to contest.

3. Copies of the citation and the summons in this matter were posted at the defendant's workplace for three or more working days. No employee or representative of employees of the defendant has appeared to seek party status in this matter.

4. Specifically, the defendant was cited for violation of Section 1926.450(a)(11) of the Virginia Occupational Safety and Health Standards adopted by the Commonwealth of Virginia pursuant to Section 40.1-22(5) and 40.1-6(2) of the Virginia State Code.

5. On May 17, 1985, Thomas Roofing was a subcontractor doing roofing work at 1000 Hampton Club Drive in Hampton, Virginia, and had been doing such work for approximately three or four days.

6. While doing said work, Thomas Roofing used a sectional aluminum ladder/hoist, thirty-two feet long, in close proximity to a live VEPCO power distribution line of 19,920 volts, twenty-five and one-half feet above the ground. The ladder was sixteen and one-half feet from and parallel to the edge of the building.

7. In the process of leaning the ladder back to take it down, three employees apparently lost control, allowing the top to touch the live line.

8. Two of the employees were burned so badly that they died four to five days later. The third was severely burned.

9. The violation was cited as a "serious" violation because of the deaths and serious physical harm that resulted and would result from such a violation.

CONCLUSIONS OF LAW

1. The court, after hearing evidence and argument on behalf of both the plaintiff and defendant, finds for the plaintiff and orders that the citation be affirmed and that judgment is hereby granted to the plaintiff against the defendant for Four Hundred and Eighty Dollars ($480.00) as civil penalty for violation of Section 1926.450(a)(11) of the Virginia Occupational Safety and Health Standards, i.e., using a portable metal ladder where it might contact electrical conductors.

2. The clerk shall forthwith mail certified copies of this order to each of the parties.

3. The defendant shall forthwith post a copy of this order at the site of each alleged violations; the copy shall remain posted for three working days or until the violation is abated, whichever is longer.

COMMONWEALTH

v.

REGINA CONSTRUCTION CORPORATION

Docket No. V85-8064

November 20, 1985

GENERAL DISTRICT COURT FOR ARLINGTON COUNTY

Barbara L. Walker, Assistant Commonwealth's Attorney, for the Plaintiff.

Louis Fireison, Esquire, for the Defendant.

Before the Honorable Eleanor S. Dobson, Judge.

Disposition: Final, by Agreement.

Nature of the Case: A citation was issued for a serious violation of VOSH Standard 1926.652(b) discovered during a referral inspection. The employer contested the citation and the related penalty.

AGREED ORDER

THIS DAY came the Commonwealth of Virginia, by its Attorney, and the Defendant, and, in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

The Defendant is before this Court pursuant to Section 40.1-49.4.E. of the Code of Virginia, contesting a citation, VOSH No. 3319548, issued by the Plaintiff. A copy of the citation, the summons in this matter, and the draft of this order were each posted at the Defendant's workplace for three working days or longer.

No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and Defendant have agreed that the Defendant has abided by the schedule of abatement and further agreed to amend the Citation from "Serious" to "Other" and let the proposed penalties of $400.00 stand.

By entering into this agreement, the Defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purpose of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that each such violation cited is hereby affirmed. The violation having been abated, judgment is hereby granted for the Plaintiff against the Defendant for $400.00 paid simultaneously with the signing of this agreement, as civil penalties for these violations.

Let the Clerk forthwith transmit certified copies of this order to the Defendant and to the Commissioner of Labor and Industry. The Defendant shall post a copy of the Order at the site of violation for three (3) working days.

COMMONWEALTH

v.

DANIEL CONSTRUCTION COMPANY
and its successors

February 4, 1986

SURRY COUNTY GENERAL DISTRICT COURT

Before the Honorable Kenneth W. Nye, Substitute Judge

Disposition: Case dismissed February 4, 1986

ORDER

The facts involved in this matter are undisputed. They were relayed to the court by H. L. McDaniel, Jr., a Construction Safety and Health Compliance Officer for the State of Virginia. He was sent to the VEPCO Surry Nuclear Power Plant in the County of Surry to investigate an accident that happened at approximately 10:25 A.M., on August 9, 1984. His testimony revealed that the Defendant, Daniel Construction Company, was employed by VEPCO to install pipe hangers for the installation of a four (4) inch pipe to be used in a Halon fire extinguisher system. The plans called for the pipe to cross an eighteen (18) inch concrete wall in the turbine room. The duct bank was encased in concrete.

The specifications for the job called for holes to be drilled into the concrete wall five (5) inches deep with three-eighths (3/8) of an inch allowance for tolerance. The deceased in this matter, Bobby J. Ancell, was working on the scaffolding at eye-level height, drilling holes in the wall for the purpose of installing pipe hangers. There was no indication or markings on the concrete wall to show that an electrical duct bank was present. The outside surface of the wall appeared to be the same throughout the turbine room. Mr. Ancell drilled into the concrete wall at the specified location and drilled into the duct bank. The depth of the hole drilled by Mr. Ancell was nine (9) inches which exceeded the specifications and requirements furnished to his employer by VEPCO by approximately four (4) inches. When his drill bit struck the high voltage line, electrical shock followed which caused his death. Subsequently, a Vepco employee responded to the incident. During the course of assisting the injured man Gary Gilmer unplugged the drill, grasped it in his hand and attempted to pull it from the wall. The drill was still energized by its contact with the high voltage line, causing Mr. Gilmer's death.

Charges

The charges were brought under the general duty paragraph of Virginia Code which parallels the Federal regulations and is an exact copy thereof:

> 40.1-51.1(a): The employer did not furnish to each of his employee(s) safe employment and a place of employment which is free from recognized hazards, that are likely to cause death or serious harm to his employees.

(a) Employees were allowed to work in proximity of a concealed electric power duct bank with a hand held power tool and were not sufficiently warned of the location of such lines and the hazards involved.

The court observes that charges made against the Defendant in this matter are under the general duty section of Federal Code and that the same is covered by a paralleling Virginia statute. The Virginia Occupational Safety Health Standards, which are charged herein, are adopted by the Safety and Health Codes Commission. It involves Virginia Code Section 40.1-22(5). The Commissioner of Labor and Industry enforces these standards which are in issue in this matter.

Opinion

The Commonwealth has the burden to prove, by a preponderance of the evidence, the content applicability of the standard, regulation or statutes in question; violation of employer; acts of a constructive knowledge of the violative conditions; exposure of employees of the cited employer to the cited condition.

It should be noted from the above facts that the danger in question is cited to be a power duct bank located in the concrete wall encased by nine (9) inches of solid concrete. The specifications given to the contractor/employer of the deceased state that holes for the pipe hanger should have been drilled at five (5) inches with three-eights (3/8) of an inch tolerance. The drill in question had penetrated through nine (9) inches of solid concrete before reaching a power line carrying a large voltage of electricity. The court must also note, from practical experience, that the drilling into solid concrete is not easy nor quick. The drilling of an additional four (4) inches into a concrete wall in excess of the specification is difficult for the court to perceive. This distance is almost twice the depth required and draws out or lengthens a laborious task.

The general duty clause is applicable where there is no specific standards or regulations to a hazard in issue. This general duty clause is very broad in nature and does not provide a specific guideline to it's requirements. Apparently, the Commonwealth alleges that the violation is based upon the Defendant's failure to sufficiently warn it's employee of the line's location and the hazards involved, not merely the fact that the employee's were allowed to work in the proximity of a concealed electric power duct bank. The court must also note that had the employer been a laborer engaged in general clean up operation, a pipe fitter or a welder working in the room, that no accident would have occurred.

The court must note that there was no specific charge against the Defendant for violating another section of the Code. That the only violation that the Defendant was charged with in this matter, is the violation of general duty to provide a safe place to work.

The court concludes that, although there may be a violation of a different section of the Virginia Code, the Defendant did not violate the general duty clause to provide a safe place to work. The room was a safe place to work. The only danger was latent. The duct bank was encased in at least eight (8) inches of solid concrete. The specification requiring drilling to a depth of five (5) inches was violated by drilling to a depth of nine (9) inches.

COMMONWEALTH

v.

THE WHITING-TURNER CONTRACTING COMPANY

Case No. A-2063

March 10, 1986

CIRCUIT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Assistant Commonwealth's Attorney, for the Plaintiff

Ronald W. Eimer, Esquire, for the Defendant

Before the Honorable Joseph Spinella, Judge

Disposition: Final, Dismissed by Agreement

Nature of the Case: This case was brought to Circuit Court on appeal by the Commonwealth of an adverse judgement in General District Court on July 5, 1985. The District Court case came about when citations were issued for violations of VOSH Standards 1926.402(a)(8) and 1926.500(d)(2) and the employer contested.

SUMMARY OF AGREEMENT

1. Whiting-Turner will pay to the Commonwealth a negotiated sum of $300.00 in settlement of the claims contained in the citation of the Commonwealth issued against Whiting-Turner.

2. The Commonwealth releases Whiting-Turner and its employees, successors, assigns, insurors and other representatives from all known and unknown claims, demands, rights, damages, actions, causes of action and liabilities of any kind arising out of the issuance of the VOSH citation dated March 19, 1985 alleging a violation of §1926.500(d)(2) of the Virginia Occupational Safety and Health Standards.

3. The Commonwealth agrees to dismiss with prejudice its case number A-2063 against Whiting-Turner in the Circuit Court of the County of Henrico.

4. This Settlement and Release Agreement is not an admission of liability on the part of any party but rather represents a negotiated settlement of a disputed claim in accordance with the provisions of §40.1-49.4 paragraph d of the Code of Virginia, 1950, as amended. It shall be binding upon the heirs, executors, administrators and assigns, as the case may be.

ORDER

CAME THIS DAY the parties, by counsel, and upon the motion of the plaintiffs, Commonwealth of Virginia, ex rel. Commissioner of Labor and Industry, by counsel, and with the consent of the defendant, The Whiting-Turner Contracting Company, by counsel, represented to the court that all matters in dispute between them have been compromised and settled.

IN CONSIDERATION WHEREOF, it is ORDERED that the claim by the plaintiffs, Commonwealth of Virginia, ex rel. Commissioner of Labor and Industry, against The Whiting-Turner Contracting Company be and hereby is DISMISSED AGREED.

COMMONWEALTH

v.

BRANDY EXCAVATING, INC.

April 22, 1986

GENERAL DISTRICT COURT FOR THE COUNTY OF CHESTERFIELD

ORDER

THIS DAY came the plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, and, in order to provide for the safety, health, and welfare of Defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The defendant is before this court pursuant to §40.1-49.4.E. contesting a citation VOSH No. D1615-057-85 and Inspection No. 3327871 issued to it by the plaintiff. A copy of the citation, the defendant's letter of contest, and the draft of this order were each posted at the defendant's workplace for three working days or longer.

No employee or employee representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed to the schedule of abatement and penalties set forth in the amended citation, attached hereto as Exhibit A (1926.651(i); 1926.652(b)&(h); 1926.650(e).

By entering into this agreement, the defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to §40.1-49.4, it is

ADJUDGED, ORDERED and DECREED that the defendant abate the violations cited in this matter within the time shown in the amended citation attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgement is hereby granted for the plaintiff against the defendant for $1500.00 as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of violation for three working days or until abatement of the violation, whichever period is longer.

Enter this 22 day of April, 1986.

COMMONWEALTH

v.

HERNDON CONCRETE, INC.

Docket No. V85-2781

April 25, 1986

GENERAL DISTRICT COURT FOR LOUDOUN COUNTY

Kevin M. O'Connell, Assistant Commonwealth's Attorney, for the Plaintiff.

Gerald I. Katy, Esquire, for the Defendant.

Before the Honorable Archibald M. Aiken, Jr., Judge.

Disposition: Final, by trial.

Nature of the Case: A citation was issued for violation of VOSH Standard 1926.550(a)(1) following a fatal accident investigation. The employer contested the citation and the related penalty.

ORDER

The Commonwealth and the Defendant stipulated that the subject crane was constructed before August 31, 1971. Whereupon the Court, after argument of counsel, ruled that the "Applicable requirements" for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B305-1968, Safety Code for Crawler Locomotive Truck Cranes did not apply to this particular crane.

The Commonwealth presenting no further evidence, the Court does hereby ORDER that the citation against Herndon Concrete, Inc., be, and it hereby is, vacated.

COMMONWEALTH

v.

GROVES - KIEWIT EASTERN,

JOINT VENTURE

Docket No. V86-2323

May 5, 1986

GENERAL DISTRICT COURT FOR THE COUNTY OF HENRICO

Gary K. Aronhalt, Commonwealth's Attorney, for Plaintiff.

Barrett E. Pope, Esquire, for Defendant.

Before the Honorable H. R. Turner, Judge.

Disposition: Final, by trial.

Nature of the Case: Two repeat citations were issued following an inspection initiated by a complaint. Specifically, the defendants are alleged to have violated VOSH Standards 1926.550.(a)(5), for failure to repair deficient outrigger cylinders on a P&H 40 ton hydraulic crane, and 1926.550(b)(2), for maintaining a faulty safelock assembly on the same crane.

ORDER

On May 5, 1986, came the plaintiff by counsel, Assistant Commonwealth's Attorney for the County of Henrico, and came also the defendant by counsel, in response to a summons issued by the plaintiff pursuant to 40.1-49.4 of the Code of Virginia, duly served upon the defendant, and the court having heard the evidence and arguments by counsel for both parties, the court finds the following facts:

1. That on November 27, 1985, a representative of the plaintiff inspected a construction site at the I-295 James River Bridge, on Varina Road in Henrico County, Virginia, where the defendant was performing its services in the construction of a bridge.

2. That as a result of said inspection the plaintiff found two violations to exist, also being the same violations found to exist as a result of a previous inspection conducted on August 5, 1985. Pursuant to such findings a citation and notification of penalty was issued to the defendant on December 24, 1985, citing the defendant for violations of 1926.550(a)(5) and 1926.550(b)(2), and proposing a penalty of $1,120.00.

3. That the plaintiff served the defendant with a copy of said citation by mailing same to it on December 24, 1985, by certified mail, said citation having been received by the defendant on December 30, 1985.

4. That the defendant notified the plaintiff by letter dated January 21, 1986, received by the plaintiff on January 23, 1986, that the defendant contested all violations and penalties contained in the citation.

5. That the court finds that all violations cited are violations of law.

6. That the penalty assessed for violation 1(a) and 1(b) is a fair penalty and is affirmed.

It is therefore ordered that the citation issued by the plaintiff pursuant to Section 40.1-49.4 of the Code of Virginia and the penalty assessed therein in the amount of $1,120.00 be and it is hereby affirmed and the defendant is ordered to pay said sum of $1,120.00 to the Virginia Department of Labor and Industry forthwith.

COMMONWEALTH

v.

SUBURBAN GRADING AND UTILITIES, INC.

Docket No. V85-16116

May 29, 1986

GENERAL DISTRICT COURT FOR THE CITY OF VIRGINIA BEACH

Cathleen Pritchard, Assistant Commonwealth's attorney, for the Plaintiff.

Wayne Lustig, Esquire, Guy, Cromwell, Betz & Lustig, P.C., for the Defendant.

Before the Honorable John B. Preston, District Court Judge.

Disposition: Final, by trial.

Nature of the Case: Following the investigation of a trench cave-in which resulted in the death of one employee and the injury of another, criminal summonses were issued against the president, the foreman and two superintendents of Suburban Grading and Utilities, Inc. (Suburban) pursuant to Virginia's criminal/willful statute - Section 40.1-49.4(k) of the Code of Virginia. In addition, civil citations were issued against Suburban for alleged willful violations of trenching standards 1926.652(b), (e) and (h), as follows:

	Type	Proposed Penalty
1a 1926.652(b): The side(s) of the trench(es) in unstable or soft material which were more than 5 feet in depth, were not shored, sheeted, braced, sloped or otherwise supported in accordance with Tables P-1 and P-2:	Willful	$10,000.00

(a) Located at da Vinci Drive, Ocean Lakes Subdivision, Virginia Beach., the near vertical walls of the 10-foot-deep, 5-foot-wide at the base, 106-foot-long trench that ran from south to north that employees were working in had not been protected to eliminate the possibility of cave-in. At approximately 4:00 PM, 10 September, 1985, one employee was killed and another injured when 42 lineal feet of the west wall caved in while employees were installing 8-inch ductile sewer pipe.

	Type	Proposed Penalty
1b 1926.652(e): Additional precautions by way of shoring or bracing were not taken to prevent slides or cave-ins where trench(es) were made adjacent to backfilled excavations, or where excavations were subjected to vibrations from railroads or highway traffic, operation of machinery, or any other source(s): (a) Located at da Vinci Drive, Ocean Lakes Subdivision, Virginia Beach, Va., a hydraulic excavator was being operated at the north end; a rubber-tired loader, a track loader and tandem dump trucks were being operated at the west side of the 10-foot deep, 5-foot wide at the base, 106-foot-long trench that ran from south to north. At approximately 4:00PM, 10 September, 1985, one employee was killed and another injured when 42 lineal feet of the west wall caved in while employees were installing 8-inch ductile sewer pipe.	Willful	---
1c 1926.652(h): Employee(s) were required to be in the trench(es) which were more than 4 feet deep, and an adequate means of exit, such as a ladder or steps, was not provided, or located so as to require no more than 25 feet of lateral travel: (a) Located at da Vinci Drive, Ocean Lakes Subdivision, Virginia Beach, Va., the 10-foot deep, 5-foot-wide at the base, 106-foot-long trench that ran from south to north that employees were working in was not equipped with a ladder.	Willful	---
		$10,000.00

Suburban requested a hearing in order to contest the civil citations and proposed penalty. The criminal and civil cases were heard together on March 19th and 20th, 1986.

FINDINGS OF FACT

In view of the fact that all parties have rested and argument has been made before the Court, and the Court having maturely considered the arguments of counsel and facts and law in this case, I am prepared now to state the Court's findings of facts.

Fact One, there was trenching done to the extent of 10 feet deep from the point of measurement, five feet wide and approximately 106 feet long.

Fact Two, the sloping was 16 inches on the ditch measurement at best.

Fact Three, Foreman Schuler, Superintendent Schuler and Baylor, in the presence of employees Moore and Damon, decided not to slope or use traps or shoring because they believed the soil was hard and presented no problems.

Fact Four, Moore and Damon did not take part in the conversation, nor did they like to use the traps, and they made no comment one way or the other in regard to the use of same.

Fact Five, that there is no evidence that there was any change in the soil conditions from the first cut to the second cut, and there is evidence testified to by Mr. John Schuler that the first cut was made in the morning and the 90 degree cut was made in the afternoon.

Fact Six, that the type of soil according to Mr. Tuthill was loamy and silty and mixed with soft clay, which was obvious to anyone who had worked soil such as employees of Suburban.

Fact Seven, that soil in the caved-in area and trenching area was similar to contiguous areas and areas in close proximity to the job site.

Fact Eight, that it is uncontradicted that the soil in this area was poor.

Fact Nine, that the soil does not change over the years with the possible exception of seasonal changes when the water level rises or falls.

Fact Ten, that the slope, as revealed by Exhibits for the Commonwealth Nos. 2 and 3 and those photographs offered by the defense showing the trenching, was approximately that as confirmed by the testimony and as shown from the other evidence of the case.

Fact Eleven, that there is no expert opinion to differ with Mr. Tuthill as to the nature of the soil except by opinion from Mr. Schuler and Mr. Baylor, which opinion was not from an expert or experts.

Fact Twelve, that Mr. Womack was on the site on one or more occasions and Mr. Womack saw the ditch.

Fact Thirteen, that at least two seminars were attended by Suburban Grading and Utilities, Inc., employees in which sloping, shoring and boxing were discussed and specific advice given because of the nature of the soil in this and surrounding areas in Tidewater by Mr. Trask, et al.

Fact Fourteen, that there were no ladders in the ditch.

Fact Fifteen, that Inspector Hester was on the scene and observed at 2:00 p.m. a slope of 12 to 15 inches at the top but added that the photographs shown to him by the Commonwealth's Attorney being photographic Exhibits No. 2 and 3 for the Commonwealth, showed less sloping than he had seen at 2:00.

Fact Sixteen, that there was evidence that equipment was in the area, but no evidence that any, other than a backhoe, were near enough the trench to cause the cave-in, with the possible exception of Mr. Hester's statements that while he was on the scene he felt some earth vibration but did not become alarmed by it to the extent that he felt it necessary to warn Mr. Schuler or any other supervisory employees of Suburban Grading and Utilities.

DECISION

This case involves two main issues: the first of which concerns the civil liability of a corporation, Suburban, in its alleged willful violation of Virginia Occupational Safety and Health (VOSH) standards, and the second concerns the individual criminal liability of that corporation's president,[1] Mr. Womack, in his alleged willful participation in such violation. While these are two distinct issues, their ultimate determination nevertheless depend upon the resolution of whether a willful violation of VOSH standards actually occurred. Accordingly, this latter question will be addressed first.

In consideration of the authorities presented to me, including Communications, Inc., v. Marshall, 10 OSHC 1273 (D.C. Cir. 1981); United States v. Dye Construction Company, 2 OSHC 1511 (10th Cir. 975); F. X. Messina Construction Corp. v. OSAHRC, 2 OSHC 1325 (1st Cir. 1975); United States v. Pinkston, 4 OSHC 1697 (D. Kan. 1976) and, in particular, Intercounty Construction Co. v. OSAHRC, 522 F. 2d 777, 3 OSHC 1337 (4th Cir. 1975), the term "willfully" means "purposely or obstinately and is designed to describe the attitude of a [person], who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." 3 OSHC at 1340. I believe that in this case the evidence supports that, by a preponderance of the evidence, Suburban did willfully violate VOSH regulation sections 1926.652(b), (e) & (h), through the acts of its supervisory personnel.

VOSH has promulgated these regulations for the protection of employees in the performance of their work. It is incumbent upon

[1]The criminal charges against the foreman and two superintendents were dropped during a pretrial conference.

employers to see that every protection is provided for the employees. With respect to civil liability, an employer cannot slough off that responsibility by saying, "I was not aware of what was going on on a particular jobsite."

Here, there was a trench ten feet deep. There were changing strata of soil, from loamy to silty to sand or soft clay. This served to convince this court that the soil conditions were not hard but, rather, were a variable and liquid type of soil. Further, there is evidence that Suburban's supervisory personnel had attended seminars in which sloping, shoring and boxing were discussed and specific advice was given concerning the nature of the soil in this and surrounding areas in Tidewater. However inconvenient it may be and however much it may slow down a particular job, if, under conditions similar to these, it is obvious, or should be obvious to the experienced person who has been employed in this business, that some measure of protection should be provided, then the benefit of the doubt should be given to the employee, rather than saying, "I will take a calculated risk and go forward." I am therefore finding Suburban civilly responsible and I am going to impose a fine of $7,500, and that fine is imposed by virtue of the previous matters that have come to the attention of these people. I believe that this is sufficient notice, and hopefully this will serve as future notice that, when employees are exposed to dangers of this type, they should be required to work in a trench box.

The second issue concerns the individual criminal liability of Suburban's president. Section 40.1-49.4(k) provides for criminal sanctions against employers who willfully violate VOSH standards, rules and regulations where such violation causes the death of an employee. While recognizing that this statute may, in some cases, extend criminal liability to officers and directors of a corporation as "employers" within the meaning of the statute,[2] the specific facts here do not support such a finding in this case. Indeed, no case has been presented to me where an individual classified as an employer has been held criminally responsible as a result of acts comparable to those committed in the present case, or in the instances cited in the facts in those cases.

I personally believe that because of the seminars that were attended, because of the information that was gleaned from previous citations of which Mr. Womack was aware, that he certainly had knowledge of how the standards of the Act should be complied with. But obviously in situations comparable to Mr. Womack's, where he has more than one job

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[2] The only case which touches briefly on whether or not there is any criminal liability is United States v. Pinkston, 4 OSHC 1697 (D. Kan. 1976). There, the court held that whether or not one was to be deemed an employer was an element of the offense to be proven by the government, and submitted to the jury as a question of fact. 4 OSHC at 1699.

site in progress, where he is not there constantly seeing that his supervisors, upon whom he has a right to rely, are complying in every instance, I do not find facts beyond a reasonable doubt in this case to hold Mr. Womack criminally responsible.

WHEREFORE, IT IS ADJUDGED, ORDERED and DECREED that the civil citation is supported by the evidence and is hereby sustained and a civil penalty of $7,500 is assessed against Suburban Grading & Utilities, Inc.

IT IS FURTHER ORDERED that the criminal charge against Mr. Womack be dismissed.

COMMONWEALTH

v.

SOUTHERN BRICK CONTRACTORS, Inc.

Docket No. GV86-3541

June 9, 1986

HENRICO COUNTY GENERAL DISTRICT COURT

Stephen H. Catlett, for the Defendant

ORDER

THIS DAY came plaintiff by counsel, the Commonwealth's Attorney of this jurisdiction, and defendant, by Stephen H. Catlett, and, in order to provide for the safety, health, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, stipulated and agreed as follows:

The defendant is before this court pursuant to Section 40.1-49.4.E. contesting a citation VOSH No. R2865 issued to it by the plaintiff. A copy of the citation, the summons in this matter, and the draft of this order were each posted at the defendant's workplace for three working days or longer.

No employee or employee representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed to the schedule of abatement and penalties set for[illegible] [illegible]he amended citation, attached hereto as Exhibit A. (1926.152; 192[illegible] [illegible]926.500, 1926.552).

By entering into this agreement, the defendant does not admit to any violation or to any civil liability arising from said violation alleged in this matter other than for the purposes of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED AND DECREED that the defendant abate the violations cited in this matter within the time shown in the amended citation attached hereto as Exhibit A. Each such violation cited in Exhibit A is hereby affirmed. Judgment is hereby granted for the plaintiff against the defendant for $380.00 as civil penalties for these violations.

Let the clerk forthwith transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of this Order at the site of violation for three working days or until abatement of the violation, whichever period is longer.

COMMONWEALTH

v.

DYNALECTRIC COMPANY

Docket No. V86-6935

June 27, 1986

GENERAL DISTRICT COURT FOR ARLINGTON COUNTY

Barbara L. Walker, Assistant Commonwealth's Attorney, for the Plaintiff.

John Randall Scott, Esquire, for the Defendant.

Before the Honorable Francis E. Thomas, Judge.

Disposition: Final, by consent agreement.

Nature of the Case: Citations were issued for violations of VOSH Standards 1926.21(b)(2), 1926.251(a)(1), and 1926.251(e)(1) following an unprogrammed inspection conducted as part of an accident investigation. The employee contested one of the citations and the related penalty.

AGREED ORDER

THIS DAY came the Commonwealth of Virginia by its Attorney, the defendant by Counsel, and, in order to provide for the safety, health, and welfare of defendant's employees and to conclude this matter without the necessity for further litigation, it is stipulated and agreed:

The defendant is before this Court pursuant to Section 40.1-49.4.E. of the Code of Virginia, contesting a citation, VOSH Number 86-6935, issued by the plaintiff. A copy of the citation, the summons in this matter, and the draft of this Order were each posted at the defendant's workplace for three working days or longer.

No employee or representative has appeared in this matter or has filed a notice of contest of the abatement time.

Plaintiff and defendant have agreed that the defendant has adhered to the schedule of abatement. The defendant has agreed to the schedule of abatement and penalty of $350 as set in citation 1a. Plaintiff and defendant have agreed to move the Court to vacate Citation 1b.

By entering into this agreement, the defendant does not admit to any civil liability arising from said violation alleged in this matter other than for the purpose of subsequent proceedings pursuant to Title 40.1.

WHEREFORE, upon the agreement of the parties and for the good cause shown, and pursuant to Section 40.1-49.4, it is

ADJUDGED, ORDERED, and DECREED that the defendant abate the violation cited in this matter within the time shown in the citation. The violation cited is hereby affirmed. The violation having been abated, judgment is hereby granted for the plaintiff against the defendant for $350, to be paid simultaneously with the signing of this agreement, as civil penalty for this violation.

FURTHER, that the citation designated 1b be vacated.

Let the Clerk forthwith transmit certified copies of this Order to the defendant and to the Commissioner of Labor and Industry. The defendant shall post a copy of the Order at the site of violation for three (3) working days.

PART IV

RETALIATION CASES

COMMONWEALTH

v.

VALLEY PROTEINS, INC.

Docket No. C-158-84

April 8, 1986

CIRCUIT COURT FOR THE COUNTY OF SOUTHAMPTON

Richard C. Grizzard, Commonwealth's Attorney, for the Plaintiff

Joel S. Keiler, Attorney, for the Defendant

Before the Honorable Benjamin A. Williams, Jr., Judge

Disposition: Final, by Settlement Agreement

Nature of the Case: The Complainant alleged that he was discriminated against by his employer in violation of §40.1-51.2:1 of the Code of Virginia.

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT, made this 31st day of March, 1986, by and between Arthur L. Pope, Jr., Complainant, Valley Proteins, Inc., Respondent; and The Commissioner Of Labor And Industry (Commissioner):

This agreement sets forth the terms of the settlement of the discrimination complaint filed against the respondent by the complainant with the Commissioner pursuant to Va. Code §40.1-51. 2:2

The complainant and respondent agree as follows:

1. Respondent will pay Arthur L. Pope, Jr., Complainant, the sum of $3000.00 with a cashier's check in settlement of his claim as set out below.

2. Respondent shall expunge from the personnel records it maintains on Arthur L. Pope all adverse references to Beneficiary-Complainant regarding the subject matter of this complaint.

3. Complainant does not seek reinstatement to his former position with Respondent and further releases any claim or right to reinstatement to and any claim for damages or dismissal from his former position with Respondent.

4. No part of the sum paid Complainant in settlement of this claim shall be subject to any action to recover unemployment benefits heretofore received by Complainant.

5. This agreement shall not be construed as an admission of liability for any discrimination alleged by Complainant in this matter.

6. Upon payment of the sum provided in paragraph 1 above, the Commissioner will administratively close her investigation in this cause and further will move the Circuit Court of Southampton County, Virginia, to dismiss this cause from its docket with prejudice to the rights of the Commissioner in this cause.

7. This agreement shall be governed by the laws of the Commonwealth of Virginia.

ORDER

This cause came on this 8th day of April, 1986, to be heard on Motion of Commissioner of Labor and Industry to dismiss this cause with prejudice for the reason that all matters pertaining thereto had been resolved between the parties.

THEREFORE, It is ADJUDGED, ORDERED and DECREED that this cause be and is hereby DISMISSED with prejudice to Complainant and further that this cause be removed from the docket.

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