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BEFORE THE

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DEPARTMENT OF INDUSTRIAL RELATIONS

STATE OF CALIFORNIA

In the Matter of the Appeal of: PACIFIC ROOF STRUCTURES A Corporation 500 West Grove Avenue Orange, California 92665	DOCKET NO. 84-R3D4-1040 DECISION AFTER RECONSIDERATION

The Occupational Safety and Health Appeals Board, acting pursuant to authority vested in it by the California Labor Code, having stayed the decision of the administrative law judge and having on its own motion ordered reconsideration, makes the following decision after reconsideration.

JURISDICTION

On August 20, 1984, a representative of the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment maintained by Pacific Roof Structures (Employer). On September 13, 1984, the Division issued to Employer a citation alleging a serious violation of Title 8, California Administrative Code.[1] A civil penalty was proposed.

Employer filed a timely appeal from the citation contesting the existence of the alleged serious violation of Section 1670(a) and from the amount of the proposed civil penalty. After a hearing before an administrative law judge for the Appeals Board, the appeal was denied in a decision dated July 10, 1985.

On August 9, 1985, the Appeals Board stayed the decision and ordered reconsideration on its own motion. Employer answered the order.

1. Unless otherwise specified, all references are to sections of Title 8, California Administrative Code.

Citation No. 1
Serious
8 Cal. Adm. Code 1670(a)

ISSUES

In determining whether a repetitive work activity is of "short duration", is it proper to cumulate the total time spent at the activity during a work shift, or should the determination be made on the basis of the time expended in a single execution of the work activity?

What are the meanings of the terms "adequate risk control" and "immediate, competent supervision" as used in Section 1669(c)?

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

Upon its independent review, the Appeals Board adopts and incorporates by reference the summary of evidence found on pages 2 to 10 of the July 10, 1985, decision. The evidence established that Employer was installing the roof structure in a large industrial building. Carpenters at a floor level construction table assembled panels, 8 feet wide and from 24 to 40 feet long, constructed with horizontal support members called purlins at the front and rear edges. The two purlins were stiffened by subpurlins. Metal hangers with two-inch lips were incorporated into the panels, two at the front and two at the rear purlins. When fully assembled, a panel was raised 22 feet above the floor by a forklift and lowered into place by resting the hangers on a ledger, a horizontal support member along a wall of the structure, and on a beam parallel to the ledger. A carpenter, referred to in the industry as a "top man", working from a previously secured panel, nailed the hangers on the rear purlin to the ledger and beam and then moved to the front purlin and repeated the nailing process. During this entire procedure, the panel was supported by the forklift. When the nailing was completed, the forklift moved to the construction table and returned with another panel to repeat the procedure. From the release by the forklift of one panel to the release of another took about three to three and one-half minutes.

On August 16, 1984, an accident occurred at the site when a panel being secured to the support members collapsed and the top man fell to the floor. Securing of this panel departed from the procedure described above. The top man secured the left rear hanger to the beam with two nails and then secured the front right hanger to the ledger with two nails. He failed to nail the other rear hanger. The top man called down to his foreman who

was operating the forklift and told him that the front purlin was a little short but "we can live with it". The foreman removed the forklift's support of the panel and returned to the assembly table for another panel. The top man moved to the left front of the panel to move the hanger further onto the support member using his hammer. The panel collapsed, causing the top man to fall. The parties stipulated that the top man was not wearing a safety belt with a lifeline secured to the structure or catenary line, nor was he otherwise protected against a fall.

Employer was cited for violating Section 1670(a), which provides in part:

> Approved safety belts and lifelines shall be worn by those employees whose work exposes them to falling in excess of 15 feet from the perimeter of a structure ...not otherwise adequately protected under the foregoing provisions of the Article...

Section 1669(c), an exception to the safety belt and lifeline requirement of Section 1670(a), states in part:

> "When the work is of short duration and limited exposure and the hazards involved in rigging and installing the safety devices required by this Article equals (sic) or exceeds (sic) the hazards involved in the actual construction, these provisions [for safety belts with lifelines securely anchored] may be temporarily suspended, provided adequate risk control is recognized and maintained under immediate, competent supervision." (Emphasis added.)

To establish that it is within the exception to Section 1670(a), an employer has the burden of proving that the work which exposes an employee to a fall from the perimeter of a structure in excess of 15 feet is of short duration and limited exposure; that the hazards of rigging the safety devices exceed those involved in installing the panelized roofing; and that adequate risk control under immediate, competent supervision is maintained. (Olsen Heating & Sheet Metal, OSHAB 79-1485, Decision After Reconsideration (Sept. 24, 1980); Mclean Steel, Inc., OSHAB 77-553, Decision After Reconsideration (Jan. 8, 1979).) Employer did not carry its burden in all respects.

The installation of a panel took about three and one-half minutes. Of this time, the top man was exposed to a fall

from the leading edge for about one minute. The administrative law judge found this work to be of long duration. He arrived at this conclusion by adding all of the one-minute periods the top man would be at the leading edge. The Appeals Board disagrees with the administrative law judge's interpretation of the term "short duration" as applied to a work practice which is repetitive. Section 1669(c) is an exception to the requirement that protective equipment be used. To cumulate periods of exposure over a work shift would impermissively make almost every work assignment one of long duration and render Section 1669(c) meaningless. A better test for determining whether a repetitive work practice is of short duration is to consider the time a worker is exposed to the hazard of falling in a single execution of the work. In this matter, the work of the top man at the leading edge for one minute in securing each panel was work of short duration.

An employer must also prove that adequate risk control is recognized and maintained under immediate, competent supervision. Adequate risk control exists when all of the following factors are present at the work site: the employees are trained and experienced in the work they are doing; the employer has a well-designed safety program which addresses the hazards inherent in the employees' work; and the safety program is applied on the project by immediate, competent supervision.

Employer failed to establish that it provided immediate, competent supervision of the top man. "Immediate, competent supervision" means such direction of a work activity - by a person fully knowledgeable of and trained in the hazards inherent in the work, with authority to control the actions of those being supervised - as will enable the supervisor to recognize that a hazard exists and to act to avert the exposure of employees to such hazard. (See Duke Timber Construction Co., OSHAB 81-347, Decision After Reconsideration (Aug. 19, 1985).) Although a foreman was present, he was engaged in operating the forklift used to raise the roof panels. He was therefore not in a position to supervise the work of the top man. The top man experienced difficulty in securing a panel because the front purlin was short. He so informed the foreman. Had the foreman investigated, he may have averted the accident by discovering the top man had failed to nail both rear hangers before walking out on the panel. Instead, the foreman released the lift's support of the panel before it was fully secured.

The Appeals Board need not address the issue of whether the Division's Administrative Interpretation No. 69, which dispenses with the need for safety belts and lifelines where work at the leading edge is performed by an experienced and competently

supervised crew, excepts Employer from compliance with Section 1670(a). Section 1669(c) requires work at the leading edge to be performed under immediate, competent supervision. As discussed above, Employer failed to establish that adequate risk control maintained by immediate, competent supervision was provided.

Since the top man was not wearing a safety belt and lifeline, and Employer did not prove it was within the exception of Section 1669(c), a violation of Section 1670(a) was established. Upon independent review, the proposed civil penalty of $100 is deemed reasonable and appropriate.

DECISION AFTER RECONSIDERATION

The decision dated July 10, 1985, denying the appeal from a serious violation of Section 1670(a) and from the proposed civil penalty of $100, is affirmed. The appeal is denied.

ELAINE W. DONALDSON, Chairman

L. A. HARRINGTON, Member

MICHAEL R. MONAGAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

DATED AND FILED AT SACRAMENTO, CALIFORNIA

MAY 21 1986