

SECRETARY OF LABOR,

Complainant,

v.

CALHAR CONSTRUCTION COMPANY, INC.,

Respondent.

OSHRC Docket No. 02-0835

APPEARANCES:

Christopher V. Grier, Esq., Office of the Solicitor, U.S. Department of Labor,
Chicago, Illinois

Johann Wasserman, Advisor, and Jim Hargis, Agency Representative,
CalHar Construction, Inc., Melissa, Texas

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

This is an action by the Secretary of Labor against CalHar Construction Company to affirm four items of a serious citation, alleging violations of safety regulations adopted under the Occupational Safety and Health Act of 1970. The controversy arose after a compliance officer of the Occupational Safety and Health Administration inspected a work place of the Respondent, concluded that it was in violation of the regulations in question, and recommended that the citation be issued. The Respondent disagreed with the citation and filled a notice of contest. After the Chief Judge of the Commission designated this matter for E-Z Trial Proceedings, a hearing was held in Dallas, Texas.

Item 1a of Citation 1 alleged that:

A stairway, ladder, ramp or other safe means of egress was not located in trench excavations that were 4 feet (1.22m) or more in depth so as to require no more than 25 feet (7.62m) of lateral travel for employees:

Station 7+45 near Horizon Road (FM 3097) at the intersection of Ralph Hall Parkway, Rockwall, Texas:

On or about Thursday, December 6, 2001, employees were spreading sand at the base of the approximate 7-foot, 8-inch deep trench excavation. The employees were exposed to the hazard of cave-in. A ladder provided for entry and exit from the trench excavation was more than 25-feet from the employees work location.

in violation of 29 CFR 1926.651(c)(2) which provides:

Means of egress from trench excavations. A stairway, ladder, ramp or other safe means of egress shall be located in trench excavations that are 4 feet (1.22 m) or more in depth so as to require no more than 25 feet (7.62 m) of lateral travel for employees.

At the hearing, the Administration's Safety and Health Officer testified that he observed excavation activity at the employer's work site. After the Respondent's foreman and superintendent gave him permission to inspect the work area, he viewed the site and supplemented his observations with a video camera. Based upon his measurements, the excavation was over four-feet deep. Employees working there were more than 60 feet away from the ladder. This infraction was in plain view of site supervision. This item of the citation is affirmed.

Item 1b of the citation stated:

Non-self-supporting ladders were not used at an angle such that the horizontal distance from the top support to the foot of the ladder was approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and top support):

Station 7+45 near Horizon Road (FM 3097) at the intersection of Ralph Hall Parkway, Rockwall, Texas:

On or about Thursday, December 6, 2001, employees were spreading sand at the base of the approximate 7-foot, 8-inch deep trench excavation. The employees were exposed to the hazard of cave-in. The portable ladder provided for entry and egress to the trench excavation was installed in the trench excavation in a manner that the horizontal distance from the top support to the foot of the ladder was greater than one-quarter the working length of the ladder.

in violation of the regulation at 29 CFR 1926.1053(b)(5)(i) which reads:

Non self-supporting ladders shall be used at an angle such that the horizontal distance from the top support of the foot of the ladder is approximately one-quarter of the working length of the ladder (the distance along the ladder between the foot and the top support).

On this point, the inspector noted that the ladder in question was more in a horizontal than a vertical plane. He estimated the angle to be between 30 and 45 degrees. This item of the citation is also affirmed.

Item 2 of citation 1 declared:

Each employee in an excavation was not protected from cave-in by an adequate protective system designed in accordance with 29 CFR 1926.652 (b) or (c):

Station 7+54 near Horizon Road (FM 3097) at the intersection of Ralph Hall Parkway, Rockwall, Texas:

On or about Thursday, December 6, 2001, employees were working at the base of the approximate 7-foot, 8-inch deep trench excavation. The employees were exposed to the hazard of cave-in. The employer did not ensure that the walls of the trench excavation were shored, adequately benched or otherwise protected.

in violation of the regulation at 29 CFR 1926.652(a)(1) which provides:

(a) *Protection of employees in excavations.* (1) Each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance with paragraph (b) or (c) of this section except when:

On this issue, the inspector testified that the regulation requires that each employee in an excavation shall be protected from cave-ins by an adequate protective system designed in accordance

with paragraphs B and C of that portion of the regulation, except if in stable rock. In his estimation, based upon his experience and observations, he concluded that the soil in the excavation was type B, not stable rock. Samples of soil were submitted to a governmental laboratory in Salt Lake City, and that agency confirmed his conclusion. The excavation was seven feet eight inches in depth, the area was muddy, and an excavator was operating nearby. His angle findings were computed with a clinometer. No trench boxes were nearby. The record also reveals that the Respondent was previously cited for the same infraction. Since employees were exposed to this hazard, this item of the citation is affirmed.

The fourth and final item of the citation alleged:

Earth moving equipment which had an obstruction view to the rear was operated in reverse gear; such equipment did not have in operation a reverse signal alarm distinguishable from the surrounding noise level nor did an assistant signal that it was safe to operate in reverse gear:

Station 7+54 near Horizon Road (FM 3097) at the intersection of Ralph Hall Parkway, Rockwall, Texas:

On or about Thursday, December 6, 2001, employees walking and working on foot were exposed to the hazard of struck-by. The employer did not ensure that the Caterpillar IT28F front end loader had an operable back-up alarm nor was a person assigned as signalling assistant.

which violated 29 CFR 1926.602(a)(9)(ii) providing:

No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.

With respect to this regulation, the inspector observed a Caterpillar front-end loader moving back and forth at the site. He noted an obstructive view for the operator. There was no employee signaling that it was safe to back up. Nor was the machine equipped with an audible reverse signal

alarm distinguishable from the surrounding noise level. This employer had been cited for a similar violation in the past. Thus, this portion of the citation was violated.

Summarized, the compliance officer's testimony was to the effect that the Respondent was in violation of the four items of the citation, all of which infractions were confirmed by photographs and video at the time of the inspection. The citation is, therefore, affirmed.

The Respondent was represented at the hearing by Johann Wasserman and Jim Hargis, but they declined to present evidence on its behalf.

With respect to the penalty, the compliance officer testified that in its assessment, he took into consideration the statutory requirements, including size of business, gravity of the violation, good faith of the employer, and history of previous violations. The penalty in this case is, therefore, affirmed.

Accordingly, I find that:

1. The Respondent was in violation of Citation 1, Item 1a and 1b with a penalty of \$1,750.
2. The Respondent was in violation of Citation 1, Item 2 with a penalty of \$1,750.
3. The Respondent was in violation of Citation 1, Item 3 with a penalty of \$4,900.

/s/
Sidney J. Goldstein
Judge, OSHRC

Dated: November 14, 2002