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VOSHA Review Board

STATE OF VERMONT
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

COMMISSIONER,
VERMONT DEPARTMENT OF LABOR,
Complainant

v. Docket #RB905

R.E.E. & C. CAPITAL MANAGEMENT SERVICES, INC.
Respondent

HEARING OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

FINDINGS OF FACT

This matter came on for hearing on Wednesday, October 9, 2013 in the offices of the VOSHA Review Board, 13 Baldwin Street, Montpelier, Vermont. In attendance at the hearing were the following: Dirk Anderson, Esq., on behalf of the Department of Labor and Daniel G. Scarlotta, representative of the respondent Company. The matter was heard by Alan S. Rome, Esq., as Hearing Officer and Leigh Keyser Phillips, Esq.

After hearing the matter, and viewing the evidence as submitted, both testimonial and documentary, the following Findings are hereby made:

1. Tony Genung, Senior Safety Compliance Officer for VOSHA, testified at the hearing. Mr. Genung has served as Compliance Officer for approximately seven years. In the past, he has worked at a nuclear shipyard and had done safety inspection work at that locale.

2. Mr. Genung has had numerous trainings regarding the VOSHA codes and regulations. He is up to date on the standards regarding possible violations.

3. On June 26, 2012, Mr. Genung did travel to a jobsite in Manchester Center, Vermont, specifically 39 Bonnet Street. Pursuant to a "Dodge report," Mr. Genung traveled to

the project in question.

4. When Mr. Genung arrived at the site, employees of the subject company were involved in renovations. Mr. Genung observed the employees on a roof upon his arrival.

5. Mr. Genung introduced himself and spoke with Mr. Scarlotta, an employee of the Company.

6. Mr. Scarlotta came down from the roof and spoke with Mr. Genung. Mr. Genung spoke to Mr. Scarlotta about certain safety violations upon his observation. They will be discussed as follows:

(a) Citation 1, Item 1 (discussion of lamps)

This violation was quoted as follows: 1926.405(a)(2)(ii)(E)

In the opinion of Mr. Genung, the employer did not provide a safe workplace by ensuring all lamps for general illumination be protected from accidental contact or breakage. Specifically, the temporary lights used on the work site did not have all of the light bulbs protected with cages. When one looks at the picture (Exhibit 5-C as admitted), it is true that the lights in question did not have cages surrounding those lights.

In the "worksheet" admitted as Exhibit 4-A, was the following description from the Compliance Officer:

> "The employer did not provide a safe and healthful workplace free from recognized hazards that are likely to cause physical harm to the employees by ensuring all lamps for general illumination shall be protected from accidental contact or breakage."

The temporary lighting strings used at the worksite did not have all of the cages mounted to protect the light bulbs from breakage. This condition was

exceptionally bad in the basement of the structure where it was dark and no outside light was shining in. If the light bulbs were struck, breaking them and causing a short in the light string, the potential for serious injuries being sustained by the employee would be greatly increased because of the lack of outside light and the construction materials and equipment used down there causing a tripping hazard. If the lighting strings had cages that protected the light bulbs, this would reduce the probability of serious injuries being sustained by the employees from a broken light bulb on the lighting string. Exhibit 4-B as admitted.

Relating to this particular alleged violation, it does not seem that the Company contested the factual accuracy of the observations as noted by the Compliance Officer. The penalty for that aforementioned violation was noted to be $525.00. This came from computing the "probability assessments" which included such factors as number of employees, frequency of exposure, employee proximity, and stress conditions. When one looks at the computations involved with this particular alleged violation, the penalty is deemed to be reasonable and will be upheld.

(b) Citation 1, Item 2

This violation was quoted as follows: 1926-451(g)(1)

"Each employee on a scaffold more than ten feet (3.1m) above a lower level shall be protected from falling to that lower level. Paragraphs (g)(1)(i) through vii of this section establish the types of fall protection to be provided to the employee on each type of scaffold. Paragraph (g)(2) of this section addresses fall protection for scaffold erectors and dismantlers."

1926-451(g)(1).

The violation was stated as follows: "The employer did not provide a safe

and healthful workplace free from recognized hazards that are likely to cause physical harm to the employees by ensuring each employee on a scaffold more than 10 feet (3.1m) above a lower level shall be protected from falling to that lower level. The Tubular Welded Frame Scaffold used at the site had an inadequate guardrail system installed for fall protection."

Exhibit 1-D.

When one analyzes Exhibit 5-B, it does seem obvious to the Hearing Officer that the protective guardrail system was not in place. One can easily observe if a roofer slips off a surface on the roof he would not have a protective guardrail system in place when viewing Exhibit 5-B.

The penalty calculations regarding this alleged violation need to be considered. It is affirmed that the site severity is high and that there is a "greater" probability should one fall. Also, the adjustment factors do reduce the penalty in an appropriate way from a potential of $5,000 down to the proposed violation of $1,500. The violation and penalty are hereby affirmed.

(c) Citation 1 - Item 3

In observing the alleged violations, the following violation was cited:

1926.1053(b)(1)

"When portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least three feet (.9m) above the upper landing surface to which the ladder is used to gain access; or, when such an extension is not possible because of the ladder's length, then the ladder shall be secured at its top to a rigid support that will not deflect, and a grasping device, such as a grab rail, shall be provided to assist employees in mounting and dismounting the ladder. In no case shall the extension be such that ladder deflection under a load would, by itself, cause the ladder to slip off its support."

1926.1053(b)(1)

The violation stated as follows: "The employer did not provide a safe and healthful workplace free from recognized hazards that are likely to cause physical harm to the employees by ensuring when portable ladders are used for access to an upper landing surface, the ladder side rails shall extend at least 3 feet (.9m) above the upper landing surface to which the ladder is used to gain access. The 24-foot extension ladder did not extend the required 3 feet above the upper landing surface.

Exhibit 1-E.

When one views closely Exhibit 5-B as admitted, this particular violation is difficult to affirm. It seems to dictate that the ladder side rails should extend at least 3 feet (.9m) above the upper landing surface to which the ladder is used to gain access. It was alleged that the 24-foot extension ladder did not extend the required 3 feet above the upper landing surface. However, when one views Exhibit 5-B, one has a hard time concluding that a higher ladder height would be safe or protective. It would be hard to imagine that it would be safer, for instance, for an employee, when climbing the ladder, to be protected or more safe when getting off of the ladder. When viewing Exhibit 5-B as it is, it seems that the employee would be well protected when getting on or off of the ladder. No more height is needed. In fact, it may make the situation more rather than less dangerous.

Again, when one looks at the aforementioned exhibit (5-B), one sees that the ladder was "lashed." Also, in viewing the exhibit, it does show that, when one

is climbing the ladder and gets to the roof, there is a rail to allow the employee to get off of the ladder in a safe fashion. If the ladder was higher by some degree, it would be more, not less, dangerous to get off of the ladder.

For reasons as stated, supra, therefore, the third alleged violation, pertaining to standard 1926.1053(b)(1) is hereby dismissed.

ORDER

Citation 1, Item 1 - relating to no cage on temporary lights (1926.405(a)(2)(ii)(e)) - violation and penalty of $525 AFFIRMED.

Citation 1, Item 2 - relating to guardrail system needed re scaffold (1926.451(g)(1) - violation and penalty of $1,500 AFFIRMED.

Citation 1, Item 3 - relating to ladder in question (1926.1053(b)(1)) - VIOLATION DISMISSED.

Dated at Montpelier, Vermont this 1st day of November, 2013.

Alan Rome, Esq.
HEARING OFFICER