

SECRETARY OF LABOR,

Complainant,

v.

QUAD MANUFACTURING CORPORATION,

Respondent.

OSHRC DOCKET NO. 99-1554

APPEARANCES:

For the Complainant:

Lisa R. Williams, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois

For the Respondent:

Richard Holder, Quad Manufacturing Corp., Cudahy, Wisconsin

Before: Administrative Law Judge: Stanley M. Schwartz

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Quad Manufacturing Corporation (Quad), at all times relevant to this action maintained a place of business at 2129 East Birchwood Avenue, Cudahy, Wisconsin, where it operated a machine shop. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On August 31, 1998 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Quad's Cudahy work site. As a result of that inspection, on September 3, 1998, Quad was issued citations alleging violations of the Act together with proposed penalties. On July 14-22, 1999, OSHA conducted a follow-up inspection, and a notification of failure to abate alleged violations was issued on August 16, 1999. By filing a timely notice of contest Quad brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On December 7, 1999, an E-Z trial hearing was to be held in Milwaukee, Wisconsin. Prior to the start of the hearing, however, a pre-trial conference was held, during which the merits of the Secretary's case and the current state of abatement were discussed. In addition, Richard Holder, Quad's owner, provided information regarding Quad's size, net worth, and ability to pay any penalties

assessed. Following that conference, the parties reached a settlement on the failure to abate notification. That agreement was entered into the record, as set forth below.

Alleged Failure to Abate

Citation 1, item 3 alleges:

29 CFR 1910.184(e)(1): Alloy steel sling(s) did not have permanently affixed durable identification stating size, grade, rated capacity, and reach:

Steel chain slings that were in use did not have the required identification on the tag.

Additional information observed during follow-up investigation:

Steel chain slings did not have tags attached stating size, grade, or rated capacity. One sling did have a tag, but was not legible.

Citation 1, item 4 alleges:

29 CFR 1910.184(e)(3)(ii): Records of the most recent month in which each alloy steel chain sling was thoroughly inspected were not available for examination:

Records of inspections for the slings was not maintained and was not available for examination.

Additional information observed during follow-up investigation:

Inspections had not been performed in the year since the original inspection.

Citation 1, item 10 alleges:

29 CFR 1910.1200(f)(5): The employer did not ensure that each container of hazardous chemicals in the workplace was marked, tagged or labeled with the identity of the contents of the container and the appropriate hazard warning:

Numerous containers throughout the plant, containing oils, solvents, and cleaners were not marked or labeled properly.

Additional information observed during follow-up investigation:

An unlabeled soft-drink container containing cutting oil, and an unlabeled laundry detergent container containing oil were used in the workplace.

Settlement Agreement

Holder testified that the slings which are the subject of items 3 and 4 have been removed from the Cudahy work site, and the crane to which they belonged has been disconnected and locked out (Tr. 47). Holder agreed to label a Coke can containing tapping fluid, and a laundry detergent container containing Way Lube oil with the names of the chemicals contained therein, the hazards associated

with those chemicals, and any immediate first aid treatment required (Tr. 49). Coffee cans containing water would also be labeled (Tr. 50).

The Secretary agreed to accept a penalty of \$6,000.00 dollars, to include the \$3,000.00 Quad owes on the original 1998 citation, none of which has, thus far, been paid (Tr. 45). The \$6,000.00 is to be paid in 24 monthly installments of \$250.00, beginning February 1, 2000; no interest shall accrue (Tr. 34, 42, 52). The Respondent is allowed a ten-day grace period and, if desired, may personally deliver the monthly payment to the OSHA Area Office located in downtown Milwaukee. The agreement includes an acceleration clause; in the event Quad misses any payments, the entire amount becomes due (Tr. 42).

The Commission's E-Z Trial proceedings have been in effect for some time. In this case, the proposed penalties for Respondent's failure to abate totaled \$60,000.00. The record establishes, that if assessed, the proposed penalty would have forced Quad to cease operations. OSHA's pretrial attempts to discuss settlement, document abatement and/or reduce the proposed penalties were unsuccessful for various reasons.

Nevertheless, because the Commission instituted E-Z Trial proceedings, which do not require pre-trial pleadings, discovery, and do not contemplate the filing of motions for default judgments, the Respondent was able to appear, without representation, to air his version of the events and his concerns. A pre-hearing conference, required under §2200.207 of the Commission Rules, was held immediately prior to the scheduled hearing and Quad was able to explain his good faith efforts to abate the cited violations and demonstrate his inability to meet the payment schedule first suggested by OSHA. It is noted that Respondent's President, Richard Holder, as well as OSHA Compliance Officer Galen Lemke, were both extremely credible and professional in their candid exchanges during the conference portion of the hearing. Both parties, as well as OSHA's counsel, should be commended for their ability to arrange a reasonable payment schedule while insuring that the specifics of abatement of the cited hazards were clearly set forth in the transcript.

In my view this case stands for a very important principle. The Commission's E-Z Trial proceedings work. They allow initial mistakes to be corrected, where, as here, all parties agree to avail themselves of the flexibility allowed, even after a false start. The Secretary and Respondent stayed focused on the mutual goal of achieving abatement of the hazards and also insuring that the penalty assessed meets the purposes of the Act. In my view, justice prevailed.

ORDER

1. The notification of failure to abate previously cited violations of 29 CFR 1910.184(e)(1), 1910.184(e)(3)(ii) and 1910.1200(f)(5) is AFFIRMED, and a total penalty of \$6,000.00, payable in installments of \$250.00/mo., as set forth in the record, is ASSESSED.

Stanley M. Schwartz
Judge, OSHRC

Dated: January 18, 2000