



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,
v.
CATERPILLAR, INC.
Respondent,
UAW - LOCAL 2096,
Authorized Employee
Representative.

**OSHRC DOCKET
NO. 93-2104**

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 13, 1995. The decision of the Judge will become a final order of the Commission on April 13, 1995 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before April 3, 1995 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

DOCKET NO. 93-2104

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr. (SKA)

Ray H. Darling, Jr.
Executive Secretary

Date: March 13, 1995

DOCKET NO. 93-2104

NOTICE IS GIVEN TO THE FOLLOWING:

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James H. Barkley
Administrative Law Judge
Occupational Safety and Health
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SECRETARY OF LABOR,

Complainant,

v.

CATERPILLAR, INC.,

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UAW - LOCAL 2096,

Authorized Employee
Representative.

OSHRC DOCKET
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APPEARANCES:

For the Complainant:
Kevin Koplín, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, IL

For the Respondent:
Robert E. Mann, Esq., Chicago, IL

For the Employee:
Jerome Schur, Esq., Eric J. Mennel, Esq., Chicago, IL

DECISION AND ORDER

Barkley, Judge:

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C., Section 651, et. seq. hereafter referred to as the Act).

Respondent, Caterpillar, Inc. (Caterpillar), at all times relevant to this action, maintained a place of business at 600 W. Washington St., East Peoria, Illinois, where it was engaged in the manufacture of construction equipment. Caterpillar admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On June 29, 1993 the Occupational Safety and Health Administration (OSHA) issued to Caterpillar citations, together with proposed penalties, alleging violations of the Act. By filing a timely notice of contest Caterpillar brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

Prior to the hearing the parties agreed to settlement of all issues with the exception of the "repeat" classification of citation No. 2, items 1-3. On November 9, 1994, a hearing was held in Peoria, Illinois, at which time copies of the citations on which the repeated classifications were based were submitted for comparison with the current citation. The parties have submitted briefs and this matter is ready for disposition.

Alleged Violations of §1910.132(a)

Citation 2, item 1 alleges:

29 CFR 1910.132(a): Protective equipment was not used when necessary whenever hazards capable of causing injury and impairment were encountered.

On or about March 30, 1993, an employee was not required to wear rubber gloves when transporting an open container of zinc chloride in Bldg. "X". This standard was cited as Citation 1, Item 1a, Inspection #103298063 issued on 11/1/90.

The underlying citation upon which the "repeat" characterization is based is a 1990 citation alleging a violation of 29 C.F.R. §1910.132(a). In that case, employees at Caterpillar's Decatur plant did not wear rubber gloves while changing bits and gate valves, and removing other machine parts laden with Chemtool Coolant 641-ND (Exh. J-1).

This judge finds that the hazard cited in 1990 was not so similar to the current hazard as to support a "repeat" characterization. The 1990 citation put Caterpillar on notice only that additional care needed to be taken to assure that employees wore personal protective equipment when handling chemically treated machine parts. The

current citation deals with a single employee transporting an open tub of chemicals. The two factual situations are so disparate that I cannot conclude that the two citations demonstrate a need for "greater than normal incentive[s] to comply with the Act." *Monitor Construction Co.*, 16 BNA OSHC 1589, 1594, 1994 CCH OSHD ¶30,338, p.41,826 (No. 91-1807, 1994).

The citation will, therefore, be affirmed as a "serious" violation of the Act with a penalty of \$2,500.00, as agreed upon by the parties (Tr. 4).

Alleged Violations of §1910.151(c)

Citation 2, item 2 alleges:

29 CFR 1910.151(c): Where employees were exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body were not provided within the work area for immediate emergency use:

The eye wash station was not in operating condition on or about March 30, 1993 near the experimental pickling line and plating line in Bldg. "X" where employees were required to work with corrosive chemicals. This standard was cited as Citation 1, Item 1, on Inspection 1025997766 issued 6/8/92.

The underlying 1992 citation alleged that an eyewash facility at Caterpillar's York plant was located too far (200 feet) from employees working at mobile acid etch stations (Exh. J-3).

The 1992 citation made Caterpillar aware of the need to supply eyewash facilities within a reasonable distance of the etching stations in its York plant. I do not find that such a citation put Caterpillar on notice generally that an eyewash station at the Peoria plant was not in operating condition; nor can I find that the issuance of these two citations calls for the imposition of additional penalties as a deterrent to further violations.

The citation will, therefore, be affirmed as a "serious" violation of the Act with a penalty of \$2,500.00, as per the prior agreement of the parties (Tr. 4).

Alleged Violations of §1910.1200(h)

Citation 2, item 3 alleges:

29 CFR 1910.1200(h): Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area:

On or about March 30, 1993, an employee was directed to weigh and transport a container of zinc chloride when the employee had not been trained in the hazards associated with such a chemical. This standard was cited on Inspection #103299723 as Citation 1, Item 1 issued on 8/8/90.

The underlying 1990 citation charged that employees at Caterpillar's Mossville plant installing oil pan noise suppression covers on engines were not provided information regarding silica dust (Exh. J-2).

The current citation involves the transport of an open container of zinc chloride without first informing the employee handling the material of the hazards associated with it. The 1990 citation was based on a manufacturing process hazard at the Mossville plant, which exposed employees to silica dust. The prior citation did not provide Caterpillar with the kind of notice, i.e. of problems with its hazardous chemical training generally, that would demonstrate a need for additional incentives to comply with the Act, or justify the imposition of additional penalties.

The citation will, therefore, be affirmed as a "serious" violation of the Act with a penalty of \$5,000.00, as agreed upon by the parties (Tr. 4).

Findings of Fact and Conclusions of Law

All findings of fact and conclusions of law relevant and necessary to a determination of the contested issues have been found specially and appear in the decision above.

Order

1. Citation 1, item 1, alleging violation of §1910.132(a), is AFFIRMED as a serious violation, and a penalty of \$2,500.00 is ASSESSED.

1. Citation 1, item 2, alleging violation of §1910.151, is **AFFIRMED** as a serious violation, and a penalty of \$2,500.00 is **ASSESSED**.

1. Citation 1, item 3, alleging violation of §1910.1200(h), is **AFFIRMED** as a serious violation, and a penalty of \$5,000.00 is **ASSESSED**.



James H. Barkley
Judge, OSHRC

Dated: March 3, 1995