



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

TNT CRANE & RIGGING, INC.,

Respondent.

OSHRC Docket No. 16-1587

BRIEFING NOTICE

The parties are requested to brief the following issues:

1. Whether the judge, in finding Respondent lacked actual knowledge of the violations alleged under 29 C.F.R. §§ 1926.1407(b)(3) (power line encroachment during assembly/disassembly) and 1926.1407(d) (power line minimum clearance distance), erred by concluding that Respondent's supervisor was the only employee engaged in the violative conduct. If not, whether the Secretary established the supervisor's violative conduct was foreseeable. *See W.G. Yates & Sons Constr. Co. v. OSHRC*, 459 F.3d 604 (5th Cir. 2006) (barring imputation of a supervisor's knowledge of his own violative conduct unless the Secretary establishes that conduct was foreseeable).
2. Whether Respondent established the affirmative defense of unpreventable employee misconduct with respect to either violation.

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party not intending to file a brief shall notify the Commission in accordance with Commission Rule 93. The time for filing any responsive briefs (or letters filed in lieu of briefs) shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: December 10, 2020

/s/ _____
John X. Cervený
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, regulations, case law, law journal articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.