

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3419

SECRETARY OF LABOR,

Complainant,

v.

OSHRC DOCKET No. 00-0022

WALKER CRANE & RIGGING
CORPORATION,

Respondent.

APPEARANCES:

For the Complainant:

David L. Baskin, U.S. Department of Labor, Office of the Solicitor, Boston,
Massachusetts

For the Respondent:

Barrett A. Metzler, CSP, Northeast Safety Management, Columbia, Connecticut

Before: Administrative Law Judge Ann Z. Cook

DECISION AND ORDER

This proceeding is before the Occupational Safety and Health Review Commission (“the Commission”) pursuant to section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). The Occupational Safety and Health Administration (“OSHA”) conducted an inspection of a work site of Respondent, Walker Crane & Rigging Corporation (“Walker”), in Higganum, Connecticut, after an accident at the site on October 21, 1999. As a result of the inspection, OSHA issued Walker a one-item serious citation alleging a violation of 29 C.F.R. 1926.550(a)(15)(i), one of OSHA’s regulations for cranes and derricks. Walker timely contested the citations, and the case was heard on June 2, 2000, in Hartford, Connecticut. Both parties have filed post-hearing briefs. Walker does not contest that it is an employer engaged in a business affecting interstate commerce and that it is subject to the requirements of the Act. (Answer ¶ III; Tr. 5-6).

The Burden of Proof

To establish a violation of a standard, the Secretary has the burden of proving, by a preponderance of the evidence:

- (a) the applicability of the cited standard, (b) the employer's noncompliance with the standard's terms, (c) employee access to the violative conditions, and (d) the employer's actual or constructive knowledge of the violation (*i.e.*, the employer either knew, or with the exercise of reasonable diligence could have known, of the violative conditions).

Atlantic Battery Co., 16 BNA OSHC 2131, 2138 (No. 90-1747, 1994).

Background

On October 21, 1999, Richard Dennis, a Walker crane operator, was utilizing a crane to move the four sections of a modular house into place at the site. Nick LaTerra of LaTerra Construction, the builder, had hired Walker, and Dennis was the only Walker employee at the site. LaTerra had also hired JRW Company ("JRW") to prepare each section before it was lifted and to assemble the sections once they were in place. One of the JRW employees, Jeff Watson, assisted Dennis by giving him signals and directions. Two other JRW employees assisted by holding tag lines that were used to steady each section as it was lifted and moved. Nick LaTerra left the site sometime after the second section was in place, leaving Watson in charge. (Tr. 17-20, 32-37, 46-56, 61-65, 119-22).

The street in front of the modular house lot was 16 feet wide, and along the edge of the street across from the lot were utility poles with phone and cable lines, and, above them, electrical power lines. When the trailers carrying the third and fourth sections arrived at the site they were parked on the same side of the street as the lot, and the crane was approximately equidistant between where the two trailers were parked and where the first two house sections had been placed on the lot. The procedure Dennis used was to lift a section 2 or 3 feet off the trailer and move it down the street to the rear of the crane and then around the back of the crane and onto the lot. When Dennis began moving the third section, which was to be put on top of the first two sections, Watson and others pulled the phone and cable lines back with a rope so that the section would not hit the lines. The section brushed against a dead tree limb on the other side of the street, and Watson cut off the limb, after which the employees thought it would no longer be necessary to hold back the phone and cable lines. (Tr. 15-17, 42-46, 83, 118-19; C1-C2, C5-C7).

After Dennis lifted the fourth house section from its trailer and was moving it along the street to the back of the crane, the crane's rear spreader bar contacted one of the power lines. Eric Jacobson, one of the JRW employees holding a tag line, received a substantial electrical shock and was seriously injured. At the hearing, Dennis testified the spreader bar hit the power line because one of the JRW workers pulled too hard on a tag line. Watson and Jacobson, on the other hand, faulted the proximity of the crane to the line and a slight wind. (Tr. 15-20, 46-56, 61-70, 119-22; C-8).

Alleged Violation of 29 C.F.R. 1926.550(a)(15)(i)

Section 1926.501(a)(15)(i) governs the operation of cranes near power lines rated 50 kv or below and provides that if power lines have not been de-energized or insulated, "minimum clearance between the lines and any part of the crane or load shall be 10 feet." The citation alleges that:

The modular house section, which was being lifted and moved by the mobile hydraulic crane, was within 10' of the 28' 2" high 13.2KV overhead power line where a worker was seriously injured from electrical shock when the rigging cable physically contacted the overhead power line.

The cited facts are uncontested, except that Walker disputes that the crane and its load were under Walker's control when it struck the power line. (Tr. 5-6). There is no doubt that the line was not de-energized or insulated. The Secretary asserts that the standard was violated from the onset of both the third and fourth lifts. Walker, however, asserts that the Secretary has failed to establish that Dennis knew the crane was within 10 feet of the power line and that even if he did he learned of it so late that it was impossible for him to have taken any actions to prevent the contact.

Gerald Chumley, the OSHA compliance officer, testified he had measured the trailer carrying the fourth house section to be 2 feet 8 inches above the ground and that he had determined the third and fourth sections to be 11.5 feet high by measuring the second section, which had identical dimensions. The sections would have been 16 to 18 feet off the ground when raised 2 to 3 feet off the trailer, and the spreader bars, which Chumley estimated to be 4 to 5 feet above the section, would have been 20 to 22 feet above the ground, putting them within 10 vertical feet of the 28-foot-high power lines. The spreader bars were just above the edge of the section, which was 13.5 feet wide. In addition, the street was 16 feet wide, the utility poles were along the edge of the other side of the street, and the power lines were on the street side of the poles. (Tr. 83-96; C1, C2, C5-C7). Thus, unless the trailers carrying the third and fourth sections had been parked so that less than 3 feet were

in the street, the spreader bars would have been within 10 horizontal feet of the power lines. From his measurements and information supplied by Dennis, Chumley concluded the trailers were parked entirely in the street. Dennis disputed this conclusion, but his own diagram showed at least half of the trailer with the fourth section to be in the street. Walker's contention that forces beyond the control of Dennis caused the violation is rejected, and the Secretary has established that the crane rigging was within 10 feet of the power lines on both the third and fourth lifts.

The Secretary has also established Walker's knowledge of the hazard. Given the close proximity of the lines, Dennis knew or reasonably should have known that he could not maintain a 10-foot clearance with the trailer positioned as it was. Control of the crane rested solely with Dennis, and he was responsible for its safe operation. *Frohlick Crane Serv., Inc. v. OSHA*, 521 F.2d 628, 631 (10th Cir. 1975). That Watson assisted Dennis in the performance of his job by signaling and directing did not lessen the responsibility Dennis had for the crane's safe operation. Moreover, the fact that Dennis could not see the power lines as he lifted and moved the sections should have heightened his concern for maintaining the 10-foot safety zone and led him to consider alternate arrangements, such as repositioning the trailers or having the lines de-energized.

I find that the Secretary has established the alleged violation. I further find that the violation was serious because it resulted in a very serious physical injury and could have resulted in death.

Penalty

The Secretary has proposed a penalty of \$3,500.00. In accordance with section 17(j) of the Act, the Commission when determining penalties is to give due consideration to the gravity of the violation and the employer's size, history and good faith. The gravity of the violation, generally the most significant factor, depends upon such matters as the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood that an injury would result. *J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 2214 (No. 87-2059, 1993).

I assess the gravity of the violation as high. Although fewer than five workers were exposed to the hazard, the likelihood of electrocution or serious injury was very high and no precautions were taken to protect against injury. Although Dennis claimed that he had measured the distance from the power line to the opposite edge of the road, his testimony was directly contradicted by Watson. I find that Dennis made no provisions to prevent the crane's intrusion into the 10-foot safety zone and that

his concern was to avoid hitting the line rather than keeping a safe distance from it. (Tr. 119, 129). I have considered the fact that Walker is a small company having ten or fewer employees. (Tr. 116). I have also considered the lack of evidence of any prior OSHA violations and the fact that Walker appears to have cooperated with CO Chumley in his inspection. Finally, I have considered Walker's argument that the others involved in moving the house sections were also culpable. I agree that the others could have done more to prevent the violation, but I nonetheless conclude that the proposed penalty of \$3,500.00 is appropriate in the circumstances of this case.

Findings of Fact

The foregoing constitutes my findings of fact in accordance with Federal Rule of Civil Procedure 52(a). Any proposed findings of fact inconsistent with this decision are hereby denied.

Conclusions of Law

1. The Commission has jurisdiction of this matter pursuant to section 10(c) of the Act.
2. Respondent, Walker Crane & Rigging Corporation, was in serious violation of 29 C.F.R. 1926.550(a)(15)(i), and a penalty of \$3,500.00 is appropriate.

ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is ordered that:

1. Item 1 of Serious Citation 1 is affirmed, and a penalty of \$3,500.00 is assessed.

Ann Z. Cook
Judge, OSHRC

Dated: September 15, 2000
Washington, D.C.