

SECRETARY OF LABOR,
Complainant,

v.

TEXAS MASONRY, INC.
and its successors,
Respondent.

OSHRC DOCKET
NO. 00-1208

APPEARANCES:

Beverlei E. Colston, Esq., Office of the Solicitor, U.S. Department of Labor,
Dallas, Texas

Thomas H. Scott, Esq., W.C. Blayney & Associates, Humble, Texas

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

In this action the Secretary of Labor seeks to affirm a serious citation issued to Texas Masonry, Inc. by the Occupational Safety and Health Administration for the alleged violation of a safety regulation relating to scaffolding. The matter arose after a compliance officer for the Administration inspected a worksite of the company in Porter, Texas, concluded that it was in violation of the regulation, and recommended that the citation be issued. The Respondent disagreed with the citation and filed a notice of contest. By order of the chief judge, this case was assigned for E-Z Trial proceedings, and the matter was heard in Houston, Texas.

The citation charged that:

Citation 1 Item 1 Type of Violation: Serious

29 CFR 1926.451(g)(1): Each employee on a scaffold more than 10 feet above a lower level was not protected from falling to that lower level:

- (a) On April 11, 2000, Texas Masonry, Inc., at a Wal-Mart under construction at 23561 Eastex Fwy (Hwy 59), Porter, TX, 77365, approximately 14' section of guardrail missing at a height of approximately 21'.

in violation of the regulation found at 29 C.F.R. §1926.451(g)(1) reading in part as follows:

- (g) *Fall Protection.* (1) Each employee on a scaffold more than 10 feet (3.1 m) above a lower level shall be protected from falling to that lower level.

At the hearing the compliance officer testified that he inspected a Respondent's roofing worksite on April 11, 2000, and observed masonry work on a retail building annex. Company employees were working on a section of roofing scaffolding approximately 21 feet above ground level with incomplete guardrail or other protection. He took photographs of the unguarded area which confirmed his observations that there was nothing to protect a worker from walking to the edge of the platform. The situation was called to the Respondent's attention, and immediately after the opening conference it installed guardrails and toeboards. The inspector also explained how all work could have been performed with guardrails in place.

Charles H. Thomas, Jr. testified on behalf of the Respondent. He has been associated with masonry for over 41 years and considers himself competent in the field. He did not dispute the compliance officer's observations that workers on the scaffolding were not protected by guardrails. However, he explained that only experienced employees worked on the upper levels. Newer people were assigned to ground level duties only. Based upon his experience the standard practice in the industry on staging platforms did not include guardrails. Initially he stated that there was no way to put a guardrail on the mainframe with blocks and mortar in the area, but later he agreed that guardrails could have been placed so that employees were protected from a 21-foot fall. Normally men would be protected from falls by materials, but after their depletion, the hazard reappeared.

On the basis of this record it is undisputed that on April 11, 2000, the Respondent had workers on a worksite about 21 feet above the ground without personal protective equipment or guardrails on a section of the roof. Respondent believes it was exempt from guardrail protection because this safety measure was not in common usage, and employees on the roof were experienced in the field. Also, part of the time its workers were not at the roof's edge when materials were

located there.

The regulation does not make exception for the Respondent's defenses that complete guardrail protection was not generally utilized by the industry, and that only experienced personnel were permitted to work on roofs.

I therefore find that the Respondent violated the regulation in issue. There also did not appear to be any quarrel with respect to the penalty.

The citation is AFFIRMED with a penalty of \$1,250.00.

/s/

Sidney J. Goldstein
Judge, OSHRC

Dated: June 1, 2001