

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1924 Building - Room 2R90, 100 Alabama Street, SW
Atlanta, Georgia 30303-3104

Secretary of Labor,

Complainant,

v.

Graphic Packaging International, Inc.,

Respondent.

OSHRC Docket No. **05-1735**

Appearances:

Paul Spanos, Esq., U. S. Department of Labor, Office of the Solicitor, Cleveland, Ohio
For Complainant

Robert A. Dimling, Esq., Frost Brown Todd, LLC, Cincinnati, Ohio
For Respondent

Before: Administrative Law Judge Stephen J. Simko, Jr.

DECISION AND ORDER

Graphic Packaging International, Inc. (Graphic), is a corporation engaged in printing and cartonboard manufacturing in Cincinnati, Ohio. The Occupational Safety and Health Administration (OSHA) conducted an inspection of Graphic's facility in Cincinnati on September 27 and 28, 2005. As a result of this inspection, respondent was issued two citations. Graphic filed a timely notice contesting the citations and proposed penalties. A hearing was held in Cincinnati, Ohio, pursuant to Simplified Proceedings on January 26, 2006. Prior to the hearing, the parties settled Citation No. 1, Item 1 and Citation No. 2, Item 1. Remaining at issue are the violative conditions alleged in Citation No. 1, Item 2 and the proposed penalty of \$2,500.00. For the reasons that follow, Citation No. 1, Item 2 is affirmed in part and a penalty of \$1,500.00 is assessed.

Background

On the day of the inspection, respondent operated two press lines that form and print cardboard packaging. The press line at issue consists of eight press units. Each unit performs a slightly different function and can be removed and reconfigured. During the inspection, the Secretary's compliance officer, Gaye Johnson, observed six of the eight units without guards over

the shaft ends. She observed an employee of respondent placing a guard onto a shaft end while the shaft was rotating. The guard slid into two flanges which held the guard in place over the rotating shaft end. The guard was placed over the shaft end during the process of cleaning the doctor blade of the press. Respondent had just completed the bumping process.

On the day of the inspection, the press line ran at a lower than normal speed while the operators configured and aligned the press units. In order to ensure that each of the press units was properly aligned and ink was being correctly applied to the packaging, the newly inserted press units were “bumped” into position. When “bumping,” the operators use a heavy, 3 foot-long steel bar to tap the end of the shafts of the press units to ensure that they are aligned and transferring ink correctly. Respondent admitted the guards on the unit shaft ends were removed during the bumping process.

Discussion

Alleged Violation of 29 C.F.R. § 1910.219(c)(4)(i)

The Secretary has the burden of proving, by a preponderance of the evidence, a violation of the standard.

In order to establish a violation of an occupational safety or health standard, the Secretary has the burden of proving: (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 OSHA 2131, 2138 (No. 90-1747, 1994).

The Secretary in Citation No. 1, Item 2, alleges that:

Unguarded projecting shaft end(s) did not present a smooth edge and end and projected more than one half the diameter of the shaft:

- (a) On or about September 27, 2005, the guard for the 8 projected shaft ends on Presses such as Press Line #1 that projected more than one half the diameter of the shaft was inadequate in that the cup guard only slid into place and was not bolted in place to prevent operators from removing the guard while the projecting shaft was rotating to bump the press.

The standard at 29 C.F.R., § 1910.219(c)(4)(i) provides:

(4) *Projecting shaft ends.* (i) Projecting shaft ends shall present a smooth edge and end and shall not project more than one-half the diameter of the shaft unless guarded by non rotating caps or safety sleeves.

This standard is clearly applicable. The projecting shaft ends do not present a smooth edge. The shaft was not a single shaft. One portion of the shaft had a larger ring. The shaft end projected 3/8 inches and the shaft diameter was 3 inches.

The standard at 29 C.F.R. § 1910.219(c)(4)(i) requires such shaft ends to be guarded by non rotating caps or safety sleeves. At issue is whether Graphic complied with the terms of this standard.

While the doctor blades were being cleaned during the inspection at least six of eight shaft end guards on one press line had been removed exposing rotating shaft ends. Mr. John McKeough, respondent's plant manager, confirmed that six guards had been removed during start-up of the run. This included the bumping process followed by cleaning of the doctor blades while the press was running and the shafts were rotating. He testified that during a typical start-up, the guards would not be put back until all tweaks and adjustments were completed. He stated that once all the adjustments are done, the guards are put back in place. He admitted at hearing it was expedient, that is, advantageous, for the operator to remove six of the eight guards at once to evaluate and adjust the units of the press before running at normal speed. It is not essential, according to Mr. McKeough, that all six guards be removed from the shafts at the same time. One could be removed, the adjustment made, and the guard replaced before removal of the next guard. He also testified that respondent has redesigned the guards so they are interlocked with the machines. If the guards are removed, the machine stops. The bumping process is now done while the machine is stopped and the shafts are not rotating.

On the day of the inspection, respondent failed to comply with the terms of the standard in that six projecting shaft ends on the press line were not guarded by non rotating caps or safety sleeves during the bumping process and while the doctor blades were being cleaned during start-up of the run.

Also at issue is whether respondent complied with the terms of the standard where the eight guards only slid into place and were not bolted in place to prevent operators from removing the guard while the projecting shaft was rotating to bump the press. No evidence was presented that bolting

guards in place offers any greater protection for employees than the method used by Graphic. Respondents' guards slid vertically into 6.5 inch deep flanges. While the guards could be lifted from these flanges, it is obvious from a review of all the evidence that these guards could not be easily inadvertently displaced from these flanges.

Bolting the guards in place would not prevent removal during the bumping process. It would merely slow down the operation while providing no protection of the employee during the bumping operation. The evidence is clear that the end of the shaft must be exposed during the bumping operation. The operator must have access to the shaft end to bump it. This is true whether the shaft is rotating, as during the inspection, or stopped, as is now done by Graphic.

I find that failure to bolt the guards in place is not a violation of this standard. The standard requires only that the rotating shaft ends be guarded by non rotating caps or safety sleeves. The standard does not require that the caps or safety sleeves be bolted. Respondent's guards, while in the flanges, qualify as non rotating caps and safety sleeves. By choosing to use these guards and flanges, Graphic did not fail to comply with the terms of the standard as long as these guards remained in place. Once the guards were removed and the shafts rotated during the bumping process and during cleaning of the doctor blades, respondent did fail to comply with the terms of 29 C.F.R. § 1910.219 (c)(4)(i).

Complainants' video of Graphic's employee cleaning the doctor blade clearly shows the employee working within the zone of danger of contacting the unguarded rotating shaft ends. (Exhibit C-1). Employees reach into the press line, their hands and arms passing within a few inches of the unprotected shaft. This work is done while the shaft continues to rotate.

Respondent admits the guards are removed during the bumping process. The video in Exhibit C-1 shows guards removed during the process of cleaning the doctor blades. Respondent argues that given these conditions, the shaft ends are still not unguarded. Graphic submits that the shaft ends are blocked from contact by employees by a metal bar 16 inches from the body of the press, and an ink tank and pumping assembly beside each press unit. This argument is rejected. The video shows that the employee cleaning the doctor blade reached beyond the bar and past the ink tanks and pumping assembly into the body of the press line to perform his work. In doing so, his

hand and arm came within a few inches of contacting the rotating shaft, passing parallel to the shaft as he placed his hand inside the body of the press line.

The employee then placed the guard over the shaft end while the shaft continued to rotate. He held the expanded metal guard with his bare hands between the bottom of the guard and the spinning shaft end as he lowered the guard into place. This action once again brought his hands within a few inches of contacting the end of the shaft. The guard also blocked his view of the shaft as he placed the guard into the flanges. Respondent's plant manager, John McKeough, testified regarding the dimensions of the shaft and the guards. The shaft ends projected 3 5/8 inches and the diameter of the shaft was 3 inches. The guard was 7 inches deep, 10-12 inches wide and 13 inches high. Simple measurement dictates that while placing the guard over the shaft, the employee's unprotected hands came between 3.5 and 4.5 inches from the spinning shaft end. The work area was next to the rotating shaft ends. The metal bar and the ink tank and pumping assembly were below that area. They offered no protection against contact with the hazard. The shaft ends were unguarded and employees were exposed to the hazard by working within inches of the violative condition.

Respondent had actual knowledge of the violation. Its plant manager and floor supervisor observed the six unguarded shaft ends during the inspection shown in the video in Exhibit C-1. The floor supervisor explained the operation to the compliance officer and the reasons the shaft was unguarded. He stated the guard must be off the shaft during the bumping process. The video shows the employee cleaning the doctor blade after the bumping process was completed. The press was up and running. The shaft was not involved in the cleaning of the blade. Employees continued to work within inches of the unguarded rotating shaft even after the bumping process was completed. Respondent's plant manager and floor superintendent observed this condition and did nothing to correct it. The video also shows the employee replacing the guard with his bare hands within 4.5 inches of the shaft. Respondent's supervisors were present during this process and did nothing to protect the employee. They had actual knowledge of the violative condition and employee exposure.

Respondent raised no defense of infeasibility or impossibility of guarding the shafts during any phase of the operation of the press line. Graphic argued that the guards must be removed while the shafts rotate during the bumping process. Mr. McKeough, its plant manager, however, testified

that the bumping process is now performed while the machine is stopped and the shafts are not rotating. No evidence was produced by respondent as to the reasons the shafts were unguarded while the doctor blades were cleaned.

Respondent violated 29 C.F.R. § 1910.219(c)(4)(i) during the bumping process and during the cleaning of the doctor blade while the guard was not in place. This was a serious hazard that was likely to cause serious physical harm, including laceration. I find that there was no violation of the standard during the operation when the guards were in place in the flanges. No bolting of the guards to the machine or floor is required by this subsection of the standard.

Section 9 (a) of the Act requires a citation to describe with particularity the nature of the violation. It must contain a description of the violation and the standard violated. This case was heard under Simplified Proceedings. Counsel for both parties participated in the pre-hearing conference on January 20, 2006. Respondent did not raise the affirmative defense of lack of particularity during that conference. Respondent failed to plead the defense of lack of particularity or fair notice throughout this proceeding. Arguably the issue was tried by consent of the parties.

In determining whether a citation item is sufficiently particular in describing and alleged violation, the Review Commission considers the totality of circumstances. In *Todd Shipyards Corp.*, 5 BNA OSHC 1012, 1976-77 CCH OSHD ¶21,509 (Docket No. 8500, 1977) the Commission stated;

The question of whether a citation gives fair notice so that an employer may abate or contest as he chooses depends upon factors other than the language of the citation itself; it also may include the circumstances of the compliance inspection and the employer's familiarity with his own business.

Here, the plant manager and the floor supervisor observed the violative conditions shown in the video with the compliance officer during the inspection. They explained to the inspector the bumping and doctor blade cleaning operations. The floor supervisor gave a detailed explanation for removing guards during the bumping process. Both were intimately familiar with the operation of the press line. Both knew of the concerns of the compliance officer relating to the unguarded shaft ends. The citation, read as a whole relates to unguarded rotating shaft ends. It directly relates the lack of guarding to the bumping process. It is uncontroverted that bumping only occurs when the

guards are removed. During the inspection, bumping occurred when the shafts were rotating. Respondent now argues surprise and lack of adequate notice. It is clear, however, from the totality of evidence and a full reading of the entire citation that the citation contained sufficient particularity to give respondent fair notice of the alleged violation, the location and the process involved.

The citation may have been inartfully worded. This employer, however, had a fair notice of the nature of the violation, given its familiarity with its own operations, business practices and the circumstances surrounding this inspection. The citation was sufficiently particular to provide fair notice of the alleged violation to the Respondent.

Penalty

Under § 17(j) of the Act, in determining the appropriate penalty, the Commission must give due consideration to the size of the employer's business, the gravity of the violation, the good faith of the employer, and the history of previous violations.

Respondent is a large employer with thirty-nine plants. It has two press lines at this facility. On the press line at issue, only three employees are working each shift. Six of the eight guards on this press line were not in place during the inspection. The hazard of unguarded rotating shafts would be serious injury such as laceration. The company exhibited limited good faith by providing guards for the shafts. This is partially negated by removing them during bumping and cleaning the doctor blades while the shafts are rotating. It was common practice for respondent to remove the guards during these processes. Multiple guards removed at one time was done as a matter of expediency. No evidence of past history was presented in support of the proposed penalty. Considering all factors, a penalty of \$1,500.00 is appropriate for Citation No. 1, Item 2.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

ORDER

Based upon the foregoing decision, it is ORDERED:

1. Citation No. 1, item 1, is affirmed as a serious violation and a penalty of \$2,500.00 is assessed.

2. Citation No.1, item 2, the alleged violation of 29 C.F.R. § 1910.219(c)(4)(i), is affirmed as a serious violation and a penalty of \$1,500.00 is assessed.
3. Citation No. 2, item 1, is affirmed.

/s/ Stephen J. Simko, Jr.
STEPHEN J. SIMKO, JR.
Judge

Date: March 20, 2006