



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

One Lafayette Centre
1120 20th Street, N.W. — 9th Floor
Washington, DC 20036-3419

PHONE:
COM (202) 606-5100
FTS (202) 606-5100

FAX:
COM (202) 606-5050
FTS (202) 606-5050

SECRETARY OF LABOR
Complainant,

v.

CATERPILLAR, INC.,
Respondent,

UAW - LOCAL 2096,
Authorized Employee
Representative.

OSHRC DOCKET
NO. 93-2686

**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. 93-2686

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. R 128A
Ray H. Darling, Jr.
Executive Secretary

Date: March 13, 1995

DOCKET NO. 93-2686

NOTICE IS GIVEN TO THE FOLLOWING:

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

John H. Secaras, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
230 South Dearborn St.
Chicago, IL 60604

Robert E. Mann, Esq.
Franczek, Sullivan, Mann, Crement,
Hein, Relias, P.C.
300 South Wacker Drive, Suite 3400
Chicago, IL 60606

Jerome Schur, Esq.
Eric Mennel, Esq.
Katz, Friedman, Schur & Eagle
77 West Washington Street, 20th FL
Chicago, IL 60602

James H. Barkley
Administrative Law Judge
Occupational Safety and Health
Review Commission
Room 250
1244 North Speer Boulevard
Denver, CO 80204 3582

00103490421:05



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1244 N. Speer Boulevard
Room 250
Denver, Colorado 80204-3582

PHONE:
COM (303) 844-3409
FTS (303) 844-3409

FAX:
COM (303) 844-3759
FTS (303) 844-3759

SECRETARY OF LABOR,

Complainant,

v.

CATERPILLAR, INC.,

Respondent,

UAW - LOCAL 2096

Authorized Employee
Representative.

OSHRC DOCKET
NO. 93-2686

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 4H Park Road, Pontiac, Illinois, where it was engaged in the manufacture of earth moving equipment. Caterpillar admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On September 7, and October 7, 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 "serious" citation 1, item 1, and "serious" citation 2, item 1, alleging violations of 29 CFR §§1910.212(a)(3)(ii) and 212(a)(1), respectively. Prior to hearing, Complainant moved and was granted leave to amend citation 1, item 1 to allege a violation of §1910.212(a)(1) in the alternative.

On November 8, 1994, a hearing was held in Peoria, Illinois on the contested issues. The parties have submitted briefs and this matter is ready for disposition.

Citation 1, Item 1

Citation 1, Item 1 alleges:

On the Emco 340, employees are not protected from the tail stock coming in contact with their hand while operated in the manual mode.

In its brief, Complainant withdraws its allegation that the cited condition constitutes a violation of 29 C.F.R. §1910.212(a)(3)(ii). Only the alternative pleading alleging a §1910.212(a)(1) violation will, therefore, be considered.

Facts

At the hearing, Maywood Williams testified that beginning in April 1993, he operated an Emco 340 lathe at Caterpillar's Pontiac plant (Tr. 25; Exh. C-1). Williams stated that, normally, in order to operate the lathe: the plexiglass guard door is opened; the operator inserts the stock by hand into the chuck; the chuck is closed by depressing one of the three buttons in the top row of the control panel to the right of the door (Tr. 28, 30; Exh. C-2, C-4). The door is then closed and the operator pushes a start button to cycle the lathe (Tr. 31). The machined part is then removed from the chuck by hand (Tr. 31).

On July 13, 1993, Williams was running a larger part than usual, one which required the use of the lathe's tail stock, a pointed securing device located across from the chuck and intended to hold the opposite end of the stock (Tr. 35-36, 42, 103; Exh. C-2). Robert Bybee, Caterpillar operations supervisor (Tr. 102), testified that prior to Williams taking over the operation of the lathe, the tail stock on the Emco 340 advanced automatically, a set time after the chuck was engaged (Tr. 123). Bybee stated that Williams was uncomfortable with the lathe's operation because he was not sure he could remove his hand before the tail stock advanced (Tr. 123). The lathe was reprogrammed so that the tail stock had to be manually advanced by pressing a button immediately to the right of the bottom which engages the chuck (Tr. 104; Exh. C-4, R-3).

On July 13, Williams remembers reaching up to press the chuck button as he held the stock in place. Instead of the chuck, however, he apparently engaged the tail stock, which advanced, and pierced his hand (Tr. 43-44).

Discussion

Section 1910.212(a)(1) requires:

One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips and sparks. Examples of guarding methods are -- barrier guards, two-hand tripping devices, electronic safety devices, etc.

The Commission has held that, in order to establish the applicability of 212(a)(1), the Secretary must prove that employees are exposed to a hazard as a result of the manner in which the cited machine functions or is operated. *Jefferson Smurfit*, 15 BNA OSHC 1419, 1991 CCH OSHD ¶29,551 (No. 89-0553, 1991).

The record establishes that the functioning of the tail stock on the Emco 340 lathe, and Williams' manual operation of it exposed him to a hazard; the hazard which resulted in his July 13 injury. The Emco 340 operator is required to insert the stock for lathing by hand. The lathe has no electronic or other guards which would prevent the start up of any

of its functions while the operator has his hands in or near its moving parts.¹ The proximity of the engage buttons for the chuck and the tail stock, combined with the operator's need to keep at least part of his attention on the position of the stock he is holding while engaging the chuck, create a substantial risk that the wrong button will be depressed, and the tail stock activated while the operator is holding the stock.

The occurrence of just such an accident establishes employee exposure to the hazard; management's reprogramming of the lathe's operation establishes its knowledge of the configuration of the controls, and the proximity of the chuck and tail stock engage buttons. The violation is affirmed.²

Penalty

A penalty of \$2,275.00 is proposed. Williams' accident establishes the serious nature of the violation, and the high probability of an accident; Williams had been using the tail stock for only two weeks before the incident. The operator of the lathe was exposed each time he engaged the chuck, approximately 100 times per shift (Tr. 41). Caterpillar is a large employer with over 50,000 employees and over \$10 billion in annual sales. \$2,275.00 will be assessed.

Citation 2, Item 1

Citation 2, Item 1 alleges:

29 CFR 1910.212(a)(1): Machine guarding was not provided to protect operator(s) and other employees from hazard(s) created by point of operation, rotating parts, and flying chips:

¹ Robert Bybee testified that there had been an interlock on the Emco 340's plexiglass door which would have prevented the lathing cycle from engaging until the door was closed (Tr. 105). The interlock had been bypassed at the time of the inspection (Tr. 106, 126). Complainant acknowledges that the interlock did not prevent the tail stock from engaging, and would not have prevented the accident had it been working. The instant citation is not based on the presence or absence of that interlock (Tr. 126-127).

² Although the means of abatement is not at issue in this case (Tr. 144), the Secretary suggests that manual control of the tail stock be eliminated and replaced either with an interlock preventing its activation until the lathe door is closed, or with dual controls which would require both the operator's hands to engage (Tr. 148). To avoid further litigation, this judge notes that Caterpillar has since installed a plexiglass shield above the tail stock engage button (Exh. R-3), effectively preventing its accidental activation and eliminating the operation hazard on which this judge's ruling is based.

Employees in Departments 26-512 and 591 were exposed to the hazards of being struck by flying chips, coolant, and/or broken parts, and being caught in rotating parts and/or the point of operation. Micro switches assuring the access doors in the guards remained closed, when the machines were operating, had been disabled or removed on the following machines. The access doors were being opened to perform viewing by the operator while the machine was running. Machines #194, #278, #279, #302, #303 and #1883.

Facts

Patrick Philipchuck testified that he operates an Acme Gridley multi-spindle lathe at Caterpillar's Pontiac plant (Tr. 47-48). Stock is automatically fed into the lathe and is held and spun by the spindles as it is cut by various tools (Tr. 49; Exh. C-6). The spindles turn at rates between 700 and 1400 rpms (Tr. 50). Philipchuck testified that the lathe was originally guarded with an interlock which caused the equipment to shut down whenever its plexiglass guard was opened (Tr. 54; Exh. C-7). The interlock caused the lathe to slow, but the spindles continued to turn and stock to feed until the cycle was completed; the spray of coolant on the spindles and tools ceased immediately, however, resulting in tool breakage and fires costing hundreds of dollars and three or four lost work hours at each occurrence (Tr. 55, 63). Because of the problems with the interlocks, Caterpillar had them disconnected (Tr. 119, 131).

Philipchuck testified that he routinely placed his hands inside the plexiglass door of the Acme Gridley lathe to clean out metal chips as it continued to run (Tr. 51). Philipchuck stated that when he worked inside the machine, he hit a stock stop button, which closes the chuck and prevents the stock from advancing, or the tools from engaging (Tr. 65). The spindles, however, continue to rotate (Tr. 112). Philipchuck stated that he cleaned chips out of the lathe five to eight times a shift (Tr. 52), using a metal hook (Tr. 51, 112). He would insert the hook next to the rotating spindles; his hand could be as little as six inches from the spindles and broach, a hydraulic tool (Tr. 51-52, 63; Exh. C-7). He admitted that he could have stopped the machine to clean the chips, but saw no reason to do so, as he was only going to be working in the machine for a few seconds (Tr. 63).

Philipchuck also placed his hands inside the lathe to adjust oil lines and slides (Tr. 51). He stated, however, that the machine had to be running to make adjustments, in order to tell whether the lines and slides were aligned (Tr. 64, 66). The slides were aligned once a year or so (Tr. 68); Philipchuck stated that his hands came within two feet of the spindles (Tr. 54). The coolant lines are between 6 and 8 inches from the spindles (Exh. R-7, R-8).

The Operator's Safety Manual for Acme-Gridley multi-spindle bar and chucking machines states that all covers and guards must be in place before running the machine, and that at no time should a safety interlock be bypassed (Tr. 88; Exh. C-9).

Discussion

Section 1910.212(a)(1), *supra*, requires employers to provide machine guarding where employees are exposed to hazards such as those created by rotating parts. The evidence establishes that the Acme Gridley operator was exposed to the lathe's rotating spindles when his hand came within 6 inches of the spindles as he cleaned out metal chips.

That rotating spindles pose a hazard is expressly recognized by the standard, and by the manufacturer, which originally provided interlocks that shut down the lathe whenever the plexiglass door covering the machining area was opened. In bypassing the manufacturer's safety precautions, Caterpillar exposed its employees to that hazard. The violation has been established.³

Penalty

A penalty of \$1,300.00 is proposed by the Secretary.

It is clear that an employee whose hand was caught in the rotating spindles would be drawn into the lathe's inner works, resulting in bruises and lacerations. The cited standard is, therefore, correctly characterized as "serious." However, this judge finds that the gravity of the violation is very low, based on the low probability of an accident occurring.

A metal hook is generally used for removing chips, reducing the chance that the operator's hands will be caught in the moving parts. No injuries have ever been caused by

³ Because I find a violation existed based on the operator's practice of cleaning out metal chips while the spindles continued to turn, it is unnecessary to address the practice of adjusting the slides and coolant lines with the lathe on. Though no affirmative defenses were pleaded, the evidence indicates that it was necessary for the lathe to be running when those operations took place.

the rotating spindles on the Acme Gridley (Tr. 134), despite the frequency of exposure, *i.e.*, five to eight times a shift since the interlock was disconnected in the early 1980's (Tr. 132).⁴

The gravity of the violation was overstated, a penalty of \$100.00 will be assessed.

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 §1910.212(a)(1), is AFFIRMED as a serious violation, and a penalty of \$2,275.00 is ASSESSED.
2. Citation 2, Item 1, alleging violation of §1910.212(a)(1) is AFFIRMED and a penalty of \$100.00 is ASSESSED.


James H. Barkley
Judge, OSHRC

Dated: March 3, 1995

⁴ Terry Camp testified that, in the summer of 1988, he was cleaning chips from the Acme Gridley and caught his finger between the drop chute and the tool slide (Tr. 72, 74). Camp was not using a chip hook, though one was available (Tr. 77). Camp's injury was neither the subject of this litigation nor, apparently, the result of the hazard cited by Complainant. The circumstances surrounding the accident are too vague to accord it any weight.