



UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR
Complainant,

v.

MARINO MIDWEST INC.
Respondent.

**OSHRC DOCKET
NO. 93-2875**

**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 September 30, 1994. The decision of the Judge will become a final order of the Commission on November 1, 1994 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 October 19, 1994 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
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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.
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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.
Ray H. Darling, Jr.
Executive Secretary

Date: September 30, 1994

DOCKET NO. 93-2875

NOTICE IS GIVEN TO THE FOLLOWING:

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Sidney J. Goldstein
Administrative Law Judge
Occupational Safety and Health
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SECRETARY OF LABOR,
Complainant,

v.

MARINO MIDWEST, INC.,
Respondent.

OSHRC Docket No. 93-2875

APPEARANCES:

Leonard Borden, Esq., Office of the Solicitor, U.S. Department of Labor,
Chicago, Illinois

C. Jeffrey Thut, Esq., Hall, Roach, Johnston, Fisher & Bollman, Waukegan, Illinois

Before: Administrative Law Judge Sidney J. Goldstein

DECISION AND ORDER

This is an action by the Secretary of Labor against Marino Midwest Corporation to enforce a citation issued by the Occupational Safety and Health Administration for the alleged violation of a regulation adopted under the Occupational Safety and Health Act of 1970 relating to the operation of a crane. The controversy arose after a compliance officer of the Administration inspected a workplace of the Respondent, concluded that the company was in violation of the regulation found at §29 CFR 800(t)(2), and recommended that the citation be issued. The employer disagreed with this finding and filed a notice of contest. After a complaint and answer were filed with this Commission, a hearing was held in Chicago, Illinois.

The citation charged that:

Cranes were not equipped with a limit switch to prevent overtravel at the boom tip:

(a) Shaft in 2200 block of Main Street, Evanston, Il - Bucyrus Erie Crawler crane 30B used for hoisting loads to workers at the bottom of the shaft had an inoperative anti-two block device.

in violation of the regulation found at 29 CFR §1926.800(t)(2) which provides:

Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip * * *.

Testimony at the hearing disclosed that the company is engaged in underground construction and utilized a crane described as a Bucyrus-Erie #30 in its hoisting operations. A compliance officer for the Administration inspected the worksite and ascertained that this equipment did not contain a limit switch at the boom tip, a device which prevents overtravel of the load hook or headache ball beyond the boom tip. The purpose of the limit switch is the same as an anti-two block instrument. He considered the lack of a limit switch to be a violation of the regulation in contest.

During the inspection, the compliance officer was informed that there was no limit switch on the crane, but the crane was equipped with an alarm system which would sound if a two block situation occurred. However, this safety feature was not connected, resulting in the absence of any alarm system. In the opinion of the officer the alternative alarm system if utilized merely alerted the operator, necessitating a manual disengagement of the hoisting controls.

Upon further examination, the compliance officer testified that the boom was about 50 feet above the ground, and the load was approximately 10 to 15 feet above ground. Personnel were not lifted by the crane. He compared the difference between a limit switch and the Respondent's unconnected alarm system by noting that the former prevented overtravel while the latter merely gave a signal to the operator, requiring human intervention to prevent a mishap.

A safety consultant for the Respondent testified that he familiarized himself with the regulation in issue after the inspection took place. He agreed that to be in compliance with the regulation the crane would need a limit switch. However, in his opinion, the anti-two block device module on the Respondent's crane was as effective as a limit switch because it automatically warned the operator of an approaching two block condition through the audible alarm and warning light flashes. He also believed Respondent's alarm system complied with the regulation. After the inspection the Respondent connected the anti-two block mechanism.

As previously noted, the regulation provides that cranes in underground construction shall be equipped with a limit switch to prevent overtravel at the boom tip. The uncontradicted evidence at the hearing established that the crane in issue was not equipped with a limit switch. Thus, there was a violation of the regulation. Further, the Respondent's anti-two block system is not the equivalent of a limit switch because the latter prevents overtravel of the boom tip while the block system merely alerts the crane operator and requires intervention to prevent an accident. In any event, the Respondent's safety device was not connected and therefore not operational. The citation is therefore affirmed.

An employer's good faith belief that its alternative program is as good as or superior to the regulation's requirements is irrelevant to the question of whether the regulation was violated. The Act provides a mechanism for an employer to avoid compliance with OSHA regulations and instead provide its own alternative program to accomplish the same goal as the regulations. This mechanism is a variance or exemption from OSHA's mandatory requirements for employers. In this case the Respondent did not apply for a variance.

The Secretary recommended a penalty of \$2,500.00. The Respondent urges that the penalty is excessive in that the boom was approximately 50 feet in the air while the loads were lifted no higher than 10 to 15 feet, thereby reducing the danger to the three men working in the underground area. In addition, the anti-two block system was connected immediately after the inspection.

After a consideration of the statutory criteria, I conclude that a penalty of \$2,000.00 is in order. Accordingly, the citation is AFFIRMED with a penalty of \$2,000.00.


Sidney J. Goldstein
Judge, OSHRC

Dated: September 23, 1994