
SECRETARY OF LABOR, :
 :
 Complainant, :
 :
 v. :
 :
 PROCESSING TECHNOLOGIES, INC., :
 :
 Respondent. :

OSHRC DOCKET NO. 97-1743

APPEARANCES:

Leonard Borden, Esquire
Chicago, Illinois
For the Complainant.

Jon P. Roberts
St. Charles, Illinois
For the Respondent, *pro se*.

Before: Chief Judge Irving Sommer

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”) inspected Respondent’s facility in August of 1997, resulting in the issuance of a three-item serious citation and a one-item “other” citation. Respondent did not contest the alleged violations, but did contest the penalties proposed for the serious citation items.¹ The case was designated an E-Z Trial case pursuant to Commission Rule 203(a), and the hearing in this matter was held on February 25, 1998.

Citation 1 - Item 1

This item was issued due to materials being stored within 3 feet of a paint booth, in violation of 29 C.F.R. 1910.107(b)(9). Julia Evans, the OSHA compliance officer (“CO”) who inspected the site, testified that cardboard, a 5-foot flammable storage cabinet and work materials were located within 3 feet of the paint booth, that the welding area was 5 to 8 feet from the booth, and that employees were in and out of the area throughout the day. Evans further testified that penalties are based on the gravity of the violation and on the size, history and good faith of the employer. She said that the initial penalty of \$3,500.00 was based on a medium rating for gravity, due to the potential for fire and second-degree burns and a greater probability of occurrence, and that this amount was

¹No penalty was proposed for the “other” citation item.

reduced by 50 percent because of the employer's small size and the fact that the company had never been inspected before, resulting in a total proposed penalty of \$1,750.00; she also said that no reduction for good faith was given because the company had no written safety program and had not done any air or noise monitoring, and that although the cited condition was corrected while she was there no reduction for abatement was given because of the gravity of the violation. (Tr. 5-12; 18).

Jon Roberts, Respondent's vice-president of manufacturing, testified that his company had been in business since 1988, that it had an excellent safety record, and that its paint booth and sprinkler system setup had been inspected and approved by the local fire department; he further testified that his company was very concerned with employee safety, that it cooperated fully with OSHA, and that all the violations were corrected either while the CO was there or by the required abatement date. Roberts said he was aware of OSHA before the inspection, although he had not read its regulations or materials, and that his company had used basic common sense, including the use of safety equipment, to protect employees. Roberts also said that the company now has a written safety program and has begun keeping the required OSHA log of injuries and illnesses and material safety data sheets; the company also now holds monthly safety meetings, keeps abreast of pertinent safety matters, and posts information in the facility to promote safety awareness. (Tr. 19-28).

Based on the foregoing, it is my conclusion that Respondent is entitled to a further reduction in penalty for good faith. It is clear from the record that before the inspection the company was not in compliance with the cited OSHA standards. However, it is also clear the company is small and inexperienced in OSHA matters, and that despite its lack of pre-inspection compliance it cooperated fully in the inspection and timely corrected all the cited conditions. Moreover, since the inspection the company has adopted a written safety program and has begun holding regular safety meetings, has been keeping abreast of relevant safety matters, and has also been keeping the required OSHA documentation and posting information to foster safety awareness. Finally, Roberts' demeanor as he testified showed that he was genuinely concerned about employee safety, and his testimony as to the company's safety record was not rebutted. On balance, I find that the appropriate resolution of this item is to apply an additional 10 percent reduction to the initial penalty of \$3,500.00, for a total reduction of 60 percent. A penalty of \$1,400.00 is accordingly assessed for this item.

This item was issued due to the presence of a 55-gallon drum of waste paint thinner inside the spray booth, in violation of 29 C.F.R. 1910.107(e)(2); the drum was about three-quarters full, and the cover was not secured. CO Evans testified that this was a high gravity, greater probability condition because of the amount of thinner, the potential for fire, and the fact that employees worked in the booth; she further testified that the condition was abated before she left the facility, and that after giving a 50 percent reduction to the initial penalty of \$5,000.00, the proposed penalty was \$2,500.00. (Tr. 12-15; 18). Jon Roberts testified that the waste drum was moved inside the paint booth after the fire department advised the company that it had to be kept in an enclosed area; Roberts also testified that the fire department had approved the drum's location inside the booth. (Tr. 21). Based on this testimony and the same factors noted above, a 10 percent reduction is applied to the initial penalty of \$5,000.00. A penalty of \$2,000.00 is therefore assessed for this item.

Citation 1 - Item 3

This item was issued due to a horizontal band saw that had a partially unguarded blade, in violation of 29 C.F.R. 1910.213(i)(1), that employees used to cut different sizes of stock steel. CO Evans testified that the saw was a hazard as employees could be 3 to 6 inches from the unguarded part of the blade when sawing smaller pieces of stock, which could result in serious injuries such as cuts or amputations; the CO also testified that the condition was of medium gravity and lesser probability, based on the possible types of injuries, the various sizes of stock, and how often the saw was used, and that a 50 percent reduction was given to the initial penalty of \$2,000.00 for a proposed penalty of \$1,000.00. (Tr. 16-18). Jon Roberts testified that when the saw was purchased it did not come with a guard like the one the CO advised was required. He further testified that he had been in the same business for 20 years and had never seen such a guard; however, after learning what was required, the company contacted the manufacturer, purchased the guard, and put it into use within the abatement period. (Tr. 22). On the basis of the record as a whole, and for the reasons set out in item 1, *supra*, a 10 percent reduction is applied to the initial penalty; consequently, a penalty of \$800.00 is assessed for this item.

Conclusions of Law

1. Respondent Processing Technologies, Inc., is engaged in a business affecting commerce and has employees within the meaning of section 3(5) of the Act. The Commission has jurisdiction of the parties and of the subject matter of the proceeding.

2. Respondent was in serious violation of 29 C.F.R. §§ 1910.107(b)(9), 1910.107(e)(2) and 1910.213(i)(1).

3. Respondent was in “other” violation of 29 C.F.R. § 1910.1200(e)(1).

Order

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

1. Items 1, 2 and 3 of serious citation 1 are affirmed, and penalties of \$1,400.00, \$2,000.00 and \$800.00, respectively, are assessed.

2. Item 1 of “other” citation 2 is affirmed, and no penalty is assessed.

Irving Sommer
Chief Judge

Date: