

SECRETARY OF LABOR,

Complainant,

v.

OSHRC DOCKET NO. 97-1898

DAWSON PRODUCTION SERVICES,

Respondent.

APPEARANCES:

For the Complainant:

David C. Rivela, Esq., Robert A. Goldberg, Esq., U.S. Department of Labor, Office of the Solicitor, Dallas, Texas

For the Respondent:

George R. Carlton, Jr., Esq., Godwin and Carlton, Dallas, Texas

Before: Administrative Law Judge: James H. Barkley

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the “Act”).

Respondent, Dawson Production Services (Dawson), at all times relevant to this action maintained a place of business at a well site in Chambers County, Texas. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act (Tr. 6).

In April 1997 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Dawson’s well site following receipt of a fatality report resulting from a drill rig collapse. As a result of that inspection, Dawson was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Dawson brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On March 17, 1998, a hearing was held in Houston, Texas. At the hearing the Secretary withdrew citation 1, item 3 (Tr. 5). The parties have submitted briefs on the remaining issues and this matter is ready for disposition.

Alleged Violations

Serious citation 1, item 1 alleges:

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to:

...such as fractures and crushing due to being struck by falling portions of the mast, rigging, and racked tubing from the Pemco model 112-150-C servicing rig serial number 1226 rig number 57 at the Andy Franklin well, located in Chambers County, TX, at Kelly Road at Farm to Market Road 582, near Anahuac, TX.

Among other means, one way of abating his hazard is to effectively guy the servicing rig with four crown-to-ground guylines, two tubing board-to-ground guylines and two mast-to-rig load guylines in accordance with the manufacturer's Recommended Guying Pattern, October 1976 revision.

Serious citation 1, item 2 alleges:

Section 5(a)(1) of the Occupational Safety and Health Act of 1970: The employer did not furnish employment and a place of employment which were free from recognized hazards that were causing or likely to cause death or serious physical harm to employees in that employees were exposed to:

...such as fractures and crushing due to being struck by falling portions of the mast, rigging, and racked tubing from the Pemco model 112-150-C servicing rig serial number 1226 rig number 57 at the Andy Franklin well, located in Chambers County, TX, at Kelly Road at Farm to Market Road 582, near Anahuac, TX, following failure of the rig anchorages.

Among other means, one way of abating this hazard is to provide anchorages capable of withstanding the maximum guyline loads prior to placing the rig into service, as specified in paragraph 3.14 of Supplement 3 of American Petroleum Institute specification 4E Specifications for Drilling and Well Servicing Structures.

Facts

The double masted PEMCO workover rig, Model 112-250-C, which is the subject of this action, is stabilized by four crown guys, which steady the top of the rig mast during heavy winds and restrain the movement of the rig in pulling loads (Tr. 194). William Luttgen, a mechanical and structural engineer with experience in the design of oil rigs dating back to 1954 (Tr. 179, 185-91), testified that without the help of the crown to ground guys, the rig would just overturn pulling a load (Tr. 194).

The crown to ground guys are secured by means of anchors. The anchors in this case are approximately 4-1/2 to 5 feet long and resemble a corkscrew with 6 inch blades (Tr. 85, 98, 111). Four men grasp a 15-20 foot pipe at the top of the corkscrew and twist the anchor straight into the ground (Tr. 94, 101).

Alfredo Delafuente, an operator for Dawson, testified that he helped set up rig number 57 at the Andy Franklin lease (Tr. 80). Delafuente testified that he and three other men augured the anchors into the

ground (Tr. 84-86, 96, 98). Once the anchor was secured, the cable was tied to the turnbuckle and tightened (Tr. 83). No pull test was conducted; no effort was made to determine the capacity of the anchors (Tr. 86-87, 289).

William Luttgen testified that the industry standards for guyline anchors are contained within Section 6 of API recommended practice 4G (RP4G) first edition, January 1, 1992. (Tr. 223, 233, 238; Exh. C-9). Section 6.6 requires that the rig contractor:

[insure] that anchor capacities are verified prior to attaching guywires to the anchors, that the verification is less than 24 months old and that anchor spacing and capacity is suitable for the mast guying pattern and anticipated loading.

Section 6.2 provides that:

. . . The capacity may be verified by pull testing or other appropriate methods that are based upon accepted engineering practices that yield equivalent results to pull testing.

* * *

b. Some manufacturers of screw-in type anchors have correlated anchor capacity to torque required to install the anchor. This “torque method,” when used in accordance with the anchor manufacturer’s instructions, is a valid method for determining anchor capacity.

Houston, Dawson’s regional safety director, testified that he was unaware of anyone in the industry who conducts pull tests (Tr. 283-84). Luttgen admitted that pull testing was not common in the industry when he was active in oil and gas drilling (Tr. 237). Houston maintained that it is the practice within the industry to judge the capacity of an anchor by its torque, or resistance to the force of four men auguring the corkscrew-like anchor into the ground (Tr. 283). Houston admitted that there was no objective measure of torque strength; therefore, no determination of the capacity of the anchors was possible (Tr. 287, 295). Delafuente admitted that “[w]e don’t know pressure”(Tr. 97).

Delafuente stated that the anchor points were determined by stretching out the length of cable provided with the rig (Tr. 81). In the prior two years, at 20 or more different locations, the same cables had been used wherever the rig was set up (Tr. 100). Delafuente stated that he has been working rigs for 15 years, and that he puts in the anchors the same way on every rig (Tr. 95-97, 99). The guylines were set up based solely on the space available at the well site (Tr. 289). No factors other than the length of the cable were considered in placing the anchors; the crew did not refer to the manufacturer’s specifications (Tr. 81, 83). It was stipulated that the crown to ground guylines were anchored between 55 and 63 feet from the rig (Tr. 49-50).

The rig manufacturer’s instructions include recommended guying requirements, and state:

WARNING
FOLLOW INSTRUCTIONS CAREFULLY
THIS DERRICK SHOULD NOT BE OPERATED WITHOUT
GUYLINES AND ANCHORS IN ACCORD WITH THE
ABOVE RECOMMENDATIONS. OPERATING WITHOUT
SUCH GUYLINES AND ANCHORS MAY CAUSE
RIG OVERTURNS, SERIOUS PROPERTY DAMAGE,
PERSONAL INJURY AND DEATH.

(Exh. C-1). The manufacturer recommends setting the guylines 90 ± 10 feet from the base of the mast (Exh. C-1). The manufacturer also recommends the use of anchors "capable of withstanding a working load of 12 tons in the direction of the well at an angle of 40E to 50E" (Exh. C-1).

Dawson stipulates that it did not follow the manufacturer's recommended guying pattern; however, the manufacturer's literature also states, that "[i]n the absence of a recommended guying pattern at the well site due to obstructions or limited anchor pattern, please refer to the guying pattern shown in figure 4 found in API recommended practice 4G (RP4G) first edition, January 1, 1992. (Exh. R-2).

Kenneth Houston testified that the well owner had constructed a board surface to provide access to the well, pipe rack, generator house, water tank and construction trailers on the site (Tr. 278, 292-93). Houston stated that it was impossible to use the manufacturer's recommended guying pattern, without anchoring the guylines outside the boarded area; the lines would then have made it impossible for trucks to access the area (Tr. 274, 279-81).

API recommended practice 4G (RP 4G) [American Petroleum Institute - **Recommended Practice for Maintenance and Use of Drilling and Well Servicing Structures**] provides anchor spacing and capacity criteria at Figure 4 (Exh. C-9, R-4) [illustration 1 of this decision].

Houston testified that the guylines on rig number 57 fell within the grid set forth at Figure 4 (Tr. 286-87). The parties agree that the crown to ground guylines were anchored within Zone A of Figure 4 (Tr. 208, 249).

Luttgen testified that Figure 4 permits guylines to be set in Zone A, so long as the lines are secured to anchors with a capacity of 15.6 tons, and the rig is not pulling more than 50% of the rated capacity of the mast (Tr. 199-205, 220-221, 260-261; Exh. C-9). Luttgen testified that Dawson's safety director admitted in depositions that 160,000 pounds of tubing was racked at the Andy Franklin well site¹, well in

¹ Statements of employees are not hearsay but rather admissions of a party opponent falling within the exception to the hearsay rule provided at 801(d)(2)(D), i.e. "a statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship." *StanBest, Inc.*, 11 BNA OSHC 1222, 1983 CCH OSHD ¶26,455 (No. 76-4355, 1983). Though such statements are not

excess of the allowable 125,000 pounds, $\frac{1}{2}$ the rated capacity of 250,000 pounds (Tr. 221; Exh. C-8). Luttgen testified that because Rig 57 was pulling 160,000 pounds of tubing, it did not comply with the recommendations found in figure 4 of API RP 4G (Tr. 265).

Discussion

In order to prove a violation of section 5(a)(1) of the Act, the Secretary must show that: (1) a condition or activity in the workplace presented a hazard to an employee, (2) the hazard was recognized, (3) the hazard was likely to cause death or serious physical harm, and (4) a feasible means existed to eliminate or materially reduce the hazard. *Tampa Shipyards, Inc.*, 15 BNA OSHC 1533, 1991-93 CCH OSHD ¶29,617 (Nos. 86-360, 86-469, 1992).

It is clear that the danger of a rig overturn is recognized in the oil and gas industry as a hazard likely to cause death or serious physical harm. Both the rig manufacturer's specifications and the API address the likelihood of rig overturn and prescribe the use of proper guying patterns and anchorages as means of reducing the danger of an overturn. The only question in this case is whether Dawson took precautions recognized by "knowledgeable persons familiar with the industry as necessary and valuable steps" to avoid the recognized hazard, under the extant circumstances. *Cerro Metal Products Division, Marmon Group, Inc.*, 12 BNA OSHC 1821, ¶27,579 (No. 78-5159, 1986). Specifically, the Secretary alleges that Dawson failed to comply with the recommended practices set forth by the manufacturer.

Guying Patterns. Pemco, rig 57's manufacturer recommends that its guylines be anchored at 90 ± 10 . Should placement of the guyline anchors at that distance prove impossible, the manufacturer recommends following figure 4 of RP4G.

Dawson admits that it did not follow the manufacturer's recommendations, setting the guyline anchors between 55 and 63 feet from the base of the mast. Dawson maintains that its guy pattern complies with RP4G; its anchor distance of 55 to 63 feet falls within Zone A of figure 4.

William Luttgen testified, without contradiction, that figure 4 permits guylines to be anchored in Zone A only if the rig is pulling less than $\frac{1}{2}$ of its rated capacity, regardless of any other factors. Luttgen testified, again without contradiction, that rig 57 was pulling 160,000 pounds, more than $\frac{1}{2}$ its rated capacity.

The Secretary has established that Dawson failed to guy its servicing rig in accordance with the manufacturer's recommendations. Serious citation 1, item 1 is established.

inherently reliable, this judge finds Luttgen's testimony credible. Luttgen's statements were uncontradicted, either by Houston, who subsequently took the stand, or in Dawson's brief.

Anchor Capacity. Item 2 of citation 1 alleges that Dawson failed to provide anchors capable of withstanding the maximum guyline loads set forth by the API. Complainant introduced no evidence which might have established the capacity of the cited anchors. Moreover, as discussed above, there is no established anchor capacity criteria for rigs working at more than ½ their rated capacity anchored within Zone A.

Rather than attempting to establish the existence of the violation as cited, the Secretary argues that Dawson made no attempt to conduct a pull test, or otherwise verify the capacity of rig 57's anchors, as required by §6.6 of the API (Secretary's brief, p. 17). No request was made to amend the citation to reflect the Secretary's new theory, either prior to, or following the hearing. Nonetheless, the Secretary's brief shall be treated as a motion to amend. Pursuant to Rule 15(b) of the Federal Rules of Civil Procedure, made applicable to Commission proceedings by 29 CFR §2200.2(b), post-trial amendment of the pleadings is proper “[w]hen issues not raised by the pleadings are tried by the express or implied consent of the parties.” *Peavey Co.*, 16 BNA OSHC 2022, 1994 CCH OSHD ¶30,572 (No. 89-2836, 1994).

In this case, consent cannot be implied. Dawson explicitly objects to the Secretary's change of theory (Dawson's brief, p.6). Dawson introduced no evidence relevant to the unpleaded issue from which consent may be implied. *McWilliams Forge Company, Inc.*, 11 BNA OSHC 2128, 1984 CCH OSHD ¶26,979 (No. 80-5868, 1984). The Secretary's amendment of the citation is disallowed.

Because the Secretary failed to prove the violation alleged in item 2 as it was originally cited, that item is VACATED.

Penalty

The parties stipulate that the proposed penalty of \$1,925.00 is appropriate for the cited violation at item 1 (Tr. 51), and that amount will be assessed.

ORDER

1. Serious citation 1, item 1, alleging violation of §5(a)(1) is AFFIRMED, and a penalty of \$1,925.00 is ASSESSED.
2. Serious citation 1, item 2, alleging violation of §5(a)(1) is VACATED.

James H. Barkley
Judge, OSHRC

Dated: