

SECRETARY OF LABOR,
Complainant,
v.
CAPEWAY ROOFING,
Respondent.

OSHRC DOCKET No. 99-0140

APPEARANCES:

For the Complainant:

James H. Angevine, Esq., Office of the Regional Solicitor, U.S. Department of Labor, Boston, Massachusetts

For the Respondent:

Barrett A. Metzler, CSP, Northeast Safety Management, Inc., Columbia, Connecticut

Before: Administrative Law Judge Ann Z. Cook

AMENDED DECISION AND ORDER¹

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 citation at issue in this proceeding alleges one serious violation arising from an Occupational Safety and Health Administration (“OSHA”) inspection on December 10, 1998. Respondent Capeway Roofing (“Capeway”) timely contested the citation, and the trial of this matter was held on June 25, 1999 in Boston, Massachusetts. Capeway admits that it is an employer

¹ This amended Decision and Order more correctly reflects the terms of the settlement reached by the parties.

engaged in a business affecting interstate commerce and that it is subject to the requirements of the Act. (Answer ¶ III).

DISCUSSION

At the commencement of the hearing, the parties announced that they had reached a settlement of all issues raised in the Complaint. (Tr. 4-5). A summary of the terms of the settlement was read into the record. Thereafter, the settlement was reduced to writing and submitted. The terms of the settlement meet the requirements of Commission Rule 100(b), 29 C.F.R. § 2200.100(b), and are fully adopted and approved.

FINDINGS OF FACT

All findings of fact necessary for a determination of all relevant issues are made within the terms of the settlement agreement and this Decision and Order.

CONCLUSIONS OF LAW

1. Capeway 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 the subject matter of the proceeding.

2. Serious Citation 1, Item 1 is reclassified as a Section 17 violation.

3. Capeway was in violation of Section 5(a)(2) of the Act as set out in Citation 1, Item 1, as amended, and a penalty of \$1,000 is assessed.

ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, it is ordered that: Item 1 of Citation 1, as amended, is affirmed and a penalty of \$1,000 is imposed.

/s/

Ann Z. Cook
Judge, OSHRC

Dated: 26 AUG 1999
Washington, D.C.