



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

CONRAD YELVINGTON DISTRIBUTORS,
INC.,

Respondent.

OSHRC Docket No. 14-0713

**BRIEFING NOTICE AND REQUEST TO FEDERAL RAILROAD ADMINISTRATION TO
FILE *AMICUS CURIAE* BRIEF**

The Commission requests that the parties and Federal Railroad Administration (FRA) brief the following issue on review of the Administrative Law Judge's decision:

Is OSHA's jurisdiction over the cited working conditions preempted by the FRA? *See* OSH Act section 4(b)(1), 29 U.S.C. § 653(a)(1) ("Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.").

In answering this question, the parties and the FRA are asked to address relevant statutory and regulatory provisions that address whether the FRA has preempted OSHA's jurisdiction over the cited working conditions. *See, e.g.*, 49 C.F.R. § 213.205; Railroad Safety Act of 1970, Pub. L. No. 91-458, *amended by* Rail Safety Improvement Act of 1988, Pub. L. No. 100-342. In addition, the parties and the FRA may address whether the Yard Track where CYDI conducted its rail operations met the FRA definition of "plant railroad." *See* 49 C.F.R. Pt. 209, App. A; 49 C.F.R. § 213.3.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the Commission

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal articles and legal treatises, be

in writing setting forth the reason therefor within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: November 5, 2015

/s/

John X. Cervený
Executive Secretary

provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.