



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.

ROY ROCK, LLC,

Respondent.

OSHRC Docket No. 18-0068

BRIEFING NOTICE

The parties are requested to brief the following issues:

- (1) Did the Secretary establish that the work being performed at the time of the alleged violation was “maintenance or repair activity,” such that the cited provision, 29 C.F.R. § 1926.702(j)(1) (Lockout/Tagout procedures), applies?
- (2) If so, did the judge err in concluding that the Secretary established the remaining elements of a violation? *See Safeway Store No. 914*, 16 BNA OSHC 1504, 1508 (No. 91-0373, 1993) (to establish a violation, the Secretary must show that “(1) the standard applies to the cited conditions, (2) the employer’s conduct does not conform to the requirements of the standard, (3) employees are exposed to the cited conditions, and (4) the employer knew or could have known of those conditions”).

The parties are advised that when a case is directed for review to consider either the merits or characterization of an item, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

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 not intending to file a brief shall 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, regulations, case law, law journal articles, and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.

in accordance with Commission Rule 93. The time for filing any responsive briefs (or letters filed in lieu of briefs) shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: August 28, 2020

/s/

John X. Cervený
Executive Secretary