



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
 1120 20th Street, N.W., Ninth Floor
 Washington, DC 20036-3419

Office of
 Executive Secretary

Phone: (202) 606-5100
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SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket No. 93-2709
	:	
DAWSON WELLTECH, L.C., RIG #387	:	
	:	
Respondent.	:	

ORDER

This matter is before the Commission on a direction for review entered by Chairman Stuart E. Weisberg on August 4, 1995. The parties have now filed a stipulation and settlement agreement.

Having reviewed the record, and based upon the representations appearing in the stipulation and settlement agreement, we conclude that this case raises no matters warranting further review by the Commission. The terms of the stipulation and settlement agreement do not appear to be contrary to the purposes of the Occupational Safety and Health Act and are in compliance with the Commission's Rules of Procedure.

Accordingly, we incorporate the terms of the stipulation and settlement agreement into this order, and we set aside the Administrative Law Judge's decision and order to the extent that it is inconsistent with the stipulation and settlement agreement. This is the final order of the Commission in this case. See 29 U.S.C. §§ 659(c), 660(a), and (b).

Stuart E. Weisberg
 Stuart E. Weisberg
 Chairman

Velma Montoya
 Velma Montoya
 Commissioner

Date: February 21, 1996



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NOTICE OF COMMISSION DECISION

The attached decision and order by the Occupational Safety and Health Review Commission was issued on February 21, 1996. **ANY PERSON ADVERSELY AFFECTED OR AGGRIEVED WHO WISHES TO OBTAIN REVIEW OF THIS DECISION MUST FILE A NOTICE OF APPEAL WITH THE APPROPRIATE FEDERAL COURT OF APPEALS WITHIN 60 DAYS OF THE DATE OF THIS DECISION.** See Section 11 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 660.

FOR THE COMMISSION

Date: February 21, 1996

Ray H. Darling, Jr.
 Ray H. Darling, Jr.
 Executive Secretary

93-2709

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Ave., N.W.
Washington, D.C. 20210

James E. White, Esq.
Regional Solicitor
Office of the Solicitor, U.S. DOL
Suite 501
525 S. Griffin Street
Dallas, TX 75202

George R. Carlton, Jr.
Godwin & Carlton
901 Main St., Suite 3300
Dallas, TX 75202-3714

Louis G. LaVecchia
Administrative Law Judge
Occupational Safety and Health
Review Commission
Federal Building, Room 7B11
1100 Commerce Street
Dallas, TX 75242-0791

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ROBERT B. REICH, SECRETARY OF LABOR, :
: :
Complainant, :
: :
v. : OSHRC Docket No. 93-2709
: :
DAWSON WELLTECH, L.C. RIG #387 :
: :
Respondent. :
:

STIPULATION AND SETTLEMENT AGREEMENT

I

The parties have reached agreement on a full and complete settlement and disposition of the issues in this proceeding which is currently pending before the Commission.

II

It is hereby stipulated and agreed by and between the Complainant, Secretary of Labor and the Respondent, Dawson Welltech, L.C., that:

1. Complainant hereby withdraws items 1(a) and 5 of Serious Citation 1, alleging violations of 29 C.F.R. §§1910.23(c)(1) and 1910.1030(d)(3)(i), respectively, and the notification of proposed penalties for those items.

2. Respondent hereby agrees to withdraw its notice of contest to item 1(b) of Citation 1 alleging a serious violation of §1910.23(c)(1), to items 3, 4, 6a and 6b of Citation 1, affirmed by the judge below as other-than-serious violations with

no penalties, and to item 1 of other-than-serious Citation 2. Complainant amends item 1(b) to characterize the alleged violation of 1910.23(c)(1) as an other-than-serious violation of the Act. The proposed penalty for item 1(b) of Citation 1 is amended to \$500.

3. Respondent also agrees to withdraw its notice of contest to item 2 of Citation 1 subject to the following terms for disposition of that item. Respondent and Complainant hereby agree that as to item 2 of Citation 1, alleging a violation of 29 C.F.R. §1910.24(h), the disposition of this item shall be governed in accordance with the final disposition of *Delta Drilling Co. v. OSHRC*, Case No. 95-60634 (*appeal filed*, Oct. 11, 1995), now pending before the U.S. Court of Appeals for the Fifth Circuit. That court is currently examining the issue of whether the Secretary's interpretation of §1910.24(h) is reasonable as it applies to rig platforms and stair guardrails, the exact question raised in the instant case. In the event that the Secretary's interpretation concerning the alleged violation of 1910.24(h) is upheld, the citation item in this case shall be deemed affirmed upon issuance of the court's final mandate and the proposed penalty for item 2 of Citation 1 shall be \$1,125. Conversely, the parties agree that if application of the standard is not upheld, item 2 of Citation 1 shall be deemed a nullity upon issuance of the court's mandate.

4. Respondent hereby agrees to pay a penalty of \$500 for Citation 1, item 1(b), by submitting its check, made payable to the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) to the Corpus Christi, Texas, OSHA Area Office within 45 days from the date of this Agreement. In the event that a decision favorable to the Secretary is rendered by the court in *Delta Drilling Co. v. OSHRC*, respondent agrees to pay the sum of \$1,125 for Citation 1, item 2 to the OSHA Area Office within 45 days from the issuance of the Fifth Circuit's mandate.

5. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

6. None of the foregoing agreements, statements, stipulations, or actions taken by Dawson Welltech, L.C., shall be deemed as admission by respondent of the allegations contained in the citation or the complaint herein. The agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and amicably and shall not be used for any other purpose, except for subsequent proceedings and matters brought by the Secretary of Labor directly under the provisions of the Occupational Safety and Health (OSH) Act of 1970.

7. Respondent states that there are no authorized representatives of affected employees.

8. The parties agree that this Stipulation and Settlement Agreement is effective upon execution.

9. Respondent certifies that a copy of this Stipulation and Settlement Agreement was posted at its main office on the 29 day of January 1996, pursuant to Commission Rules 7 and 100, and will remain posted for a period of ten (10) days.

Dated this 24 day of January, 1996.

Respectfully submitted,

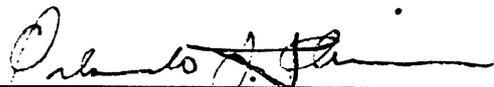
THOMAS S. WILLIAMSON, JR.
Solicitor

JOSEPH M. WOODWARD
Associate Solicitor for
Occupational Safety and Health

DONALD G. SHALHOUB
Deputy Associate Solicitor for
Occupational Safety and Health

DANIEL J. MICK
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SECRETARY OF LABOR
Complainant,

v.

DAWSON WELLTECH, L.C. RIG #387
Respondent.

OSHR DOCKET
NO. 93-2709

**NOTICE OF DOCKETING
OF ADMINISTRATIVE LAW JUDGE'S DECISION**

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on July 6, 1995. The decision of the Judge will become a final order of the Commission on August 7, 1995 unless a Commission member directs review of the decision on or before that date. **ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW.** Any such petition should be received by the Executive Secretary on or before July 26, 1995 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

A handwritten signature in cursive script that reads "Ray H. Darling, Jr." followed by a flourish.

Date: July 6, 1995

Ray H. Darling, Jr.
Executive Secretary

DOCKET NO. 93-2709

NOTICE IS GIVEN TO THE FOLLOWING:

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Louis G. LaVecchia
Administrative Law Judge
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SECRETARY OF LABOR,

Complainant,

v.

DAWSON WELLTECH, L.C.,
RIG #387,

Respondent.

OSHRC DOCKET NO. 93-2709

APPEARANCES:

Robin S. Horning, Esquire
Dallas, Texas
For the Complainant.

George R. Carlton, Jr., Esquire
Dallas, Texas
For the Respondent.

Before: Administrative Law Judge Louis G. LaVecchia

DECISION AND ORDER

This proceeding arises under section 10 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (“the Act”). Respondent seeks review of two citations issued by the Occupational Safety and Health Administration (“OSHA”) after an inspection at a well site north of Lamar, Texas on August 11, 1993. Serious citation 1 has six items and “other” citation 2 has one item. At the hearing, the Secretary amended items 3, 4 and 6 of citation 1 to allege “other” violations with no penalties.

Citation 1 - Items 1a and 1b

Item 1a alleges an employee was on the unguarded catwalk of a mud tank in violation of 29 C.F.R. 1910.23(c)(1). OSHA compliance officer (“CO”) Guadalupe Ozuna identified C-5 as a photo of one of Dawson’s employees standing on the catwalk. (Tr. 17-18; 89).

However, he provided no further evidence in support of the alleged violation. This item is therefore vacated for lack of proof.

Item 1b alleges there were no guardrails on the east and west sides of Dawson's workover rig platform in violation of the same standard. The record shows the guardrails were off when CO Ozuna arrived and that the platform was 7 feet off the ground. It also shows another company was using a wireline stripper head to run tools in and out of the well when Ozuna was there. (Tr. 21-25; 45-48; 62-63; 78-81; C-1-3; C-6-7). Mike Rhodes, Dawson's manager, testified that the guardrails had to be removed so they would not interfere with the other company's lines. He also testified the company provides guardrails for all its rigs and that the policy is for guardrails to be in place when employees are working on the platform. (Tr. 78-81). The evidence also indicates that while some of Dawson's employees were on the platform when the CO first arrived they got down and did not get on it again until he asked them to put up the guardrails. (Tr. 22-24; 45-47; 62-63; 78-86). This brief exposure, in my view, does not violate the standard under the facts of this case. This item is vacated.

Citation 1 - Item 2

This item alleges there was an unguarded gap at the top of the stairs going to the rig floor in violation of 29 C.F.R. 1910.24(h). The record shows there were guardrails on both sides of the stairs. The cited gap was the opening between where the stair guardrails ended and the platform guardrails began. (Tr. 25-28; 51-52; 67-68; 71-73; C-1-2; C-6-7). CO Ozuna testified this was a fall hazard required to be guarded. However, he conceded 1910.24(h) addresses only guardrails on stairways and that these were in place. (Tr. 71-73). In my view, the cited hazard is not within the purview of the standard. No violation has been shown. This item is vacated.

Citation 1 - Item 3

This item alleges employees were allowed to drink water from a common drinking cup in violation of 29 C.F.R. 1910.141(b)(1)(vi). CO Ozuna observed water coolers at the site. He saw a worker drink water from the soda can shown in C-8 on top of one of the

coolers. He asked if there were any disposable drinking cups. Martin Garza, the rig supervisor, told him there were not and that they needed to get some from the main office. (Tr. 11-12; 31-35; 55-57; 69). The CO's testimony demonstrates the alleged violation. This item is affirmed as a nonserious violation. No penalty is assessed.

Citation 1 - Item 4

This item alleges there were no toilet facilities at the site as required by 29 C.F.R. 1910.141(c)(1)(i). CO Ozuna testified there were five employees at the site and no toilet facilities. The nearest facilities were about 3 miles away. (Tr. 35-37). This testimony shows the alleged violation. This item is affirmed as a nonserious violation. No penalty is assessed.

Citation 1 - Item 5

This item alleges there were no disposable gloves at the site as required by 29 C.F.R. 1910.1030(d)(3)(i). CO Ozuna determined that two employees at the site were trained to give first aid. The first aid kit, shown in C-9, contained no disposable gloves. The rig supervisor told Ozuna there were none at the site. Ozuna said the first aid responders could have contacted blood in case of an accident and been exposed to bloodborne pathogens such as hepatitis and HIV. (Tr. 29-32; 53-55; 68-69). The CO's testimony establishes the alleged violation. This item is affirmed as a serious violation. The proposed penalty of \$1,125.00 is assessed.

Citation 1 - Items 6a and 6b

These items allege material safety data sheets ("MSDS's") for two chemicals were not at the site as required by 29 C.F.R. 1910.1200(e)(1) and 29 C.F.R. 1910.1200(g)(1). CO Ozuna determined the employees at the site had been trained in hazard communication. There were some MSDS's at the site but none for the paint and lubricant being used. Ozuna said these chemicals could have caused minor skin or respiratory irritation. (Tr. 37-41; 58-62; 69-70). The CO's testimony shows the alleged violations. These items are affirmed as nonserious violations. No penalties are assessed.

Citation 2 - Item 1

This item alleges that the distance from the ground to the first rung of a ladder exceeded 12 inches in violation of 29 C.F.R. 1910.27(b)(1)(ii). CO Ozuna observed a 51-foot ladder affixed to one side of the rig, shown in C-4, which the derrick man used to get to the "monkey board." The first rung was 40 inches off the ground and two by tens had been stacked together to make access easier. Ozuna's opinion was that trying to reach the first rung could have resulted in a sprain or bruise. He also said a portable extension could have been used. (Tr. 41-44). The CO's testimony demonstrates the alleged violation. This item is accordingly affirmed as a nonserious violation. No penalty is assessed.

Conclusions of Law

1. The Commission has jurisdiction of this matter.
2. Respondent was not in violation of 29 C.F.R. §§ 1910.23(c)(1) and 1910.24(h).
3. Respondent was in serious violation of 29 C.F.R. § 1910.1030(d)(3)(i).
4. Respondent was in nonserious violation of 29 C.F.R. §§ 1910.141(b)(1)(vi), 1910.141(c)(1)(i), 1910.1200(e)(1), 1910.1200(g)(1) and 1910.27(b)(1)(ii).

Order

1. Items 1 and 2 of citation 1 are VACATED.
2. Items 3, 4 and 6 of citation 1 are AFFIRMED as nonserious violations and no penalties are assessed.
3. Item 5 of citation 1 is AFFIRMED as a serious violation and a penalty of \$1,125.00 is assessed.
4. Item 1 of citation 2 is AFFIRMED as a nonserious violation and no penalty is assessed.



Louis G. LaVecchia
Administrative Law Judge

Date: JUN 26 1995