

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR, Complainant, v. DEL-COOK LUMBER CO., Respondent.
--

OSHRC DOCKET NO. 16093

February 2, 1978

DECISION

Before: CLEARY, Chairman; and BARNAKO, Commissioner.

BY THE COMMISSION:

An August 16, 1976, decision of Review Commission Judge John S. Patton is before this Commission pursuant to a direction for review issued by former Commissioner Robert D. Moran under § 12(j) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 et seq. [the Act]. At issue is whether the Judge erred in finding respondent in violation of section 5(a)(2) of the Act for failing to comply with the safety standards codified at 29 C.F.R. § 1910.265(c)(4)(iv) [citation for nonserious violation] and 29 C.F.R. § 1910.265(c)(18)(i) [citation for serious violation].¹ For the reasons that follow, we affirm the Judge's decision.

Respondent's sawmill was inspected by an authorized representative of the Department of Labor following an accident at the worksite resulting in an employee fatality. As a result of that inspection, respondent was issued citations alleging the aforementioned violations at its #1 Night Sawmill. In that location, respondent operates a log deck, a chain conveyor and a cut-off

¹ The cited standards provide as follows:

1910.265 Sawmills.

(c) Building facilities, and isolated equipment—

(4) Walkways, docks and platforms—

(iv) Elevated walks. All elevated walks, runways, or platforms, if 4 feet or more from the floor level, shall be provided with a standard railing except on loading or unloading sides of platforms. If height exceeds 6 feet, a standard toe board also shall be provided to prevent material from rolling or falling off.

(18) Conveyors—(i) Standards. Construction, operation, and maintenance of conveyors shall be in accordance with American National Standard B20.1-1957.

saw. The saw is located on a platform that is adjacent to the log deck and the conveyor. The platform is 15' x 15' in size, and exceeds 4 feet in height. As is illustrated in the drawing attached as an appendix to this decision, the log deck is located to the left of the platform, and the conveyor runs parallel with the back side of the platform. Logs are placed on the log deck, travel to the conveyor, are dumped into the conveyor trough by a loader bar, and are pulled along to the cut-off saw. The logs are not uniform in length, and may overlap the platform from one to three feet. Occasionally, a much longer log will extend over the platform to such an extent that, unless cut by a hand saw, it would hit the saw housing.

A rampman works on the platform. It is his responsibility to keep the logs on the deck straight and spread out, and to cut off parts of logs that overhang the platform and could hit the saw housing. The sawman's station is located on the side of the conveyor opposite the platform. Both the rampman and the sawman gain access to their work stations by way of the stairs in front of the platform, directly adjacent to the ten foot long unguarded edge.

I

Respondent was found in noncompliance with § 1910.265(c)(4)(iv) for failing to install guardrails on the unguarded edge of the platform that is designated by X's on the attached drawing. Respondent's arguments on review are summarized as follows:

1. The cited standard is inapplicable because the platform was used for loading and unloading.
2. The installation of guardrails was impossible and would create a greater hazard.
3. The part of the platform that was used regularly was protected by suitable railings.
4. An OSHA inspector indicated during a prior inspection that guardrails were not necessary. The citation should therefore be dismissed, and/or the penalty vacated.

The evidence establishes that logs are carried to the conveyor by traversing the log deck, not the platform. Judge Patton properly rejected respondent's contention that the platform was used for loading and unloading.

Respondent's 'impossibility' argument is based on the premise that a rail extending all

the way to the log deck would be hit and shattered by logs that are longer than the deck and overlap the platform. It is further argued that the rampman working on the platform would be injured by the shattering rail, thereby making compliance more hazardous than noncompliance. Judge Patton rejected respondent's contentions, finding that, 'there are ways to prevent the logs from striking the railing.'² We agree with the Judge's conclusion for the reasons he assigned.

Respondent argues that suitable railings were provided on the part of the platform regularly used by employees. Employees were still exposed, however, to the unguarded portion of the platform during the normal course of their work. Such partial compliance cannot excuse respondent's failure to install required guardrails, but will be considered for the purpose of determining an appropriate penalty in this case.

Testimony of respondent's witnesses indicates that respondent's worksite had been inspected previously by an authorized representative of the Department of Labor. At that time the compliance officer had indicated that guardrails were not necessary at the cited location. The opinion of a compliance officer cannot bind the Secretary or the Commission to an erroneous interpretation of a standard. Holman Erection Co., Inc., 77 OSAHRC 196/A2, 5 BNA OSHC 2078, 1977-78 CCH OSHD para. 22,318 (No. 13529, 1977).

We therefore conclude that Judge Patton properly found respondent in violation of § 1910.265(c)(4)(iv). We do not agree, however, that the assessed penalty of \$185 is appropriate. Considering respondent's reliance on the recommendation of the compliance officer who conducted the earlier inspection, and its apparent good faith in erecting guardrails on other parts of the platform, we consider it appropriate to assess no penalty for this nonserious violation.

II

Respondent was found in serious violation of the Act for failing to comply with American National Standards Institute (ANSI) standard B20.1-1957, as adopted by § 1910.265(c)(18)(i). The ANSI provision provides the following:

Maintenance work should not be done while conveyor is in operation. If it is necessary to operate the conveyor while servicing it, special safety provisions shall be used.

² It should be noted that respondent did not provide any railing on this side although logs would overlap the platform only one to three feet. Respondent has not stated any reason for failing to install a rail up to that point. In fact, respondent did install two feet of railing after the inspection, with no resultant difficulty.

Sawman Page and rampman (**redacted**) were repairing the conveyor when the fatal accident occurred. The conveyor chain had jumped off the sprocket, as frequently occurs when logs traveling on the conveyor are crooked. Following their usual procedure, the employees stopped the conveyor, procured a cant hook, and replaced the chain with the hook. The saw was not turned off. Because a log was lying over the sprocket, rampman (**redacted**) used a cant hook to pull one end of the log off the sprocket and held it while the chain was replaced. (**redacted**) was still holding the log when the conveyor was turned back on to allow the chain to jump onto the sprocket. (**redacted**) was fatally injured when he fell onto the conveyor and toward the operating saw.³

Respondent's arguments on review are summarized as follows:

1. Complainant failed to establish the existence of a recognized hazard, failed to specify the particular steps respondent should have taken to avoid citation, and failed to demonstrate the feasibility and likely utility of these measures.

2. The standard is inapplicable because replacing the chain is not maintenance.

3. The violation was unpreventable because (a) respondent lacked either actual or constructive knowledge of the violation and (b) the violation was caused by the willful misconduct of respondent's employees.

4. The Judge erred in failing to allow respondent to reopen its case to present testimony regarding its supervisor's knowledge of the violation.

Respondent's first argument is without merit. National Realty and Construction Co., Inc. v. OSHRC, 489 F.2d 1257 (D.C. Cir. 1973) is cited by respondent for the proposition that complainant has the burden in cases alleging general duty clause violations of proving the existence of a recognized hazard and the particular steps an employer should have taken to avoid the citation, as well as the feasibility and likely utility of these measures. Respondent, however, has not been charged with a violation of section 5(a)(1) of the Act, the general duty clause, but has been charged with a violation of a specific duty under section 5(a)(2) of the Act.⁴ The cited

³ Page did not see (**redacted**) fall and there were no other witnesses to the accident. We do not know, therefore, whether (**redacted**) lost his balance or was pulled forward when the conveyor was turned on.

⁴ The Act describes the duties of employers as follows:

Sec. 5(a) Each employer—

(1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause

standard presupposes the existence of a hazard when its terms are not met. See Vecco Concrete Construction, Inc., 77 OSAHRC 183/A2, 5 BNA OSHC 1960, 1977-78 CCH OSHD para. 22,247 (No. 15579, 1977).

Respondent's argument that replacement of the chain does not constitute maintenance on the conveyor is also without merit. The chain is an integral part of the conveyor, upon which its operation depends. Work performed on the chain and sprocket for the purpose of returning the conveyor to proper functioning order must, therefore, be considered maintenance work within the meaning of the cited standards. The evidence establishes that **(redacted)** was still holding the log off the sprocket with the cant hook at the time the conveyor was turned back on. Respondent has therefore violated the standard's requirement that maintenance work not be performed while the conveyor is in operation.

The third issue raised by respondent on review involves questions of its knowledge of the violation and the preventability of the accident that occurred. It is respondent's position that the fatal accident resulted from the employees' careless violation of company policy and was, therefore, not preventable. It is argued that, having instructed the deceased employee on company policy, respondent has satisfied its responsibility under the Act. According to respondent, finding liability under these circumstances would impose upon respondent a standard of strict liability that was not intended under the Act.

In order to defend against the prima facie showing of a violation on the basis of the unpreventable employee misconduct defense, an employer must prove that the employee conduct was a departure from a uniformly and effectively enforced safety rule. Leo J. Martone & Associates, Inc., 77 OSAHRC 46/C4, 5 BNA OSHC 1228, 1977-78 CCH OSHD para. 21,718 (No. 11175, 1977); B. G. Maintenance Management, Inc., 76 OSAHRC 60/A2, 4 BNA OSHC 1282, 1976-77 CCH OSHD para. 20,744 (No. 4713, 1976). To establish this defense, an employer must show that his employees received adequate training and instructions designed to prevent the violation. Enfield's Tree Service, Inc., 77 OSAHRC 32/B3, 5 BNA OSHC 1142, 1977-78 CCH OSHD para. 21,607 (No. 9118, 1977). In other words, specific safety instructions and work rules concerning particular hazards that may be encountered on the job are the essential foundations of an adequate safety program. Kansas Power & Light Co., 77 OSAHRC 39/A2, 5 BNA OSHC 1202, 1977-78 CCH OSHD para. 21,696 (No. 11015, 1977).

Judge Patton found that respondent had a policy requiring employees to 'turn off the

power' and call for assistance to make the type of repairs that the sawman and the repairman were attempting at the time of the accident. He determined, however, that respondent had failed to sustain its defense because of evidence establishing frequent violations of company rules, including 'violations observed by company supervisors.' We agree that respondent has not sustained its defense for the reasons assigned by the Judge.

Respondent also maintains that the Judge erred by refusing to allow that respondent reopen its case to recall the night foreman. Respondent's counsel made an offer of proof, indicating that the witness would have testified that he had no knowledge that the employees were replacing the chain without turning off the saw. Respondent is, however, chargeable with constructive knowledge of the violation through its failure to adequately enforce its rule that the power be turned off during maintenance. Whether it also had actual knowledge of the specific incident involved in this case is therefore irrelevant. There was no error.

Having considered the penalty assessment criteria set forth at section 17(j) of the Act, 29 U.S.C. § 666(i), particularly the gravity of the violation, we find the assessment of a \$900 penalty in this case to be appropriate. The violation of § 1910.265(c)(18)(i) and the \$900 penalty are, therefore, affirmed.

It is ORDERED that the decision of the Administrative Law Judge, as modified by this decision, is affirmed.

FOR THE COMMISSION:

Ray H. Darling, Jr.

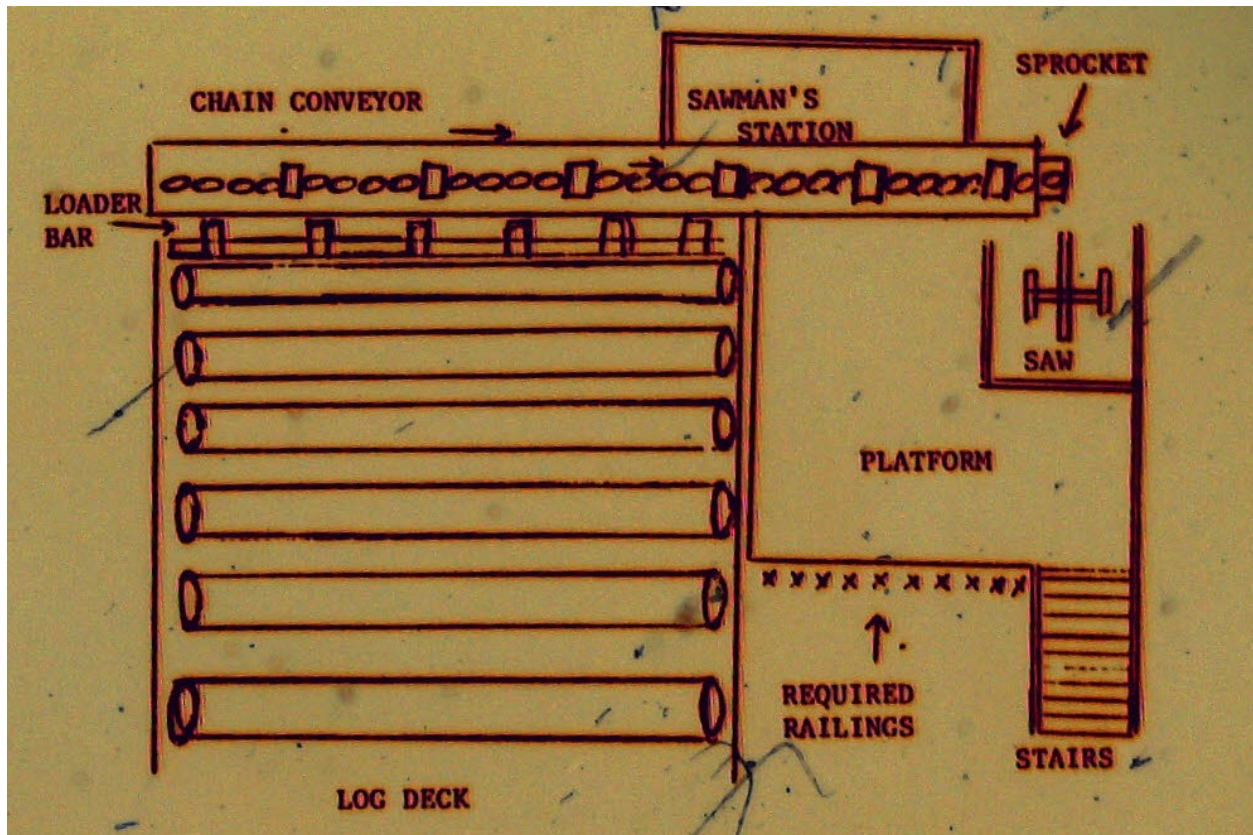
Executive Secretary

BY: Gloria W. White

Acting Executive Secretary

DATED: FEB 2, 1978

APPENDIX



This drawing is a reproduction of Complainant's exhibit C-15 which was introduced into evidence at the hearing in this matter. Exhibit C-15 is a free-hand sketch of the inspected worksite and is not drawn to scale. The double lines represent guardrails in place at the time of the inspection. The X's represent the unguarded side of the platform involved in the § 1910.265(c)(4)(iv) charge.

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,
Complainant,

v.

DEL-COOK LUMBER CO.,
Respondent.

OSHRC DOCKET NO. 16093

August 16, 1976

DECISION AND ORDER

APPEARANCES

Carl B. Carruth, Esquire, Office of the Solicitor, U. S. Department of Labor, Atlanta, Georgia, on behalf of complainant

J. Reese Franklin, Esquire, Knight, Perry and Franklin, Nashville, Georgia, on behalf of respondent

STATEMENT OF THE CASE

Patton, Judge:

This is a proceeding pursuant to section 10 of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 651, et seq., 84 Stat. 1590, hereinafter referred to as the Act) contesting a citation issued by the complainant against the respondent under the authority vested in complainant by section 9 of the Act.

The citation alleges that as a result of the inspection of a workplace under the ownership, operation, and control of the respondent, located at Cherry and Ninth Street, Adel, Georgia, respondent has violated section 5(a)(2) of the Act by failing to comply with Occupational Safety and Health Standards 29 C.F.R. 1910.265(c)(4)(iv) and 29 C.F.R. 1910.265(c)(18)(i). Hearing was held in Valdosta, Georgia, on March 15, 1976. Complainant and respondent appeared and presented evidence. Both parties have filed written briefs. There was no motion to intervene.

LAW AND ISSUES OF THE CASE

It was alleged that the respondent violated standard 29 C.F.R. 1910.265(c)(4)(iv), in that respondent failed to provide standard railing for wood platforms which were four feet or more

above the ground level at the #1 Night Saw Mill near the cutoff saw opposite the cutoff saw operator's station.

Standard 29 C.F.R. 1910.265(c)(4)(iv) is as follows:

'All elevated walks, runways, or platforms, if 4 feet or more from the floor level, shall be provided with a standard railing except on loading or unloading sides of platforms. If height exceeds 6 feet, a standard toeboard also shall be provided to prevent material from rolling or falling off.'

It is undisputed that the height was between four and five feet. The respondent does not deny that side rails were not provided. The respondent defends on the grounds, however, that the platform was a loading or unloading platform, and that because of the probability of logs striking the rails, it would be impossible to perform said operation and comply with the standard.

It was further alleged that the respondent violated American National Standard B20.1-1957, Section 10(e), as adopted by standard 29 C.F.R. 1910.265(c)(18)(i), in that respondent performed maintenance work on a conveyor near the cutoff saw at the #1 Night Saw Mill while the conveyor was in operation.

Respondent defends on the ground that it was company policy to require a cutoff on the saws; and if an employee attempted to make repairs on said equipment while the saw was in operation, it would be a violation of instructions; and according to respondent, it should not be held responsible.

EVIDENCE AND EVALUATION OF THE CASE

As above-stated, the complainant alleges that the respondent was in violation of standard 29 C.F.R. 1910.265(c)(4)(iv), in that it permitted its employees to work at a height in excess of four feet on a platform which did not have safety rails. The fact that rails were not in existence was not disputed.

Mr. Mathew Henry, compliance officer for the complainant, testified that an inspection of the premises revealed that the platform in question is approximately 15 feet long with 8 metal risers for its stairs approaching the platform. The platform was over his shoulder in height at the point nearest the steps going to the platform, and there was no guardrail. He also observed floor holes in the platform. He is 5'11" tall, and his shoulder is at a 5'1" height, so the platform was a little over 5 feet high (Tr. 10, 11, 13). No sides were lower than four feet (Tr. 13, 14). Logs are brought beside the platform by means of a conveyor, which operates by means of a chain (Tr. 19,

20). As the logs are pulled up by the log deck, they are transferred to another chain. The conveyor feeding into a cutoff saw is approximately 60 feet long (Tr. 35). The edge of the wood platform runs parallel to the edge of the log ramp. An employee works on the platform where he keeps logs straightened out, and when the logs come over on the platform, he chops them off (Tr. 53). He also operates a button which moves the conveyor and moves the logs on down the ramp (Tr. 53). The button that operates a portion of the log ramp is at the saw man's station, which is on the opposite side of the conveyor from the log deck. There is a button at the west of the log deck where the ramp man pulls the logs up (Tr. 56). The ramp man's normal duties are to keep the logs spread out and to keep them there for the cutoff man (Tr. 88).

Mr. Sherman Page who runs the cutoff saw testified that the logs are always brought up the log deck and never over the platform (Tr. 89). In reaching the saw station, he goes up the steps and around to the end of the logs on the log deck, then gets down and goes in the door (Tr. 89). The saw station is to the right of this post where they go up the stairs (Tr. 89).

The floor of the platform had some give to it upon pressure exerted by Mr. Henry; and according to Mr. Henry, this created a tripping hazard. He stated that the saw chain was on the perimeter within five feet of the end of the platform and could also cause a tripping hazard (Tr. 11). Had an employee fallen off the platform, he would probably have landed on log ends that had been cut by the chain saw (Tr. 12). He would also fall on other scraps (Tr. 12). The unguarded portion of the platform was approximately ten feet long.

The lengths of the logs varied, and the logs would, on occasion, stick out over the conveyor belt and platform (Tr. 99, 114). If logs could not be pulled back, they would be cut in about 10 or 12-foot lengths (Tr. 100). It was testified that if a railing was there and a long log hit it, the log would shatter the railing (Tr. 101). If the deck operator walked by and the log hit the railing, it would cause the railing to break and perhaps hit the employee (Tr. 102). It was testified that there could be a real danger to the employee from the railing flying apart (Tr. 14). There is a control button which moves the conveyor and moves the logs on down the ramp (Tr. 53). A power saw is used to cut the log off when it is too long (Tr. 86). It is not necessary to have a man hold the log back to do this (Tr. 86). There is a pole along the side; and if the log sticks out over the platform, it could not go any further than the pole sticking up. When a log hits the pole, it will hang. They are supposed to cut it off before it hits the pole (Tr. 117). If there was a railing, it would be struck first (Tr. 118). If the logs are too long they would hit the railing, unless they

were cut before they got to the railing, or unless they were pushed back with the forklift, or the chain was stopped (Tr. 114).

Mr. Al Luongo, the manager, testified that any of said procedures would be time consuming. He stated it would be a definite loss to cut the logs because even if two or three feet were taken off the length of the logs, that would represent a two or three feet loss of lumber. He testified that he considered the platform a loading and unloading platform. The platform was more than four feet high; and admittedly, guardrails were not erected. The question for determination is whether it is practical for guardrails to be erected or whether it would be more dangerous, due to the possibility of the railing being shattered, if respondent complied with the standard. It is the contention of the respondent that the long logs which come through and might hit the railing would jam the conveyor several times a day. There are several alternatives to which the respondent could resort in order to prevent the logs from striking the railing. If the long logs which might hit the railing were a constant occurrence, it would be impractical to cut off the equipment so as to prevent the logs from hitting the saw. The indication by the respondent, however, is that it is an occurrence that would happen several times a day. It does not appear that it would constitute any substantial loss of production or that it would be impractical to cut off the power several times a day in order to avoid the logs hitting the rail. It will further be noted that it is possible to readjust the logs so as to put them in position so that they would not hit the rail. It is also possible to cut the logs. The testimony, as above set forth, is to the effect that the operation is slow enough that it is not necessary to hold the logs back. It is further testified that the logs are always supposed to be cut before they hit the pole. The suggestion by respondent that cutting the logs would cause a loss of lumber does not appear to be a sound reason for not having the logs cut. If the logs must be cut in any event before getting as far as the pole, the only question is whether the long logs should be cut sooner. Apparently it is possible and feasible to cut the logs before they hit the railing. In any event, if the logs are too long, they must be cut before striking the pole. It is admitted by respondent that the problem would not be complicated by having a railing that extends as far as the pole, a distance of approximately four feet. The respondent did not have a rail covering the distance that respondent admits would be feasible. It appears that while it would cause some additional complications to the respondent to erect a railing, there are ways to prevent the logs from striking the railing; and in view of the necessity of providing for the safety of the employees, the incidental additional

time and effort consumed would be justified. The respondent did not establish that it is impossible, or impractical, or more dangerous to the employees to have the railing erected.

Respondent maintains that the platform was a loading and unloading platform. Mr. Page testified that the logs reached the saw by means of the conveyor and not by means of the platform. It would appear that the weight of the evidence is to the effect that the only method almost always used of conveying the logs to the saw was by conveying them on the conveyor and not by means of the platform. The contention of the respondent that the platform was a loading and unloading platform, therefore, has not been sustained, and the complainant had established by a preponderance of the evidence to the contrary.

A penalty in the amount of \$185 is proposed for this violation. In view of the history of numerous previous violations by the respondent, a penalty in the amount of \$185 appears appropriate.

It was also alleged that respondent violated standard 29 C.F.R. 1910.265(c)(18)(i), in that respondent performed maintenance work on a conveyor near the cutoff saw at the #1 Night Saw Mill while the mill was in operation.

An employee of the respondent, Mr. **(redacted)**, was killed while working in the above-described operation. While working with the conveyor which carries the logs to the #1 Night Saw Mill, the chain had come off the sprocket near the cutoff saw. Mr. **(redacted)** and another employee, Mr. Page, were attempting to get the conveyor back into operation by putting the chain back on the sprocket. They did not cut off the power of the saw, but let the saw run. As a result, Mr. **(redacted)** was pulled into the saw, losing his life (Tr. 16, 17).

There was considerable testimony by the respondent that its policy and instructions were to the effect that before any work was done under such circumstances, the power of the saw was to be cut off (Tr. 92, 93, 94, 95, 98, 99). Employees have been frequently instructed to cut off the power (Tr. 103, 106, 108, 109, 121). Employees are instructed never to try to fix anything (Tr. 124). They are instructed to cut off all equipment and call for a supervisor or millwright to see that repairs are made (Tr. 99). When using the hook to control the logs, the employees are instructed to brace back away from the log, get at the end of the hook, and hold it on the right side, from which position if anything happens unexpected, they can always turn it loose (Tr. 109). The man who suffered the fatal accident, Mr. **(redacted)**, was fully instructed by his supervisor in regard to cutting off power and how to handle the hook. At the time of the accident,

however, Mr. **(redacted)** had it in his left hand, which, as testified, was not proper procedure (Tr. 109, 110). A new employee is thoroughly instructed as to these safety measures (Tr. 121). He is instructed to let the mill foreman know if something goes wrong. It is one of the millwright's obligations to make the repairs (Tr. 122). Employees are instructed that if they cannot find someone to report to, they are to blow a whistle, which is a notification to the proper persons (Tr. 122, 123). They are instructed never to try to fix anything (Tr. 124). They should shut everything off and blow the whistle (Tr. 124, 125). Employees were instructed to never get in front of a cant-hook. They are to let themselves be between it and the deck saw (Tr. 125).

Shiftmill foreman Clyde Morgan stated, however, that he had seen Mr. **(redacted)** on many occasions do the same thing which eventually resulted in his death (Tr. 126). Mr. Page stated that the usual procedure that he and Mr. **(redacted)** performed was to go ahead and adjust the situation without cutting the power off. He stated that approximately twice each night, it would slip off the sprocket (Tr. 76, 77, 78). He stated that at times, the foreman would be present when they would do it in that manner (Tr. 78). They were never, according to Mr. Page, instructed not to do it that way (Tr. 78).

It appears without contradiction that respondent did have a policy whereby its employees were to cut off the power prior to performing the work, such as was performed by the deceased. They were further instructed that they were not to perform the work at all, but were to call for proper persons to do it after having themselves cut off the power.

It is not enough, however, that a rule be passed or that instructions be given. A respondent has an obligation to see to it that the instructions are carried out. An isolated instance of violation of instructions which the respondent could not have known about, or prevented, would constitute a good defense to this action. The accident, however, did not result from an isolated instance. The testimony of Mr. Page, who worked with Mr. **(redacted)**, was to the effect that the normal procedure was not to cut off the power, although Mr. Page acknowledged that his instructions were to do so. Shift foreman Morgan stated that Mr. **(redacted)** had violated instructions on numerous occasions. In view of the fact that prior to the accident the violations of said policies seemed to have been the rule rather than the exception for Messrs. **(redacted)** and Page, it cannot possibly be treated as an isolated situation. It will further be noted that Mr. Page testified that, not infrequently, his foreman had observed him violating that particular rule and nothing was done about it. The foreman is the agent of the respondent who has the responsibility

given him by the respondent to see to the method of operation. In view of the frequent violations of the company's rules, including violations observed by company supervisors, and the tragic result that flowed from these violations, the allegations of the complaint have been sustained. A penalty in the amount of \$900 is proposed for this violation. Notwithstanding the fact that the respondent did properly instruct its employees, the apparent frequency of violation, and the extreme danger to an employee of working with a saw the size of the saw in this instance, makes the proposed penalty proper.

FINDINGS OF FACT

1. Respondent is a corporation engaged in the operation of a saw mill. Respondent, at all times relevant to this cause, has been an employer engaged in a business effecting interstate commerce within the meaning of the Act.

2. Respondent maintained a platform adjoining a conveyor belt and saw from which its employees worked in operation of same. The platform was in excess of four feet in height. There were no guardrails on said platform.

3. Logs came down the conveyor belt to the saw and some of said logs were of such length that, unless some action was taken by employees to prevent it, said logs would have struck a rail, had it been erected on the platform.

4. Each day there were several logs of sufficient length to have struck the rails if such action had not been taken.

5. The respondent could have shut off the power and readjusted the logs or, it could have changed the position of the logs, or cut off the ends of the logs, reducing them to proper size to pass the guardrail.

6. The speed at which the conveyor belt carried the logs was slow enough to permit such action to be taken.

7. There was a pole the size of a telephone pole by which the long logs could not pass in any event, and the erection of guardrails for a distance of approximately four feet would not have created any additional problems.

8. The respondent had a policy and rule that its employees were to cut off power before any repair work was done on the conveyor, chain, sprockets or saw. These rules were communicated to the respondent's employees.

9. Two employees of the respondent violated said rules and, as a result, one of said

employees was pulled into the saw and lost his life.

10. This rule was violated on numerous occasions.

11. Respondent required that when using a cant-hook, the employees hold it in their right hand and not place themselves between the hook and the saw.

12. This instruction as to how to hold the cant-hook was violated by said employee who was killed by the saw. Said employee had violated said rule on other occasions.

CONCLUSIONS OF LAW

1. Respondent is engaged in a business affecting interstate commerce and is within the jurisdiction of the Occupational Safety and Health Act.

2. On or about November 14, 1975, respondent violated standard 29 C.F.R. 1910.265(c)(4)(iv), in that respondent failed to provide standard railing for a wood platform, which was four feet or more above ground level at the #1 Night Saw Mill near the cutoff saw, opposite the cutoff saw operator's station.

3. On or about November 14, 1975, respondent violated American National Standard B20.1-1957, Section 10(e), as adopted by standard 29 C.F.R. 1910.265(c)(18)(i), in that respondent performed maintenance work on the conveyor near the cutoff saw at the #1 Night Saw Mill while the conveyor was in operation.

ORDER

It is therefore ORDERED that:

Respondent on or about November 14, 1975, was in violation of standard 29 C.F.R. 1910.265(c)(4)(iv). A penalty in the amount of \$185 is assessed for said violation. The proposed abatement date is affirmed.

On or about November 14, 1975, the respondent violated American National Standard B20.1-1957, Section 10(e), as adopted by standard 29 C.F.R. 1910.265(c)(18)(i). A penalty in the amount of \$900 is assessed for said violation. The proposed abatement date is affirmed.

Dated this 16th day of August 1976.

JOHN S. PATTON

Judge