
SECRETARY OF LABOR,	:	
	:	
Complainant,	:	
	:	
v.	:	OSHRC Docket No. 99-0815
	:	
POOL COMPANY TEXAS, LTD., ¹	:	
	:	
Respondent.	:	

ORDER APPROVING STIPULATION AND SETTLEMENT AGREEMENT

This matter is before the Commission on a direction for review entered by Commissioner Gary L. Visscher on April 6, 2000. The parties have now filed a Stipulation and Settlement Agreement. In the Stipulation, the Secretary withdraws Citation 1, Item 2, instances (a) and (b), alleging violations of 29 C.F.R. § 1910.24(h), and the notification of proposed penalty for those instances.² The parties also request that the administrative law judge’s decision be set aside.

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

2000 OSHRC No. 19

¹ The Stipulation identifies the Respondent as “Pool Company Texas, Ltd.” and states that the Respondent was inadvertently cited as “Poole Company Texas, Ltd.” The case caption is amended consistent with the Stipulation.

² The Secretary withdrew Citation 1, Item 1, at the hearing.

further review by the Commission. The Stipulation and Settlement Agreement is approved and the administrative law judge's decision is set aside.

So ordered.

Date: August 1, 2000

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/S/
Thomasina V. Rogers
Chairman

—

/S/
Gary L. Visscher
Commissioner

—

/S/
Stuart E. Weisberg
Commissioner

99-0815

NOTICE IS GIVEN TO THE FOLLOWING:

Daniel J. Mick, Counsel for Regional Trial Litigation
Eve Marie Stocker, Attorney
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Room S4004
200 Constitution Ave., N.W.
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John F. Martin, Esq.
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Irving Sommer
Chief Administrative Law Judge
Occupational Safety and Health
Review Commission
1120 20th Street, Suite 990
Washington, D.C. 20036-3419

Stanley M. Schwartz
Administrative Law Judge
Occupational Safety and Health
Review Commission
1244 North Speer Boulevard, Rm. 250
Denver, CO 80204-3582

July 31, 2000

Mr. Ray H. Darling, Jr.
Executive Secretary
Occupational Safety and Health
Review Commission
One Lafayette Centre
1120 20th Street, NW, 9th Floor
Washington, DC 20036-3419

Re: Secretary of Labor v. Pool Company Texas, Ltd.
OSHRC Docket No. 99-0815

Dear Mr. Darling:

Enclosed please find a corrected first page of the Stipulation and Settlement Agreement in this case. The corrected page reflects that the regulation cited by the Secretary in Citation 1, Item 2, was 1910.24(h), not 1910.24(b). (The judge's decision, at pages 2 and 5, contains the same clerical error.) The Secretary has contacted Employer's counsel who joins with the Secretary in asking that the clerical error in the Settlement Agreement be corrected by replacing existing page one with the corrected page. The Secretary is forwarding copies of the same corrected page to employer's counsel who states that he will forward a copy of the corrected page to the company for posting, as required by Commission Rules 7 and 100, in order to serve notice on non-party affected employees.

Sincerely,

/s/

Eve Marie Stocker
Attorney for the
Secretary of Labor

Enclosure

cc: Mr. John F. Martin, Esq.
Godwin White & Gruber
901 Main Street, Suite 2500
Dallas, Texas 75202-3727

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ALEXIS M. HERMAN,
Secretary of labor,

Complainant,

v.

POOL COMPANY TEXAS, LTD.,

Respondent.

OSHRC DOCKET NO. 99-0815

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, Pool Company Texas, Ltd. (inadvertently cited as “Poole Company Texas, Ltd.”), that:

1. Complainant hereby withdraws citation 1, item 2, instances (a) and (b), alleging violations of 29 C.F.R. §1910.24(b) and the notification of proposed penalty for those instances. 2. Each party agrees to bear its own fees and other expenses incurred by each party in connection with any stage of this proceedings.

3. The parties request that the Review Commission set aside the judge's decision. The Secretary of Labor and OSHA agree not to use the ALJ's decision in this action affirming the citations alleging violations of 29 C.F.R. § 1910.24 in any future proceedings against Pool Company Texas, Ltd.

The Secretary of Labor and OSHA reserve the right to issue citations against Pool Company Texas, Ltd. for future OSHA violations pertaining to ship's ladders of ship's stairs.

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

5. The parties agree that this Stipulation and Settlement Agreement is effective upon execution, and shall resolve all pending issues, charges and complaints arising from the inspection on January 8-14, 1999.

6. Respondent certifies that a copy of this Stipulation and Settlement Agreement was posted at its workplace at the workover rig at issue in inspection No. 300576816 in a conspicuous manner on the 1st day of August, 2000, pursuant to Commission Rules 7 and 100 and will remain posted for a period of ten (10) days.

Dated this 26th day of July, 2000.

Respectfully submitted,

HENRY L. SOLANO
Solicitor

JOSEPH M. WOODWARD
Associate solicitor for
Occupational Safety and Health

DONALD G. SHALHOUB
Deputy Associate Solicitor for
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DANIEL J. MICK
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/S/

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SECRETARY OF LABOR,

Complainant,

v.

POOLE COMPANY TEXAS LTD., and its
successors,

Respondent.

OSHRC DOCKET NO. 99-0815

APPEARANCES:

For the Complainant:

Richard Munoz, Esq., Janice H. Mountford, Esq., Office of the Solicitor, U.S. Department of Labor,
Dallas, Texas

For the Respondent:

George R. Carlton, Esq., John F. Martin, Esq, Godwin, White & Gruber, Dallas, Texas

Before: Administrative Law Judge: Stanley M. Schwartz

DECISION AND ORDER

This proceeding arises under the Occupational Safety and Health Act of 1970 (29 U.S.C. Section 651 *et seq.*; hereafter called the "Act").

Respondent, Poole Company Texas Ltd., and its successors (Poole), at all times relevant to this action maintained a place of business at the Caprito 83 Lease on North Hwy. 115, Peyote, Texas. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On January 8-14, 1999 the Occupational Safety and Health Administration (OSHA) conducted an inspection of Poole's work site on the Caprito 83 lease. As a result of that inspection, Poole was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Poole brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On November 5, 1999, a hearing was held in Dallas, Texas. At the hearing, the Secretary withdrew citation 1, item 1 (Tr. 5-6). The parties have submitted briefs on the item remaining at issue,

and this matter is ready for disposition.

Alleged Violations

Serious citation 1, item 2 alleges:

29 CFR 1910.24(b): Standard railing(s) were not provided on the open side(s) of all fixed industrial stairway(s) and stair platform(s):

a) A set of stairs leading to the north side of the working platform on a workover rig on the Caprito 83 lease, on January 11, 1998, was not equipped with a standard railing on the west side. The railing on the east side did not meet the definition of a standard railing in that it was not equipped with a midrail.

b) A set of stairs leading to the east side of the deck of a workover rig on the Caprito 83 lease, on January 11, 1998, was not equipped with a standard railing on the north side of the stairs.

Employees who were engaged in pulling tubing from the well were thus not protected against the hazards of slips and falls from the open side of a fixed industrial stairway.

Facts

Thomas Nystel, OSHA's Compliance Officer (CO), testified that when he arrived on Poole's work site, he observed and photographed two sets of steps accessing the sides of two platforms of a mobile well-servicing rig (Tr. 11, 14, 22; Exh. C-1 through C-4). Nystel testified that the first set of steps consisted of four risers leading from the ground to a platform attached to the drilling rig where the operator of the rig stands (Tr. 16-17; Exh. 1). Nystel estimated that platform was approximately 4-1/2 feet off the ground (Tr. 18). The second stair consisted of two adjustable, overlapping segments with four risers on each (Tr. 55). Six risers were in use, and led up to a higher operating floor, where the rig hands work (Tr. 17-18; Exh. C-2, C-3). The steps were attached to the rig with metal flanges that were inserted into slots in the platform floor (Tr. 19-20; Exh. C-4). Both sets of steps had handrails on the left side, and mounts on the right side, into which a second rail could be inserted. The left hand mounts, however, were empty (Tr. 14).

Operations had been shut down, and no one was working on the platform during Nystel's first visit (Tr. 10). However, when Nystel returned to the site on January 11, the second set of steps had been moved around the corner to the end of the rig, and employees were on both platforms, withdrawing drilling string or a "fish tool" from the hole (Tr. 15, 21, 46; Exh. C-5). Nystel testified, without contradiction, that the steps were the only means of accessing the service platforms. Based on employee interviews, Nystel determined that Poole employees routinely used them for that purpose (Tr. 25, 38-39; Exh. C-3).

Nystel testified that the platforms of the mobile well servicing rig are attached to the base of a

derrick, which is part of the drilling rig itself (Tr. 22, 56). The servicing units, though mobile, are placed on stands while in use; its wheels are either lifted from the ground or chocked during servicing (Tr. 23). Nystel stated that the service platforms can be moved up and down on the derrick as needed, but were stationary for the duration of the inspection (Tr. 22, 55). Nystel testified that the steps were sturdy, and did not wobble when used (Tr. 21). Nystel believed that an employee could fall to the unprotected side of the stair, fall and sustain contusions and/or broken bones, though he admitted the probability was low (Tr. 43).

Discussion

Poole does not dispute CO Nystel's recitation of the facts. Poole stipulates that fixed industrial stairs are required to have standard rails on each side (Tr. 37). If the cited standard is found to be applicable to the cited stairs, therefore, the violation is established.

Poole argues, however, that the cited standard is not applicable, because the steps at issue are not "fixed stairs," but constitute an "extension ladder," as defined by the Act, and so do not require handrails. Poole further argues that the steps, if found to be stairs, were not fixed, and so are not covered by the cited standard. Finally, Poole maintains that if the steps are found to be fixed industrial stairs, they are exempt from coverage under subsection (a) which excludes "articulated" stairs.

For the reasons set forth below, Poole's arguments are rejected.

Applicability. Section 1910.21(b)(4) defines "ladder" as:

. . .an appliance usually consisting of two side rails joined at regular intervals by cross-pieces called steps, rungs, or cleats, on which a person may step in ascending or descending.

As noted by Poole, the cited steps meet the strict definition of "ladders" set forth in §1910.21. Nonetheless, the record establishes that the cited steps were not, and could not be used in the way a ladder is used. Functionally, the steps are not ladders.

Section 1910.26(a)(3)(i) *Use of ladders* suggests that portable ladders be set so that the distance between the base of the ladder and the vertical wall is equal to 1/4 the working length of the ladder, creating a pitch of approximately 75°. Subsection (v) states that when ascending or descending, the climber must face the ladder. The purpose of these sections is to ensure that anyone ascending or descending the ladder can comfortably use the side rails or cleats/rungs as hand holds. CO Nystel did not measure the pitch of the cited steps; however, it is clear from the photographs that the pitch of the stairs is between 45° and 60°. Poole introduced blueprints which, though not dispositive, suggest that the pitch of the steps was approximately 55° (Exh. R-7). Because the pitch of the steps was relatively gradual, employees would face the steps while ascending to the platform, but would face outwards when descending. It would be impossible for an employee climbing or descending the steps to use

either the side rails or cleats as handholds. The cited steps cannot, functionally, be considered ladders.

The cited steps do, however, meet the definition of “stairs, stairways” set forth in §1910.21(b)(8), *i.e.*:

A series of steps leading from one level or floor to another or leading to platforms, pits, boiler rooms, crossovers or around machinery, tanks or other equipment that are used more or less continuously or routinely by employees or only occasionally by specific individuals. A series of steps and landings having three or more risers constitutes stairs or stairway.

Moreover, the §1910.24(b) *requires* that fixed stairs be provided “for access from one structure level to another where operations necessitate regular travel between levels, and for access to operating platforms at any equipment which requires attention routinely during operations. . . .”

CO Nystel testified, without contradiction, that the sole purpose of the workover rig is to serve as a work platform; the rig operator stands on the lower platform of the well-servicing rig, while the rig hands work from the higher platform. Nystel photographed the exposed employees, who worked from the platforms during the second day of his inspection; according to Nystel, the operator never left the platform (Tr. 46).

The record establishes that the workover rig was a platform routinely and/or continuously used by employees, which required fixed stairs.

Though Poole argues that the stairs were not permanently attached to the mobile rig, the stairs were, nonetheless, “fixed” in that they were secured to the platform to prevent their movement while in the configuration. CO Nystel testified that the steps were attached to the rig with flanges that could be inserted into slots on the platform floor, which were apparently intended for that purpose.

Complainant has established that the steps in question were fixed industrial stairs as contemplated by the standard, and that the cited standard is applicable.

Exemption. Subsection (a) of the cited standard exempts “articulated stairs, such as may be installed on floating roof tanks or on dock facilities, the angle of which changes with the rise and fall of the base support. The cited stairs, which rested on solid ground, clearly do not change pitch with the rise and fall of said ground. Respondent’s argument that the adjustable stairs are “articulated stairs” within the meaning of subsection (a) is, therefore, rejected.

The cited violation is established.

Penalty

Two employees were exposed to the cited hazard for an unspecified period of time. CO Nystel testified that based on the relatively low height of the platform and the stair, as well as the presence of another railing, he determined the probability of an accident occurring was low. Because Poole has a written safety program which requires that open stairways have handrails, CO Nystel gave Poole a 15%

