
SECRETARY OF LABOR,
Complainant,

v.

OSHRC Docket No. 97-0152

BEAVER PLANT OPERATIONS, INC.,
Respondent.

ORDER

Before: ROGERS, Chairman; and WEISBERG, Commissioner.

BY THE COMMISSION:

On September 30, 1999, the Commission affirmed a citation issued to Beaver Plant Operations, Inc. ("Beaver") by the Secretary of Labor ("Secretary") under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-78. *Beaver Plant Operations*, 18 BNA OSHC 1972, 1999 CCH OSHD ¶ 31,948 (No. 97-0152, 1999).¹ On appeal, the First Circuit reversed the Commission's decision, holding that because "Beaver lacked adequate notice" of the Commission's interpretation of the standard at issue, the citation must be vacated. *Beaver Plant Operations v. Secretary*, 223 F.3d 25, 32 (1st Cir. 2000). The Court noted that "proof of Beaver's 'actual knowledge' of a hazardous condition could negate the question of fair notice," but "[w]ithout factual findings from the Commission or the ALJ," it "decline[d] to conclude, based on this record, that Beaver had knowledge of a hazardous condition." The court remanded the case to the Commission "for proceedings consistent with [its] opinion." *Id.* at 32.

¹Commissioner Weisberg did not participate in that decision.

Pursuant to the remand order, we have reviewed the record for further evidence of "Beaver's awareness of a hazardous condition" and have found no evidence, other than that already found insufficient by the Court, to establish such knowledge on Beaver's part. Accordingly, we vacate the citation and penalty.

/s/
Thomasina V. Rogers
Chairman

/s/
Stuart E. Weisberg
Commissioner

Date: November 30, 2000