SECRETARY OF LABOR, Complainant, v. CROWN PACIFIC, Respondent.	OSHRC DOCKET NO. 97-1606

APPEARANCES:

For the Complainant:
Jay Williamson, Esq., Office of the Solicitor, U.S. Department of Labor, Seattle, Washington

For the Respondent:
George Goodman, Esq., Cummins, Goodman, Fish & Platt, McMinnville, Oregon

Before: Administrative Law Judge: Benjamin R. Loye

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, Crown Pacific (Crown), at all times relevant to this action maintained a place of business at 1001 W. Riverside, Bonners Ferry, Idaho, where it was engaged in lumber processing and related activities. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On August 26, 1997, following a reported fatality, the Occupational Safety and Health Administration (OSHA) conducted an inspection of Crown's Bonners Ferry work site. As a result of that inspection, Crown was issued citations alleging violations of the Act together with proposed penalties. By filing a timely notice of contest Crown brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On May 19, 1998, a hearing was held in Coeur d'Alene, Idaho. Prior to the hearing, the Secretary withdrew items 2 and 4 of "serious" citation 1 (Tr. 24). The parties have submitted briefs on the remaining issues and this matter is ready for disposition.

Alleged Violation of §1910.177 et seq.

Serious citation 1, item 1 alleges:

29 CFR 1910.177(c)(1): The employer did not provide a program to train all employees who service rim wheels in the hazards involved and the safety procedures to follow while servicing rim wheels:

(a) A training program for mechanics and others handling multi-piece wheels was not available.

Serious citation 1, item 3 alleges:

29 CFR 1910.177(f)(10): The employer did not ensure that employees stayed out of the trajectory whenever multi-piece rim wheels are handled:

(a) On August 22, 1997 at the tire storage area, a employee was struck by the locking rim of a multi-piece wheel while unloading the wheel from a company vehicle. The employer did not ensure that employees stay out of the trajectory of the multi-piece wheels while handling the wheels.

Facts

On August 22, 1997, Wally Cossairt, a mechanic at Crown Pacific (Tr. 51), and another Crown employee, Terry Davis, were unloading repaired tires from the bed of a pickup truck, sliding each tire across the tailgate until it flipped, upright, onto the ground (Tr. 62, 65, 69-70). As a tire Davis was unloading dropped to the ground, it exploded, striking Davis in the chest (Tr. 70).

Cossairt testified that on or before August 22, 1997, he regularly worked with multi-piece wheels at Crown's Bonners Ferry facility (Tr. 53). Cossairt estimated that Crown's rolling stock utilized approximately 75 either split rim and/or split ring wheels at that time (Tr. 54). When a multi-piece wheel required service, a mechanic or the equipment operator would remove it from the vehicle or machinery on a concrete slab outside the plant boiler room (Tr. 55-56). Cossairt would generally put a spare back on to the vehicle or machinery so it could be returned to service (Tr. 57). The wheel was then loaded into the back of a pickup and Cossairt or another mechanic would take it to a tire repair shop (Tr. 56, 59). Cossairt stated that he delivered damaged tires, or picked up repaired tires approximately twice a week (Tr. 60). Repaired tires were unloaded at Crown and stored (Tr. 61). Cossairt testified that, as he handled the tires, his body was sometimes in the wheel's trajectory (Tr. 63).

Cossairt also testified that he serviced multi-piece wheels, inflating low or soft tires without removing the wheel from the vehicle (Tr. 57-58). Cossairt stated that he did not use a remote chuck to

inflate tires on multi-piece wheels prior to August 22, 1997, and that his body was often in the wheel's trajectory path as the tire was inflated (Tr. 58-59).

Cossairt stated that he knew that a multi-piece wheel, if not properly fitted, can separate when the tire is inflated after mounting (Tr. 64). Cossairt testified that he was not aware, prior to August 22, 1998, that there was any hazard associated with inflating a soft tire, or that it was necessary to stay out of the wheel's trajectory while removing, installing or handling multi-piece wheels (Tr. 64-65). Cossairt testified that he had not been trained in the proper means of inflating, removing, installing or otherwise handling multi-piece wheels (Tr. 64).

Discussion

Crown does not dispute the underlying facts, but maintains that the cited standard is not applicable to employers in general industry, unless they are actually engaged in the mounting and demounting of rim wheels. Respondent further maintains that, even if applicable, the standard is so vague that it fails to provide employers with adequate notice of its scope.

Applicability. The cited standard sets forth its scope with some specificity.

> (a) *Scope*. (1) This section applies to the servicing of multi-piece and single piece rim wheels used on large vehicles such as trucks, tractors, trailers, busses and off-road machines. . ..
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> * * *
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> (b) *Service* or *servicing* means the mounting and demounting of rim wheels, and related activities such as inflating, deflating, installing, removing, and handling.

Respondent's witnesses; Terry Miller, the safety and loss control manager for the Associated General Contractors-Oregon (Tr. 243-44); Gerald Ripka, a safety consultant (Tr. 321); and Kendall Hansen, Crown's safety and environmental compliance manager (Tr. 397), all testified that it is the understanding within general industry that §1910.177 *et seq.* applies only to employers actually "breaking down" tires (Tr. 411). Respondent's witnesses agreed that they interpreted the phrase "and related activities such as inflating, deflating, installing, removing, and handling" as having effect only when the precondition " mounting and demounting of rim wheels" is performed at the same time, and by the same employer as the related activity (Tr. 319, 342).

Respondent's interpretation of the cited standard is contrary to the plain meaning of the standard as set forth under the *Scope* heading, as well as to the intent of the drafters. The plain language of the standard clearly provides that the §1910.177 *et seq.* is applicable to all employers covered by Part 1910 engaged in servicing multi-piece wheels. Servicing includes inflating, deflating, installing, removing, and handling *as well as; together with; in addition to* mounting and demounting. Respondent seeks to

introduce ambiguity into the standard's plain meaning by infusing the word "and" with a meaning beyond the common sense of the word, relying on testimony of industry practice or custom. The Commission and the courts, however, look to industry practice "only when the standard in question is so broadly worded or vague that the employer may legitimately claim that it could not know, without reference to industry practice or other reasonable example, how to comply." *Pyramid Masonry Contractors, Inc.*, 1993 CCH OSHD ¶30,255, p. 41,676 (No. 91-0600, 1993). Where, as here, the meaning of the standard is clear, no reference to industry practice is appropriate.

In any event, the sole object of statutory construction is to determine the intent of the drafters. *Donovan v. Anheuser-Busch, Inc.*, 666 F.2d 315 (6th Cir. 1981). Richard Sauger, a safety specialist with OSHA, and the primary author of the standard (Tr. 442), testified that the cited standard was intended to cover all employees involved in servicing multi-piece wheels, regardless of whether they or their employers are involved in tire repair, *i.e* .mounting and/or demounting (Tr. 451-53). In her proposed rules, the Secretary noted that "numerous accidents occurred while moving an inflated tire in the service area, measuring tire pressure, removing the valve core or simply while storing an inflated tire at rest." 44 Fed. Reg. 24,253 (April 24, 1979). Sauger testified that the hazards associated with multi-piece wheel, *i.e.*, the possibility that explosive air pressure from the tire will turn the steel wheel and locking ring into a projectile, are the same whether the multi-piece wheel is handled in a tire repair shop, or by the employee of a general industry employer (Tr. 112, 443, 449). Adoption of Crown's interpretation would deprive employees servicing multi-piece tires in the general industry of the protection of the Act. "Axiomatic in statutory interpretation is the principle that laws should be construed to avoid an absurd or unreasonable result." *United States v. Mathena*, 23 F.3d 87, 92-93 (5th Cir.1994).

The cited standard is applicable.

Notice. As noted above, the cited standard's scope is not so broadly worded or vague that Crown may legitimately claim it could not have recognized a need to comply. I find that Section 1910.177 afforded Crown with adequate notice of the conduct required of it.

The Secretary has established the cited violations.

Penalty

A penalty of $4,500.00 has been proposed for each of the cited violations. Crown is a large company. It has not been cited for any "serious" violations of the Act within the last three years (Tr. 144). The gravity of the violation is high in that failure to train employees in proper procedures, including staying out of the wheel's trajectory, could result in death (Tr. 144-45). Crown's mechanics were exposed to the

cited hazard a couple of times a week. The OSHA Compliance Officer (CO) Steve Gossman, testified that no reduction in the size of the penalty was allowed for good faith because of the gravity of the violation, and because he did not believe Crown expeditiously abated the hazard (Tr. 145-46). Gossman admitted that he later learned that Crown had put a training program into place even before the OSHA inspection took place (Tr. 149-50). Gossman also testified that there had never been another incident involving an accident with a multi-piece wheel at Crown's workplace (Tr. 151).

Based on the evidence in the record, I find that Crown has acted in good faith, and that an additional reduction in the penalty is appropriate. A penalty of $4,000.00 for each violation is deemed appropriate.

ORDER

1. Citation 1, item 1, alleging violation of 29 CFR 1910.177(c)(1) is AFFIRMED and a penalty of $4,000.00 is ASSESSED.

1. Citation 1, item 3, alleging violation of 29 CFR 1910.177(f)(10) is AFFIRMED and a penalty of $4,000.00 is ASSESSED.

Benjamin R. Loye
Judge, OSHRC

Dated: