NEVADA OCCUPATIONAL SAFETY AND HEALTH

REVIEW BOARD

CHIEF ADMINISTRATIVE OFFICER OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DIVISION OF INDUSTRIAL RELATIONS OF THE DEPARTMENT OF BUSINESS AND INDUSTRY,

Complainant,

vs.

SME STEEL CONTRACTORS, INC.,

Respondent.

_____/

Docket No. LV 10-1387

DECISION

This matter having come before the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** at a hearing commenced on the 9th day of June 2010, and reconvened on June 10, 2010, in furtherance of notice duly provided according to law, MR. JOHN WILES, ESQ., counsel appearing on behalf of the Complainant, **Chief Administrative Officer of the Occupational Safety and Health Administration, Division of Industrial Relations** (OSHA); and MR. JOEL F. HANSEN, ESQ., appearing on behalf of Respondent, **SME Steel Contractors, Inc.** the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** finds as follows:

Jurisdiction in this matter has been conferred in accordance with Nevada Revised Statute 618.315.

The complaint filed by the OSHA sets forth allegations of violation of Nevada Revised Statutes as referenced in Exhibit "A", attached thereto.

Citation 1, Item 1 charges a "Serious" violation of Nevada Revised

Statute 618.375(1). Complainant alleges the respondent violated the cited Nevada Revised Statute commonly known as the "general duty clause". Employees were tied off to the top portion of a guardrail system on an elevated working platform but not to anchor point as designated by the manufacturer. The violation was classified as Serious due to the potential for serious injury or death. The proposed penalty for the serious violation is in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00).

Citation 1, Item 2, charges a violation of 29 CFR 1926.502(d)(17). The complainant alleges the employer did not ensure that a body harness was worn in accordance with the proscriptions of the standard. The body harness attachment point was not located in the center of an employee wearer's back and near the shoulder level. The violation was classified as Serious due to the potential for serious injury or death. The proposed penalty for the serious violation is in the amount of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00).

Citation 1, Item 3, charges a violation of 29 CFR 1926.760(a)(1). The complainant alleges the employer did not ensure employees near the edge of elevated metal decking were protected from a fall hazard of approximately 20 feet. The violation was classified as Serious due to the potential for serious injury or death. The proposed penalty is in the amount of ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS ($1,875.00).

Counsel for the Chief Administrative Officer presented testimony and documentary evidence with regard to the alleged violations. Safety and Health Representative (SHR) Tanisha Solano testified that she conducted an assigned comprehensive inspection of the employer's worksite located at Terminal 3 of the McCarran Airport in Las Vegas,

Nevada. She identified and introduced Exhibit A, pages 1-23 as her inspection/investigation report, Exhibit B comprising photographs taken by her at the site, numbered 1-7, and Exhibit C, a printout of the type of ariel work platform involved in Citation 1, Item 1.

At Citation 1, Item 1, Ms. Solano testified she observed two employees connected by their safety line attachment (hooked off) to the top guardrail of an ariel work platform (boom lift). She pointed to the location of attachment by the employees at Exhibit C and indicated same to be the top rail near the work panel. During the investigation she obtained the manufacturer requirements for recommended tie-off points. The top guardrail identified was not permitted for such use. She referenced pages 11, 12 and 13 of Exhibit A and testified she spoke to Mr. Steven Best, a company engineer for the manufacturer of the subject ariel work platform. She determined from her discussions, research and investigation the specific anchor points for tie-off rated by the manufacturer did not include the top rail. She testified the top rail had not been tested to withstand the weight and pressure necessary to protect employees tied off to same as a safety line attachment point. She testified the recognized hazard is the potential of a fall due to tie-off to an insufficient weight bearing anchor point.

Ms. Solano testified from Exhibit A, pages 14 and 15 with regard to employer knowledge of the violative conditions cited at Item 1. She determined the written disciplinary notice for two employees, Messrs. Anaya and Burt established the hazard was **recognized**. Statements at page 9, Exhibit A confirm employer knowledge of the improper actions of its employees incorrect attachment of the safety lines. Ms. Solano testified the employees were supervised by a respondent foreman, superintendent and several levels of safety management on the site. She

confirmed her investigative information that the foreman was on the job site at least twice during the day of the inspection.

Exhibit D was admitted in evidence without objection for the purposes of reflecting at pages 1-6 the SHR notes taken during the inspection. She testified from Exhibit D that employee Anaya signed a statement admitting he was tied off to the top rail while working for approximately one hour. The SHR referenced the feasibility of enforcement and compliance and testified the violation was readily observable in plain view had the supervisors performed their job to assure proper safety line attachment.

At Citation 1, Item 2, referencing 29 CFR 1926.502(d)(17), SHR Solano testified she cited the employer for a violation of the specific standard governing safety harness fit and wear based upon her observations as confirmed by photographic evidence at Exhibit B, pages 1 and 2. She testified that based upon her training and recognized interpretation of the referenced standard, the harnesses worn by observed employees were improperly fitted and worn because the attachment point of the harness was not located in the center of the wearer's back near shoulder level. She further testified the recognized hazard for an improper fitted harness consisted of potential greater injury inflicted on an employee after a fall due to swinging and/or harmful contact with other objects. Employees should be suspended in a vertical position after a fall rather than being cast horizontally which could cause body parts to come in contact with the lift equipment or other obstructions. Ms. Solano referenced Exhibit A page 20 to establish employer knowledge of the standard on proper fit and wearing of a harness. The SHR read the applicable regulations into the record. She referenced pages 14 and 15 at Exhibit A as the employer disciplinary

action resultant from the employee conduct to support employer knowledge of the proper way to fit and wear a harness. She further testified in support of her classification of the violation as serious and the appropriate penalty calculations.

At Citation 1, Item 3, SHR Solano cited the employer for a violation of 29 CFR 1926.760(a)(1). She testified that on the second day of her initial inspection (July 13, 2009) while continuing her "walk around" of the site, she observed respondent employees exposed to a fall hazard and photographed them as depicted in Exhibit B, page 4. She said they appeared to be on break and seated near the edge of metal roof decking and exposed to holes in the deck with a potential fall hazard of approximately 20 feet in height. She testified from Exhibit D, page 6 that respondent employee Shawn Salsberry told her he tied off to a beam and the scissor lift to climb onto the decking in order to take a work break. Various safety and other management employees of respondent were regularly on the site. Ms. Solano testified the employer supervisory and safety representatives should have readily noted the exposed employees on the deck because the violative conduct occurred in plain view. She described the potential hazards from a fall of 20 feet in height and explained her penalty calculations in accordance with the enforcement manual.

Counsel for the complainant presented testimony from Mr. Gregg Masnick, respondent safety manager. Mr. Masnick testified as to Exhibit A, pages 14 and 16. He identified the documents as company discipline forms utilized and corporate records of infractions for serious violations. The documents reflected employees Anaya and Burt had received written warnings at the McCarran job on June 16, 2009. He testified on the company reporting system for violations and those

issued to employees Anaya and Burt. Mr. Masnick also testified there was no hazard demonstrated by the employees' attachment to the top rail of the ariel working platform as charged at Citation 1, Item 1.

Respondent conducted cross-examination of SHR Solano. She testified the boom lift is equipped with designated anchor points for tie-off. She admitted the employer did furnish safe equipment for employee use at the job site but cited respondent at Item 1 because employees did not utilize the anchor points designated by the manufacturer which were specifically tested and rated for tie-off protection. She testified employee Burt admitted at page 4, Exhibit D that he tied off to the top rail in violation of the employer work rule. Ms. Solano admitted on further cross-examination that an employer cannot assure employee compliance with safety regulations every moment of the work day.

At Citation 1, Item 2, counsel questioned SHR Solano extensively as to the meaning of the standard and her interpretation of location of the harness attachment ring and fitting "near the shoulders." She testified the simple meaning is as she described the phrase ". . . near the shoulders . . ." and not at the lower area worn by the employees subject of citation.

Ms. Solano responded to cross-examination as to Citation 1, Item 3. She admitted the employees observed were apparently on a break and not actually engaged in work at the time of obtaining the photographic evidence.

Respondent presented testimony and evidence in defense of the citations and alleged violations. Counsel conducted direct examination of respondent safety manager, Gregg Masnick. Various exhibits were identified and entered in evidence by stipulation. Mr. Masnick

testified he spent 90% of his day looking for safety violations to provide employee oversight. At Citation 1, Item 2, he testified employees were trained in safety harness use but that OSHA has no guidelines on "near the shoulder" or a clear definition. He testified that in his opinion the photos in evidence depict the harness positioned between shoulder blades and therefore no violation. At Citation 1, Item 3, Mr. Masnick testified that as safety manager, he verbally disciplined the employees sitting too close to the edge when the photo was taken after he observed them along with the SHR. He testified the employees dismissed his discipline and advisories, stating they were not working but rather "on break," and not required to observe fall hazard protection.

Mr. Don Bidlock provided evidence and testimony on behalf of respondent. He identified himself as the welding foreman on the job site subject of inspection. He testified all respondent employees were trained in safety by the employer and iron workers union. All were experienced in the job tasks underway. He further testified there were two safety managers on the job site. The three employees depicted at Exhibit B, page 4 and 5, were identified and Mr. Bidlock testified all three had been trained in safety, and in fact participated in a training session the very morning of the inspection. He further testified the training provided to the employees repeatedly included remaining away from the edge of open holes. He testified the three employees depicted in the exhibit and disciplined for their action advised him they did not have to obey various safety rules during a break. He said the employees violated company policy and were engaged in employee misconduct.

Mr. Jason Faltinowski testified he is the respondent safety manager with five years field experience and recipient of a BA degree in OSHA

from the University of Nevada, Las Vegas. He testified on the extent and breadth the existent respondent safety program. He trained employees to use tie-off points on boom lifts. The tie-off points differ from lift to lift dependent upon the manufacturer. He testified that if he had seen employees tied off to the top rail as depicted in the Exhibit he would have stopped their work.

Mr. Faltinowski testified that Exhibit B, pictures 1 and 2 do not demonstrate any violation of Citation 1, Item 3 with regard to shoulder harness wear because there is no specific definition of "near the shoulder".

Counsel for complainant called Mr. Nicholas LaFronz as a rebuttal witness. Mr. LaFronz identified himself as an SHR and provided testimony based upon his education, training, experience and interpretation of the proper fit and wear of a body harness. He testified as to dictionary definitions of "near the shoulder" or "location of shoulder" and the basic apparent meaning of the standard. He stated the proper fit is widely interpreted in furtherance of that given by SHR Solano to support respondent's violation of the standard. He further testified as to the hazards that could result from a fall with an improperly fitted and attached harness.

Counsel for complainant and respondent provided closing argument asserting positions with regard to facts, testimony and interpretations of law or standards upon which the citations were based.

Counsel for complainant argued the burden of proof was met as to each cited violation based upon credible witness testimony and documentary exhibits in evidence. He further argued the "plain meaning rule" supports the OSHA interpretation for proper fitting and wearing of the safety harness.

Complainant counsel asserted that safety rules under established occupational safety and health law must be enforced by an employer when employees are exposed to hazards, whether they are engaged in their work task or on break.

Counsel for respondent argued the respondent maintained a safety program and rigorously enforced same. He asserted the employees subject of cited violations were all engaged in employee misconduct which prevents any finding of violations even if sufficient evidence could be found to satisfy the burden of proof in the first instance. He further argued there was no violation of the general duty clause because there was no unsafe workplace shown or demonstrated by any of the evidence, documentary or testimonial. Counsel charged erroneous OSHA interpretation of the harness standard under the plain meaning rule, and the standard itself is constitutionally void for vagueness due to the inability of reasonable men to accurately interpret an objective meaning.

The board in reviewing the facts, documentation, testimony and other evidence must measure same against the established applicable law developed under the Occupational Safety & Health Act.

A serious violation can be established under Nevada occupational safety and health law in accordance with Nevada Revised Statutes.

(NRS) 618.625(2) provides:

> ...a serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one or more practices, means, methods, operations or processes which have been adopted or are in use at the place of employment unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation.

N.A.C. 618.788(1) provides:

> In all proceedings commenced by the filing of a notice of contest, the burden of proof rests with the Administrator.
>
> All facts forming the basis of a complaint must be proved by a preponderance of the evidence. See Armor Elevator Co., 1 OSHC 1409, 1973-1974 OSHC ¶16,958 (1973).
> To establish a prima facie case, the Secretary (Chief Administrative Officer) must prove the existence of a violation, the exposure of employees, the reasonableness of the abatement period, and the appropriateness of the penalty. See Bechtel Corporation, 2 OSHC 1336, 1974-1975 OSHD ¶18,906 (1974); Crescent Wharf & Warehouse Co., 1 OSHC 1219, 1971-1973 OSHD ¶15,047. (1972).

At Citation 1, Item 1, complainant cited respondent for a violation of NRS 618.375(1) commonly known as the "general duty clause". The evidence did not show the respondent maintained a generally unsafe worksite, however employee safety line tie-offs to a non-rated top guardrail demonstrated exposure to a potential fall hazard. Notwithstanding the unsafe tie-off and exposure to hazard, Congress in the United States Code and well-established law developed under the Occupational Safety and Health Act prevents an employer from being cited under the general duty clause when a specific standard is applicable to the facts. Complainant cited the respondent under the general duty clause notwithstanding the existence of the specific applicable standard governing anchoring attachments at 29 CFR 1926.502(d)(15). The standard provides:

> Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least 5,000 pounds (22.2kN) per employee attached, or shall be designed, installed and used ...

A citation will be vacated if the cited condition is regulated by a more specifically applicable standard.

29 C.F.R. §1910.5(c) E.g., McNally Constr & Tunneling CO., 16 OSH Cases 1886 (Rev. Comm'n 1994), aff'd and approved, 71 F3d 208, 17 OSH Cases 1412 (6th Cir. 1995); Bratton Corp., 14 OSH Cases 1893 (Rev. Comm'n 1990) (steel erection standards to not preempt general fall protection standards) (acceding to view of several circuits); New England Tel. & Tel. Co.,8 OSH Cases 1478 (Rev. Comm'n 1980).

It has long been established under Occupational Safety and Health Law that the provisions of 29 CFR 1910.5(f) to be the preemption clause which provides in effect that a standard may preempt the general duty clause. The commission has long held, based in part on this regulation and in part on its view of congressional intent, that a standard will preempt the (general duty) clause.

Brisk Waterproofing CO., 1 OSH Cases 1263 (1973); Daniel Int'l, Inc., 10 OSH Cases 1556 (1982); Morrison-Knudsen Co./Yonkers Contracting Co., Joint Venture, 16 OSH Cases 1105, 1120-21 (Rev. Comm'n 1993).

Sawnee Electric Membership Corporation, 5 OSHC 1059, 1977-1978 OSHD ¶ 21,560 (1977); Tolar Construction Co., 2 OSHC 1385, 1974-1975 OSHD ¶ 19,078 (1974); Sun Shipbuilding and Drydock Co., 1 OSHC 1381, 1973-1974 OSHD ¶ 16,725 (1973).

Nevada Revised Statutes have adopted applicable Federal law promulgated under the Occupational Safety and Health Act. NRS 618.295(8) provides:

> All federal occupational safety and health standards which the Secretary of Labor promulgates, modifies or revokes, and any amendments thereto, shall be deemed Nevada occupational safety and health standards unless the Division, in accordance with federal law, adopts regulations establishing alternative standards and provide protection equal to the protection provided by those federal occupational safety and health standards.

NRS 618.305(4) provides:

> The Division may consider the following sources in adopting standards under this Chapter . . . 4. Code of Federal regulations (CFR).

29 U.S.C. § 658(a) provides:

> Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated.
>
> The purpose of ¶ 658(a) is to ". . . place the cited employer on notice of the nature of the alleged violation."

The evidence in the record demonstrates the employer did maintain a safety program and conducted both training and discipline for the subject employees referenced at Citation 1, Item 1. However the board need not reach the issue of unforeseeable employee misconduct for what could have been an isolated incident difficult to readily observe because of the threshold prohibition of citing an employer under the general duty clause when a specific standard applies.

At Citation 1, Item 2, referencing 29 CFR 1926.502(d)(17), the testimony and evidence centered on a disputed interpretation of the harness standard. SHRs Solano and LaFronz testified appropriate wear of the body harness is at the center of the back near the shoulders as previously interpreted by this board and the federal Occupational Safety and Health Review Commission. Respondent safety representatives Messrs. Masnick and Faltinowski testified the harness as depicted in Exhibit B, pages 1 and 2 were appropriately worn, fitted and not in violation of the standard. The testimony presented by Mr. Masnick as to proper fit and wear in defense of the citation was argumentative and evasive. Statutory interpretation under the "plain meaning rule" established by the United States Supreme Court is a well-recognized precedent in the State of Nevada. This board has followed the plain meaning rule when required to interpret standards and law.

Caminetti v. United States, 242 U.S. 470, 485, 37

> S.Ct. 192, 194, 61 L.Ed. 442 (1916) (citations omitted). Rodgers v. Rodgers, 110 Nev. 1370, 1373, 887 P.2d 269, 271 (1994) (words in statute should be given their plain meaning unless spirit of act is violated.) Sheriff v. Encoe, 110 Nev. 1317, 1319, 885 P.2d 596 (1994) (proper construction of statute is legal question rather than factual question). Neal v. Griepentrog, 108 Nev. 660, 664, 837 P.2d 432, 434 (1992) (words in statute should be given their plain meaning unless this violates spirit of act).

The description of "center of back . . . near the shoulder. . ." has a sufficiently plain meaning and not so vague that reasonable people could be confused. Further, the recognized hazard described by SHR LaFronz supports his interpretation of the wear and fit to be such to keep an employee vertical. The "D ring" centered at the back and the straps at what are commonly considered the shoulder upper area make the phrase "near the shoulder" logical and sufficiently clear. The terms "center of the back . . . and near the shoulder" reflects that the harness should **not** be worn as that depicted in Exhibit B, pages 1 and 2. If the subject employees fell, it is reasonable to infer one could dangle or swing horizontally. This is a reasonable inference and a major aspect of the potential hazard intended by Congress to be protected.

While it might have been arguable that the employees observed, photographed and cited had loosened their harnesses or relaxed the fit during the photographs, the testimony of respondent safety managers Masnick and Faltinowski was that the harnesses were in fact properly fitted as depicted in the photo and not in violation of the standard. Further, Mr. Faltinowski testified as to Exhibit B, Page 1 and the photo that the employee depicted was wearing the harness as shown the ". . . same as when . . . working off the boom lift . . ." The facts demonstrate the harness was fitted and worn contrary to with the

proscriptions of the standard and the plain meaning interpretation made Nevada OSHA and that utilized by federal OSHA enforcement personnel to assure appropriate safety compliance.

At Citation 1, Item 3, referencing 29 CFR 1926.760(a)(1), the facts and evidence clearly demonstrated employees exposed to a hazardous fall condition intended to be protected by the applicable standard.

Respondent witnesses and legal counsel admit the employees to be in a violative posture, but assert the recognized defense of **unpreventable employee misconduct**. While the employer demonstrated the existence of a safety program and general enforcement, it carries the burden of proof to establish and prove the defense under established case law guidelines by a preponderance of evidence. This board has previously relied upon federal court and established OSHRC case law which provides that for an employer to prevail on the defense of unpreventable employee misconduct, it must meet its burden of proof by a preponderance of evidence that despite established safety policies in a safety program which is effectively communicated and enforced, the conduct of its employees in violating the policy was unforeseeable, unpreventable or an isolated event.

> Evidence that the employer effectively communicated and enforced safety policies to protect against the hazard permits an inference that the employer justifiably relied on its employees to comply with the applicable safety rules and that violations of these safety policies were not **foreseeable or preventable**. Austin Bldg. Co. v. Occupational Safety & Health Review Comm., 647 F.2d 1063, 1068 (10th Cir. 1981). (emphasis added)

> When an employer proves that it has effectively communicated and enforced its safety policies, serious citations are dismissed. See Secretary of Labor v. Consolidated Edison Co., 13 O.S.H. Cas. (BNA) 2107 (OSHRC Jan. 11, 1989); Secretary of Labor v. General Crane Inc., 13 O.S.H. Cas. (BNA) 1608 (OSHRC Jan. 19, 1988); Secretary of Labor v.

Greer Architectural Prods. Inc., 14 O.S.H. Cas. (BNA) 1200 (OSHRC July 3, 1989).

> An employer has the affirmative duty to anticipate and protect against **preventable** hazardous conduct by employees. Leon Construction Co., 3 OSHC 1979, 1975-1976 OSHD ¶ 20,387 (1976). **Employee misbehavior, standing alone, does not relieve an employer.** Where the Secretary shows the existence of violative conditions, an employer may defend by showing that the employee's behavior was a deviation from a uniformly and **effectively enforced work rule**, of which deviation the employer had neither actual **nor constructive** knowledge. A. J. McNulty & Co., Inc., 4 OSHC 1097, 1975-1976 OSHD ¶ 20,600 (1976). (emphasis added)

In furtherance of the tests in the established case law, while the respondent employer did maintain general work rules and a safety program designed to prevent violations, it failed to **effectively** enforce safety rules sufficient to avoid violation. Respondent did not **adequately** communicate safety policies and rules in its work practice to employees for safely carrying out the job. Respondent did not take meaningful steps to **discover** violations which were easily observable through supervisory representatives on the construction site. The defense of unpreventable employee misconduct must fail because the violative conditions were readily foreseeable in plain view and reasonably preventable. Adequate communication and **meaningfully** enforced work rules would have prevented the violative conditions and the citations.

See Jensen Construction Co., 7 OSHC 1477, 1979 OSHD ¶23,664 (1979). Accord, Marson Corp., 10 OHSHC 2128, 1980 OSHC 1045 ¶24,174 (1980).

> These cases make clear the existence of an employer's defense for the unforeseeable disobedience of an employee who violates the specific duty clause. However, the disobedience defense will fail if the employer does not *effectively communicate and conscientiously enforce the safety program at all times. Even when a safety program is thorough and properly conceived, lax administration renders it ineffective.* P.

> Gioioso & Sons, Inc. v. OSHRC, 115 F.3d 100, 110-111 (1st Cir. 1997). Although the mere occurrence of a safety violation does not establish ineffective enforcement, Secretary of Labor v. Raytheon Constructors Inc., 19 O.S.H.C. 1311, 1314 (2000) the *employer must show that it took adequate steps to discover violations of its work rules and an effective system to detect unsafe conditions* control. Secretary of Labor v. Fishel Co., 18 O.S.H.C. 1530, 1531 (1998). Failure to follow through and to require employees to abide by safety standards should be evidence that disciplinary action against disobedient employees progressed to levels of punishment designed to provide deterrence. *Id.* See also, Secretary of Labor v. A&W Construction Services, Inc., 19 O.S.H.C. 1659, 1664 (2001); Secretary of Labor v. Raytheon Constructors Inc., 19 O.S.H.C. 1311, 1314 (2000). A disciplinary program consisting solely of verbal warnings is insufficient. Secretary of Labor v. Reynolds Inc., 19 O.S.H.C. 1653, 1657 (2001); Secretary of Labor v. Dayton Hudson Corp., 19 O.S.H.C. 1045, 1046 (2000). Similarly, disciplinary action that occurs long after the violation was committed may be found ineffective. (emphasis added)

Arguments for lack of applicability of the safety standards cited at Item 3 to employees on a break during their work shift does not constitute a recognized defense under occupational safety & health law.

> In Gilles & Cotting, Inc., 3 OSHC 2002, 1975-1976 OSHD ¶ 20,448 (1976); The Commission rejected the need to show actual exposure in favor of a **rule of access** based upon reasonable predictability: (1) the zone of danger to be determined by the hazard; (2) access to mean that employees either while in the course of assigned duties, **personal comfort activities** on the job, or while in the normal means of ingress-egress will be, are, or have been **in the zone of danger**; and (3) the employer knew or could have known of its employees' presence so it could have warned the employees or prevented them from entering the zone of danger. See also, Cornell & Company, Inc., 5 OSHC 1736, 1977-1978 OSHD ¶ 22,095 (1977). (emphasis added)

Based upon the above and foregoing, it is the decision of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** that no violation of Nevada Revised Statutes did occur as to Citation 1, Item 1, NRS

618.375(1), the general duty clause, and the proposed penalty is denied.

It is the further decision of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** that violations of Nevada Revised Statutes did occur as to Citation 1, Item 2, 29 CFR 1926.502(d)(17) and Citation 1, Item 3, 29 CFR 1926.760(a)(1). The violations were appropriately classified as serious and the proposed penalties of ONE THOUSAND FIVE HUNDRED DOLLARS ($1,500.00) and ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE THOUSAND DOLLARS ($1,875.00) respectively for a total of THREE THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS ($3,375.00) are reasonable and confirmed.

The Board directs counsel for the complainant, **CHIEF ADMINISTRATIVE OFFICER OF THE OCCUPATIONAL SAFETY AND HEALTH ENFORCEMENT SECTION, DIVISION OF INDUSTRIAL RELATIONS**, to submit proposed Findings of Fact and Conclusions of Law to the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** and serve copies on opposing counsel within twenty (20) days from date of decision. After five (5) days time for filing any objection, the final Findings of Fact and Conclusions of Law shall be submitted to the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** by prevailing counsel. Service of the Findings of Fact and Conclusions of Law signed by the Chairman of the **NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD** shall constitute the Final Order of the **BOARD**.

DATED: This 12th day of July 2010.

NEVADA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

By /s/
TIM JONES, Chairman

CALENDARED
DATE: