

1 NEVADA OCCUPATIONAL SAFETY AND HEALTH

2 REVIEW BOARD

3  
4 CHIEF ADMINISTRATIVE OFFICER  
5 OF THE OCCUPATIONAL SAFETY AND  
6 HEALTH ENFORCEMENT SECTION,  
7 DIVISION OF INDUSTRIAL RELATIONS  
8 OF THE DEPARTMENT OF BUSINESS AND  
9 INDUSTRY,

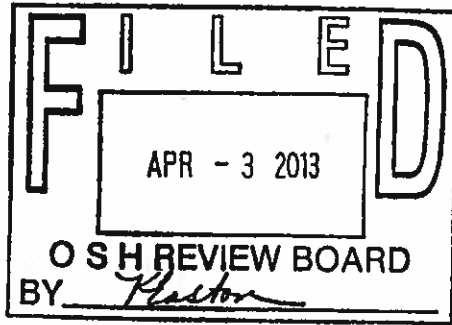
Docket No. LV 10-1402

Complainant,

vs.

10 DIELCO CRANE SERVICE, INC.,

Respondent.



11  
12  
13 DECISION (ON REMAND) and FINAL ORDER

14 This matter came before the NEVADA OCCUPATIONAL SAFETY AND HEALTH  
15 REVIEW BOARD (Review Board) on the 13<sup>th</sup> day of March, 2013, in  
16 furtherance of notice duly provided after appeal to the Clark County  
17 District Court, Case No. A-11-642108-J and remand directing the Review  
18 Board proceed consistent with the District Court order. Counsel for  
19 complainant and respondent stipulated to the case being reconsidered on  
20 the record without a new evidentiary hearing or oral argument. The  
21 District Court order on remand is restricted to Citation 1, Item 1, 29  
22 CFR 1910.180(h)(3)(v).

23 Jurisdiction in this matter is conferred in accordance with Nevada  
24 Revised Statute 618.315.

25 Citation 1, Item 1, referenced a violation of 29 CFR  
26 1910.180(h)(3)(v).

27 29 CFR 1910.180(h)(3)(v). No hoisting, lowering,  
28 swinging, or traveling shall be done while anyone  
is on the load or hook.

1 Dielco Crane Service, Inc. (Dielco) was cited by NVOSHA for hoisting the  
2 employees of another employer on a platform attached to the load hook  
3 of a crane.

4 At the contested evidentiary hearing conducted on August 11, 2010,  
5 the Review Board ruled, as a matter of law, that the **Multi-Employer**  
6 **Worksite Doctrine** did not apply to the facts at issue because there were  
7 only two employers on the premises, namely the Dinner in The Sky  
8 restaurant company (Dinner) which employed waiters, bartenders and  
9 service personnel on the one hand and Dielco Crane Service (Dielco) a  
10 licensed Nevada contractor that rented to Dinner a crane with two  
11 employees, an operator and oiler. The Review Board interpreted the  
12 multi-employer worksite doctrine to apply when

13 " . . . various employers and employees on a common  
14 worksite were intermingling about the property . .  
15 . with the potential for exposure of contractor or  
16 subcontractor employees to hazards **created or**  
**controlled** by other contractor or subcontractor  
employers . . ."

17 The Board found there were **only two (2)** employers on the common  
18 worksite, and Dielco was a lessor of a crane with an operator and oiler.  
19 The crane operator followed the directions of Dinner for hoisting a  
20 platform occupied by only Dinner employees and guests to provide a  
21 unique dining experience. No employees of Dielco were hoisted on the  
22 load hook.

23 The Review Board further concluded as a matter of fact and law that  
24 even if the multi-employer worksite doctrine applied with only two (2)  
25 employers on the worksite, Dielco did not **create or control the**  
26 **hazardous condition** at the worksite, which is a threshold requirement  
27 of proof under the established multi-employer worksite doctrine. The  
28 Review Board found the crane operator merely followed the hoisting

1 instructions of Dinner and therefore Dielco neither created nor  
2 controlled the lifting operations; accordingly, Dielco had no liability  
3 under the established occupational safety and health law for hazard  
4 exposure to only the employees of Dinner.

5 The case was a matter of first impression in Nevada. On appeal,  
6 the Nevada District Court ruled the threshold numerical requirement for  
7 application of the multi-employer worksite doctrine in the state of  
8 Nevada is to be based upon there being more than one employer on a  
9 common worksite. The court further ruled that while the case facts in  
10 evidence were unique and its decision limited to the facts presented at  
11 the administrative hearing, hoisting a platform on the load hook  
12 occupied by employees of the restaurant company, Dinner, was within the  
13 "control" of the crane operator and therefore his employer Dielco.

14 Based upon the court order and instructions, the Decision  
15 (reissued), Final Order, and Findings of Fact and Conclusions of Law of  
16 the Nevada Occupational Safety and Health Review Board dated the 3<sup>rd</sup> day  
17 of January 2011, are hereby reversed in part and amended as to Citation  
18 1, Item 1, referencing 29 CFR 1910.180(h)(3)(v) to find and conclude,  
19 as a matter of fact and law:

20 1. Nevada occupational safety and health law requires any number  
21 more than one employer of employees on a common worksite for application  
22 of the Multi-Employer Worksite Doctrine. Respondent Dielco Crane  
23 Service, Inc. and Dinner in the Sky were both employers with employees  
24 on the common worksite referenced in the citation and satisfied the  
25 threshold for application of the multi-employer worksite doctrine.

26 2. Dielco Crane Services, Inc. through its employee crane  
27 operator "controlled" the crane hoisting operations when employees of  
28 the Dinner in The Sky restaurant company, were exposed to the recognized

1 hazards of being lifted by a crane at the end of the load hook as  
2 proscribed by the occupational safety and health law multi-employer  
3 worksite doctrine to establish violation of the cited standard.

4 3. The classification of the violation as Serious and the penalty  
5 proposed at \$3,500.00 are reasonable and appropriate.

6 **FINAL ORDER**

7 The Decision and Findings of Fact and Conclusions of Law herein  
8 shall be the **FINAL ORDER** of the Nevada Occupational Safety and Health  
9 Review Board to confirm violation of Nevada Revised Statutes at Citation  
10 1, Item 1, 29 CFR 1910.180(h)(3)(v), the classification of **Serious** and  
11 penalty assessed in the amount of \$3,500.00.

12 DATED: This 3<sup>rd</sup> day of April 2013.

13 NEVADA OCCUPATIONAL SAFETY AND HEALTH  
14 REVIEW BOARD

15 By /s/  
16 JOE ADAMS, Chairman

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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, STATE OF NEVADA

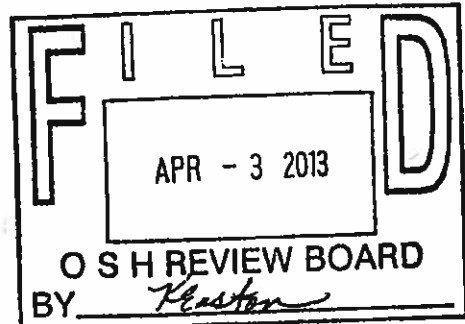
Docket No. LV 10-1402

Complainant,

vs.

DIELCO CRANE SERVICE, INC.,

Respondent.



CERTIFICATE OF MAILING

Pursuant to NRCP 5(b)(2)(B), I certify that I am an employee of  
SCARPELLO & HUSS, LTD., and that on April 3, 2013 I deposited for  
mailing, certified mail/return receipt requested, at Carson City,  
Nevada, a true copy of the **DECISION (ON REMAND) and FINAL ORDER**  
addressed to:

Michael Tanchek, Esq., DIR Legal  
400 W. King Street, #201-A  
Carson City NV 89703

Robert D. Peterson, Esq.  
3300 Sunset Blvd., Suite 110  
Rocklin, CA 95677

DATED: April 3, 2013

*Karen A. Easton*  
KAREN A. EASTON

RECEIVED  
APR 04 2013  
DIR LEGAL  
CARSON CITY OFFICE