UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR, Complainant,	:	
v.	:	Docket No. 93-817
JOHN H. QUINLAN, d/b/a QUINLAN ENTERPRISES, Respondent.	:	

ORDER

This matter is before the Commission on a direction for review entered by Commissioner Edwin G. Foulke, Jr. on May 2, 1994. The parties have now filed a stipulation and settlement agreement.

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 further review by the Commission. The terms of the stipulation and settlement agreement do not appear to be contrary to the purposes of the Occupational Safety and Health Act and are in compliance with the Commission's Rules of Procedure.

Accordingly, we incorporate the terms of the stipulation and settlement agreement into this order, and we set aside the Administrative Law Judge's decision and order to the extent that it is inconsistent with the stipulation and settlement agreement. This is the final order of the Commission in this case. See 29 U.S.C. §§ 659(c), 660(a), and (b).

Stuart E. Weisberg
Stuart E. Weisberg
Chairman

Edwin G. Foulke
Edwin G. Foulke
Commissioner

Velma Montoya
Velma Montoya
Commissioner

Dated March 17, 1995

1995 OSHRC No. 14

I certify that a copy of this order has been served on the following persons this 17th day of March, 1995:

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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

ROBERT B. REICH, SECRETARY OF LABOR, Complainant, v. JOHN H. QUINLAN, d/b/a QUINLAN ENTERPRISES, Respondent.	OSHRC Docket No. 93-817

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 on review.

II

It is hereby stipulated and agreed by and between the Complainant, Secretary of Labor and the Respondent, John H. Quinlan, d/b/a Quinlan Enterprises, that:

1. Respondent represents that the alleged violation of 29 C.F.R. 1926.550(a)(12) (Serious Citation 1, item 4) has been abated and shall remain abated.

2. Complainant hereby withdraws item 1b of Serious Citation 1, alleged violation of 1926.550(a)(16), issued to respondent on February 18, 1993, and the notification of proposed penalty for that item. Complainant amends the proposed penalty for item 4 of Serious Citation 1 to $375 for the alleged violation of 1926.550(a)(12).

3. Respondent hereby withdraws its notice of contest to the citation and penalty as amended herein.

4. Respondent hereby agrees to pay a penalty of $375 by submitting its check, made payable to U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) to the OSHA Area Office within 30 days from the date of this Agreement.

5. Each party agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.

6. None of the foregoing agreements, statements, stipulations, or actions taken by John H. Quinlan, d/b/a Quinlan Enterprises shall be deemed an admission by Respondent of the allegations contained in the citations or the complaint herein. The agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter economically and amicably and they shall not be used for any other purpose, except for subsequent proceedings and matters brought by the Secretary of Labor directly under the provisions of the Occupational Safety and Health Act of 1970.

7. All rulings made by Commission Judge Nancy Spies not on review are final and are not modified or affected by this Stipulation and Settlement Agreement.

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

9. The parties agree that this Stipulation and Settlement Agreement is effective upon execution.

10. Respondent certifies that a copy of this Stipulation and Settlement Agreement was posted at its main office on the 8th day of March 1995, pursuant to Commission Rules 7 and 100, and will remain posted for a period of ten (10) days.

Dated this 8th day of March 1995.

Respectfully submitted,

THOMAS S. WILLIAMSON, JR.
Solicitor

JOSEPH M. WOODWARD
Associate Solicitor for
Occupational Safety and Health

DONALD G. SHALHOUB
Deputy Associate Solicitor for
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SECRETARY OF LABOR Complainant, v. JOHN H. QUINLAN, D/B/A QUINLAN ENTERPRISES, Respondent.	OSHRC DOCKET NO. 93-0817

NOTICE OF DOCKETING OF ADMINISTRATIVE LAW JUDGE'S DECISION

The Administrative Law Judge's Report in the above referenced case was docketed with the Commission on March 31, 1994. The decision of the Judge will become a final order of the Commission on May 2, 1994 unless a Commission member directs review of the decision on or before that date. ANY PARTY DESIRING REVIEW OF THE JUDGE'S DECISION BY THE COMMISSION MUST FILE A PETITION FOR DISCRETIONARY REVIEW. Any such petition should be received by the Executive Secretary on or before April 20, 1994 in order to permit sufficient time for its review. See Commission Rule 91, 29 C.F.R. 2200.91.

All further pleadings or communications regarding this case shall be addressed to:

Executive Secretary
Occupational Safety and Health
Review Commission
1120 20th St. N.W., Suite 980
Washington, D.C. 20036-3419

Petitioning parties shall also mail a copy to:

Daniel J. Mick, Esq.
Counsel for Regional Trial Litigation
Office of the Solicitor, U.S. DOL
Room S4004
200 Constitution Avenue, N.W.
Washington, D.C. 20210

If a Direction for Review is issued by the Commission, then the Counsel for Regional Trial Litigation will represent the Department of Labor. Any party having questions about review rights may contact the Commission's Executive Secretary or call (202) 606-5400.

FOR THE COMMISSION

Ray H. Darling, Jr.

Date: March 31, 1994

Ray H. Darling, Jr.
Executive Secretary

DOCKET NO. 93-0817

NOTICE IS GIVEN TO THE FOLLOWING:

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SECRETARY OF LABOR, Complainant, v. JOHN H. QUINLAN, d/b/a QUINLAN ENTERPRISES, Respondent.	OSHRC Docket No.: 93-817

Appearances:

Curtis L. Gaye, Esquire
Office of the Solicitor
U. S. Department of Labor
Atlanta, Georgia
For Complainant

Frank L. Kollman, Esquire
Kollman & Sheehan, P. A.
Baltimore, Maryland
For Respondent

Before: Administrative Law Judge Nancy J. Spies

DECISION AND ORDER

John H. Quinlan is the owner and operator of Quinlan Enterprises, an unincorporated steel erection company operating in Georgia and South Carolina (Tr. 8).[1] On December 3, 1992, Quinlan Enterprises was erecting a pre-engineered metal building at Intermarine in Savannah, Georgia, when it was investigated by Occupational Safety and Health Administration (OSHA) Compliance Officer David Baker. As a result of the investigation, on February 18, 1993, OSHA issued Quinlan Enterprises one serious citation alleging violations of the Occupational Safety and Health Act of 1970 (Act). Item 2b of the citation was withdrawn at the hearing (Tr. 6). Remaining for decision are alleged violations

[1] For the purposes of this decision, "Quinlan" shall refer to John H. Quinlan, and "Quinlan Enterprises" shall refer to his company.

of § 1926.550(a)(1), for failure to comply with manufacturer's specifications in operation of a crane; § 1926.550(a)(16), for modifying the crane without the manufacturer's approval; § 1926.550(a)(2), for failure to post the crane's load capacity chart; § 1926.550(a)(5), for failure to inspect the crane; and § 1926.550(a)(12), for failure to have safety glass or the equivalent in the crane cab.

Quinlan Enterprises argues that the Secretary failed to meet his burden of showing that it violated any of the cited standards.

Background

In the mid 1970s Quinlan Enterprises purchased a 1962 Grove TM-12 crane. Shortly after the purchase, Quinlan acquired Grove manuals from a local dealer (Exhs. J-1, J-2; Tr. 23). In 1985 Quinlan "drew up" plans to construct a platform which he intended to attach to the crane so that employees could reach elevated work stations. The Grove manuals did not address attaching a work platform to the crane. Quinlan's son, who is a certified welder, welded the platform together following Quinlan's drawing (Exhs. J-1, J-2; Tr. 14, 15, 61). The platform was of simple design, having two metal planks for walkboards, tubular guardrails and four pieces of iron, two on each side, welded at the center to provide a means for hooking the platform to the boom (Exhs. C-2, C-5).

Quinlan Enterprises removed the jib extension from the boom and hooked the platform into the boom (Tr. 167-169). Quinlan Enterprises used this personnel platform periodically after 1985. When Quinlan Enterprises determined to use the platform for the Intermarine job, employees located it "out in the weeds." They retrieved the platform by pulling it out with a cable, and further bending the guardrails. By 1992 the platform appeared to be rusted and deteriorated. Its walkboards were bowed up and the guardrails were bent (Exh. C-2, C-5; Tr. 244-245). The Grove TM-12 crane was used exclusively with the personnel platform during the 1½ months Quinlan Enterprises worked at Intermarine before the inspection (Tr. 15). No one associated with the design or construction of the platform was a certified engineer (Tr. 14, 15). Until after the inspection, the employees did not know the weight or capacity of the platform they constructed in 1985 (Tr. 91, 109).

As Baker approached the worksite in December 1992, he observed an employee suspended on the personnel platform 48 feet above ground level. The crane operator had

maneuvered the platform so that the employee could work on the corner of the building. Baker watched as the employee in the platform climbed the guardrails, placing one foot on the mid-rail and one foot on the top rail. The employee was not tied off (Tr. 62). For unstated reasons, the Secretary did not allege violations relating to the conduct of the employee on the platform. Instead, the Secretary focused on alleged violations involving the crane and platform.

CITATION NO. 1

Item 1: § 1926.550(a)(1)

The Secretary charges a violation of § 1926.550(a)(1), asserting that Quinlan Enterprises failed to follow the manufacturer's limitations when it attached a personnel platform to the boom of its crane. The standard requires:

> The employer shall comply with the manufacturer's specifications and limitations applicable to the operation of any and all cranes and derricks. Where manufacturer's specifications are not available, the limitations assigned to the equipment shall be based on the determinations of a qualified engineer competent in this field and such determinations will be appropriately documented and recorded. Attachments used with cranes shall not exceed the capacity, rating, or scope recommended by the manufacturer.

Did Grove Manufacturing Co. (Grove) place limitations relating to the operation of its TM-12 crane, and did Quinlan Enterprises violate those limitations? The manufacturer's manuals, which Quinlan secured shortly after purchasing the Grove TM-12 crane, did not discuss attaching a platform or personnel handling (Tr. 242). The Secretary maintains, but has not proven, that Grove placed limitations on its crane whenever an owner utilized it for personnel handling.

The Secretary sought to introduce rejected Exhibit C-8. That document purported to be printed material allegedly secured from Grove by the compliance officer. The proposed exhibit raised authentication and hearsay concerns. The compliance officer attempted to sponsor the exhibit, apparently assuming that any information received by him as a part of his investigation was sufficiently authenticated. The document was not offered by a source with knowledge to support that it was a record kept in the ordinary course of

business or a prepared commercial publication. With a proper sponsor a complete document may have been admissible, as the Secretary urged, under exceptions to the hearsay rule, Rule 803(6), Fed. R. Evid. (business records exception), or Rule 803(17), Fed. R. Evid. (commercial publication exception).

Quinlan objected to introduction of marked Exhibit C-8, asserting that the document was not sponsored by an appropriate party, that it was hearsay, and that it constituted only a portion of the complete document (Tr. 69-70). Pursuant to Rule 803(24), Fed. R. Evid., Quinlan's objection to admission of the document was provisionally overruled, contingent upon the Secretary securing a post-hearing affidavit of a Grove representative authenticating a complete document. The Secretary was afforded additional time to secure the affidavit, even though he made an untimely request for the extension. Finally, the Secretary refused to file the affidavit or to utilize other alternative means to authenticate a complete document. In his brief the Secretary renewed his motion to accept rejected Exhibit C-8. That motion is again denied.[2] Having failed to establish that Grove specifically limited the operation of Quinlan's crane as a personnel handler, the violation is vacated.

Item 1b: § 1926.550(a)(16)

The Secretary contends Quinlan Enterprises's unapproved addition of the personnel platform affected the safe operation of the crane in violation of §1926.550(a)(16). The standard provides:

> No modifications or additions which affect the capacity or safe operation of the equipment shall be made by the employer without the manufacturer's written approval. If such modifications or changes are made, the capacity, operation, and maintenance instruction plates, tags, or decals, shall be changed accordingly. In no case shall the original safety factor of the equipment be reduced.

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[2] The Secretary suggests that an evidentiary ruling made in an unrelated case, *Ralph Taynton d/b/a/ Service Specialty Co.*, __ BNA OSHD __, 1993 CCH OSHD ¶ 30,179 (No. 92-498, 1993) is applicable. That case, however, differs from the present one since a knowledgeable source, the manufacturer's representative, sponsored the crane manual which was admitted into evidence.

Quinlan Enterprises removed the jib extension and hooked the personnel platform directly to the remaining portion of the boom. Quinlan Enterprises did not seek written approval from Grove Manufacturing Co. before adding the personnel platform to the boom. Quinlan Enterprises's position that the standard defines "modification" to mean only an alteration made to the *body* of the crane is erroneous (Tr. 25-27). The addition of the personnel platform altered the configuration of the boom and changed the function of the crane. It was a "modification or addition" within the meaning of the standard. [3]

The standard, however, requires more than proof that an employer made an unapproved modification to the crane. There must be evidence that the modification "affect[ed] the capacity or safe operation of the equipment."

Structural engineer John Kern, Quinlan Enterprises's expert witness, determined that the personnel platform weighed 1,500 pounds and could support 1,400 pounds distributed uniformly along the floor of the platform. Kern explained that the capacity of the crane at a height of 50 feet without the jib extension was 8,700 pounds. In Kern's opinion the attached platform and the added weight of the man was well within the capacity of the crane (Tr. 216-217, 233-234).

Quinlan Enterprises argues from these facts that there was no negative effect on the safe operation of the crane. The Secretary views "safe operation" differently. Arguing that an employee could fall or be otherwise injured when working from the raised personnel platform, the Secretary contends that attachment of the platform affected the safe operation of the crane. The Secretary's argument has merit. It is not enough that the weight of the employee and platform could be safely accommodated by the crane. Quinlan Enterprises's employee was suspended at the end of a rigid boom 48 feet in the air while working adjacent

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[3] Not every use of a crane as a personnel handler is a "modification." This was a rough, job-built personnel carrier. It was constructed without benefit of engineering design or testing. A distinction exists between Quinlan's adaptation, on the one hand, and those expressly designed by manufacturers for personnel handling (and impliedly approved by the OSHA standards), on the other. For example, a manbasket may be attached to the cable of a crane and used as a personnel handler under certain circumstances. In contrast, Quinlan's adaptation required removal of a portion of the boom and attachment of the untested and unrated carrier. Even if, as Kern stated, there was "nothing that would have structurally compromised the [platform]" (Tr. 217), this is a far cry from the type of design, fabrication and testing implemented by a manufacturer of personnel carriers.

to the wall of the building. Small movements of the crane boom could have major negative effects on the safety of the employee. The only control that the employee had over movement of the platform was through the crane operator. Quinlan Enterprises converted the crane from primarily material handling to primarily personnel handling. What the crane operator could safely do while hoisting material differed significantly from what he could safely do when carrying employees. For example, the crane's new configuration as a personnel carrier raised the concern that the employee could fall or be crushed against the building, that the platform could fail, and that there could be miscommunication between the operator and employee on the platform. The Secretary established that Quinlan Enterprises's modification or addition to the crane affected its safe operation.[4]

The modification placed employees at risk of falling 48 feet from a personnel platform. The probable result would be death or serious injury. The violation is serious. Quinlan Enterprises's supervisory employees, including its owner, were fully aware that the personnel platform had been attached to the crane and that they failed to secure Grove's approval for the modification.

The Commission is the final arbiter of penalties in all contested cases. *Secretary v. OSAHRC and Interstate Glass Co.*, 487 F.2d 438 (8th Cir. 1973). It must give "due consideration" to the size of the employer's business, the gravity of the violation, the good faith of the employer, and the history of previous violations in determining the appropriate penalty. *J.A. Jones Constr. Co.,* 15 BNA OSHC 2201, 2213-14, 1993 CCH OSHD ¶ 29,964, p. 41,032 (No. 87-2059, 1993). These factors are not necessarily accorded equal weight. The gravity of the violation is the primary element in the penalty assessment. *Trinity Indus.,* 15 BNA OSHC 1481, 1483, 1992 CCH OSHD ¶ 29,582, p. 40,033 (No. 88-691, 1992).

Quinlan Enterprises had eleven employees on site the day of the inspection; one employee was exposed to the hazard (Tr.10). Weighing against a finding of good faith is the fact that Quinlan Enterprises had no written safety and health program (Tr.117). Also,

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[4] Having determined that the modification or attachment of the personnel platform affected the "safe operation" of the crane, it is unnecessary to determine whether the "capacity" of the crane was also affected.

Quinlan reviewed the OSHA standards applicable to operation of cranes before he proceeded with construction and attachment of the personnel platform. Quinlan stated that he found nothing to specifically prohibit attachment of the platform to the crane (Tr. 34). However, even a cursory examination of the OSHA standards relating to use of cranes as personnel carriers would advise a reasonable employer that stringent requirements might apply. Quinlan Enterprises has a relevant history of previous serious violations of the Act. Considering these factors, together with the gravity of the violation, a penalty of $800 is assessed for this previously grouped violation.

Item 2a: § 1926.550(a)(2)

The Secretary alleges a violation of § 1926.550(a)(2) because rated load capacities were not posted in the crane.

The requirement states:

> Rated load capacities, and recommended operating speeds, special hazard warnings, or instruction, shall be conspicuously posted on all equipment. Instructions or warnings shall be visible to the operator while he is at his control station.

A rated load capacities chart was not posted in the Grove TM-12 crane. As Quinlan explained, "there was a load chart in the crane that got tor[n] up over the years" (Tr. 75). Quinlan Enterprises suggests that if the manufacturer's load capacities chart had been posted, those figures would not apply to the modified crane. Even if true, this does not help Quinlan Enterprises. It had a responsibility to provide the crane operator with accurate load capacity information. The personnel platform was a constant configuration at the Intermarine jobsite, and Quinlan Enterprises should have provided modified load capacity information. Even had the platform been attached temporarily, the standard was violated. Since a load chart cannot set limits for every possible crane configuration, "when no specifically applicable limits are included on a load chart, the employer is expected to make a reasonable estimate of the limits of the crane from the capacities set forth in the load chart." *Archer-Western Contractors Ltd.*, 15 BNA OSHC 1013, 1016 CCH OSHD ¶ 29,317, p. 39,376 (No. 87-1067, 1991).

The standard is mandatory. Load capacities "**shall be** conspicuously posted." It is irrelevant that well after the inspection Quinlan Enterprises hired an engineer who calculated that the weight of the platform was within the capacity of the crane. The charts used by this engineer when testifying at the hearing should have been available to the operator of the crane. It is also immaterial that the operator may have accurately estimated the weight of the platform. There is no exemption from posting the capacities chart because an operator purports to know the weight of the lift. A load capacities chart was not available, and thus the standard was violated.

The Secretary has the burden of proving that there is "a substantial probability that death or serious physical harm could result" from the hazard. When an operator does not have the chart enabling him to coordinate the angle of the boom with the weight of the lift, overloading and crane failure may occur. Serious bodily injury or death is the probable result. The hazard is heightened by the fact that the crane was lifting personnel. Employees working in, on, or around the crane were exposed to the hazard of crane failure. The violation is affirmed as serious. A penalty of $500 is assessed.

Item 3: § 1926.550(a)(5)

The Secretary charges that Quinlan Enterprises violated § 1926.550(a)(5) when it failed to inspect the crane to determine that it was safe to operate. The standard provides:

> The employer shall designate a competent person who shall inspect all machinery and equipment prior to each use, and during use, to make sure it is in safe operating condition. Any deficiencies shall be repaired, or defective parts replaced, before continued use.

The Secretary's evidence is based on an alleged admission of the crane operator Brent Terrell. Baker wrongly identified Terrell as Jeremy Bath and reported that "Bath" told him he had not conducted a pre-use inspection (Tr. 95). Terrell was misidentified because Baker relied on the badge number worn by Terrell, but belonging to Bath (Tr. 204-205). Terrell denies that he made the admission. He asserts that he did not discuss the Grove TM-12 with Baker, but only the "bigger crane." Terrell testified under oath that he inspected the Grove crane before he operated it. He checked its cable and fluids. He

tested its swing radius before allowing an employee onto the platform (Tr. 196-198, 201-202). Baker presented no contemporaneous notes or signed statement which would support the accuracy of the alleged admission. Baker's confusion over the operator's correct name and the possibility that Terrell's statements related to a different crane weigh against the probity of the alleged admission. The Secretary did not establish Terrell's failure to conduct a pre-use inspection.

Alternatively, the Secretary relies on *Vergona Crane Co.*, 15 BNA OSHC 1782, 1992 CCH OSHD ¶ 29,775 (No. 88-1745, 1992), for the proposition that the mere presence of uncorrected crane defects establishes a violation of the second sentence of the standard. Under *Vergona*, since a condition of the crane (failure to have boom stops) was "hazardous," the crane had a "defective part." When *Vergona* failed to replace a "defective part" before operating the crane, it violated the standard. Following this precedent, the question becomes whether the cracked window (and paneless window) and lack of a load chart, rise to *Vergona's* level of "hazardous" even though found to be separate violations. Here, the crane operator handled personnel from a cab with a distorted view from one window, no glass in another window, and no load chart of lifting capacities. The conditions were hazardous.

Nevertheless, under these facts the requirement that "[a]ny deficiencies shall be repaired, or defective parts replaced, before continued use" is duplicative of § 1926.550(a)(12) (failure to have undistorted safety glass in crane windows) and § 1926.550(a)(2) (failure to post rated load capacities). *See Cleveland Consolidated, Inc.*, 13 BNA OSHC 1114, 1986-87 CCH OSHD ¶ 27,829 (No. 84-696, 1987) (violations are duplicative when they involve substantially the same violative conduct and abatement procedures). Since 29 C.F.R. § 1926.550(a)(12) and 29 C.F.R. § 1926.550(a)(2) prohibit the specific conduct complained of, the violation of 29 C.F.R. § 1926.550(a)(5) is vacated as duplicative.

Item 4: § 1926.550(a)(12)

The Secretary asserts a violation of § 1926.550(a)(12) because the crane cab windows had either cracked glass or no glass at all. The standard specifies:

> All windows in cabs shall be of safety glass, or equivalent, that introduces no visible distortion that will interfere with the safe operation of the machine.

Baker approached the crane's cracked side window "close enough to look through the window . . . from the outside" (Tr. 176). He observed that his view through the window was distorted (Tr. 113). Crane operator Brent Terrell did not recall that there was a crack in the side window. The photographs amply support the spider-web cracks in that window (Exhs. C-3, C-4). Even if Terrell did not often look through the side window, he needed an undistorted view from each window, especially since the crane was used for personnel handling. The cracks in the side window "introduced visible distortion" which would interfere with the safe operation of the crane.[5]

In addition to the cracked side window, the front windshield contained no glass at all (Exh. C-4; Tr. 203). Allegedly because of the heat, Quinlan removed the window "years ago." He did "not know where the frame [was] at" (Tr. 49). Excessive heat would not be a problem during the December inspection. Reasoning that the standard did not contemplate abatement by removal of damaged windows, *Capitol Tunneling, Inc.*, 15 BNA OSHC 1304, 1991 CCH OSHD ¶ 29,488 (No. 89-2248, 1991) (ALJ), held that the wording of the standard ("**all** windows in cabs shall be of safety glass") implied a requirement that every window must contain safety glass. Although Baker did not base his recommendation of a violation on the failure to have any glass, the Secretary correctly asserts that the paneless window also supports the violation. With a distorted view from one window and exposure to the elements from another window, the potential for operator error was aggravated. An employee was positioned on a platform at the tip of the boom. An accident would likely result in serious injury. A serious violation is affirmed. Considering the penalty factors already discussed, a penalty of $750 is assessed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The foregoing decision constitutes the findings of fact and conclusions of law in accordance with Federal Rule of Civil Procedure 52(a).

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[5] Terrell noted that while there was a crack and a hole in the top window, this did not distort his view, but the violation is not based on the top window (Tr. 202, 206).

ORDER

Based on the foregoing decision, it is ORDERED:

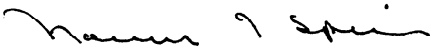
(1) That the violation of § 1926.550(a)(1) is vacated;

(2) That the violation of § 1926.550(a)(16) is affirmed and a penalty of $800 is assessed;

(3) That the violation of § 1926.550(a)(2) is affirmed and a penalty of $500 is assessed;

(4) That the violation of § 1926.550(a)(5) is vacated; and

(5) That the violation of § 1926.550(a)(12) is affirmed and a penalty of $750 is assessed.



NANCY J. SPIES
Judge

Date: March 23, 1994