UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR, Complainant, v. G&K SERVICES, and its successors, Respondent.	OSHRC DOCKET NO. 00-1544

APPEARANCES:

For the Complainant:
David Q. Jones, Esq., Sheryl Vieyra, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas.

For the Respondent:
Steven R. McCown, Esq., Earl M. Jones, III, Esq., Littler Mendelson, Dallas Texas; Joseph Casseb, Esq., Goode, Casseb, Jones, Riklin, Choate & Watson, San Antonio, Texas.

Before: Administrative Law Judge: James H. Barkley

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, G&K Services, and its successors (G&K), at all times relevant to this action maintained a place of business at 410 Probant, San Antonio, Texas, where it operated a commercial laundry. Respondent admits it is an employer engaged in a business affecting commerce and is subject to the requirements of the Act.

On May 12, 2000, after an accident occurred at G&K's San Antonio plant, the Occupational Safety and Health Administration (OSHA) conducted an inspection of the work site. As a result of that inspection, OSHA issued citations to G&K alleging violations of the Act, and proposing civil penalties. By filing a timely notice of contest G&K brought this proceeding before the Occupational Safety and Health Review Commission (Commission).

On May 15, 2001, a hearing was held in San Antonio, Texas. At the hearing, Complainant's motion to amend citation 1, item 1 was granted (Tr. 7-15). Respondent's motion to raise additional

affirmative defenses to meet the amended complaint was also granted (Tr. 17). The parties have submitted briefs on the amended issues and this matter is ready for disposition.

Facts

G&K's Smith Grantham dryer consists of a large rotating basket in a stationary housing. The basket door is mounted to a crossbar assembly which lifts the door over the top of the dryer when the dryer is being loaded and unloaded. The dryer will not operate with the crossbar in the raised position. Before the dryer can be operated, the cross-arm must be closed, and locked onto the housing. Closing the crossbar seals the basket and door assembly. The door is mounted to the crossbar by means of ball-bearings, which permit the door to rotate with the basket when the dryer is in operation (Tr. 138, 149; Exh. C-5, C-6, C-18, p.5). The seal between the door and basket, however, is not tight, and the door rotates at a slower speed than the basket. The witnesses estimated that the door revolves more slowly than a residential dryer basket (Tr. 59, 120, 149). There is a three or four inch gap between the door and the crossbar (Tr. 59; Exh. C-11). When the Smith Grantham dryer is completely and correctly assembled the ball bearing housing forms a round port in the door/crossbar assembly. The port is covered by a plate, which is fastened by four bolts (Exh. C-1). It is undisputed that there was no plate covering the port on May 11, 2000.

On May 11, 2000, Ricardo Espitia, a wash floor operator at G&K's commercial laundry, was instructed to work in the dryer area (Tr. 44-45, 49, 69, 77). Espitia had worked at G&K a little over a month; he testified that he had not yet been trained to run the dryers. Espitia stated that he never ran the dryers himself, though he was occasionally called upon to help load and unload the machines (Tr. 46, 48, 65, 77). Another G&K employee, Mark Gutierrez, was running the dryers on May 11. Espitia was assisting (Tr. 50). Espitia testified that, at some point while Gutierrez was out of the area, he noticed a piece of clothing protruding from the uncovered port in the front of G&K's Smith Grantham dryer (Tr. 54; Exh. C-2 [depicting open port]). Espitia stated that when he attempted to push the cloth back into the dryer, the clothing in the dryer wrapped around his hand and pulled his arm into the dryer's rotating basket (Tr. 50-51). Espitia's arm was amputated (Tr. 54). In addition, Espitia suffered friction burns and lacerations when his other arm became caught between the cross-bar and the rotating door of the dryer during his efforts to extricate himself (Tr. 59).

It is undisputed that G&K's written safety rules state: "Never reach or move through guards, gears, belts, chains or any moving parts in machinery," and "Do not operate any equipment unless all protective guards are in place. Check all exposed moving parts. Be sure they are clear of material before operation" (Tr. 73; Exh. R-13, p.2-24, ¶14, ¶14.d).

Espitia, however, testified that he was never told not to place his hand in the open port, and was not aware of any company rule prohibiting the practice (Tr. 45, 56, 64). Espitia admitted that on the day he applied for a job at G&K, he signed a statement verifying that he had received G&K's new employee safety orientation (Tr. 66-67, 75; Exh. R-10). Espitia testified that he was not actually given a copy of G&K's Safety Rules For Employees when he applied for the job, though portions of the document were read to him (Tr. 72, 75). Espitia stated he was called back approximately a week after he completed the application process, and began work the same day. He did not receive any additional safety training at that time (Tr. 75).

Espitia testified that he was trained to actually operate the washers by a Richard Mata, the lead man on night shift; he maintained that he was never trained in the operation of the dryers (Tr. 45-46). Espitia testified that he had seen other G&K employees put their hands into the port on the door of the dryer, including operators Mark Gutierrez and Abraham Cruz, and night shift production manager Tim Cofield (Tr. 49, 51, 84, 87). According to Espitia, the temperature gauge on the Smith Grantham did not work properly, and employees routinely put their hands in the port to pull clothing out to see if the dryer had cooled enough to be opened (Tr. 52, 55-56, 79). Espitia testified that he had never seen a plate over the inspection port (Tr. 62).

Abraham Cruz worked on G&K's wash floor from the end of 1999 through the date of the accident (Tr. 112, 127). Cruz was never told that placing his hand into the port on the dryer door was hazardous (Tr. 117-19). Cruz testified that he routinely saw other employees, including his area supervisor, Matias, place their hands in the open port. He was trained to do the same (Tr. 114, 117-18). Cruz stated that during his shift, uniform pants were dried. Because the pants took a long time to dry, Cruz would place his hand in the port several times a shift (Tr. 118, 124). According to Cruz, the temperature gauge read hotter than the actual temperature inside the drum; manually checking the temperature of the clothing allowed him to open the dryer sooner (Tr. 125). Cruz stated that at one time there was a plate over the inspection port, which was fastened with a single screw, allowing it to swing open (Tr. 115). According to Cruz, the plate had been missing for a month or two prior to May 11 (Tr. 115-16).

Tim Cofield understood that G&K's safety manual prohibited employees placing their hands in moving parts of machinery, and stated that an employee found violating the rule would be issued a written warning (Tr. 91). However, according to Cofield, the written rule does *not* prohibit checking the dryer's internal temperature by pulling laundry items through the port in the front of the Smith Grantham dryer. Cofield stated that the inspection port was four inches deep, and so long as employees

do not put their fingers more than four inches into the port, there is no danger of being pulled into the dryer basket (Tr. 97). Cofield never reprimanded or issued a warning to employees using that method (Tr. 91, 94, 100).

In fact, Cofield stated that checking the temperature of "dust items," *i.e.* towels, in the Smith Grantham dryer, by catching them with the fingers and pulling them through the inspection port, was an accepted procedure at G&K (Tr. 94-95, 97, 106). Cofield testified that they could cut down the drying time on dust items by shortening the wash time, extracting excess water prior to drying, and manually checking the items while they were still in the dryer (Tr. 107). Cofield testified that he put his own hand into the inspection port 45 minutes prior to Espitia's accident (Tr. 95, 97). He stated that when he was trained for the wash floor, Richard Mata and Mark Gutierrez showed him how to check the temperature of dust items by pulling them through the port from the operating dryer (Tr. 94-95, 99). Cofield testified that Gutierrez instructed him not to put his hand any further than four inches into the port, so as not to be caught in the dryer basket (Tr. 99, 106). Cofield stated that employees only attempted to pull dust items, *i.e.*, towels, from the operating dryer, never garments (Tr. 108).

Cofield testified that all the wash floor employees are cross-trained to handle all the machinery on the wash floor (Tr. 92). Cofield testified that he had seen the plate covering the inspection port about a week prior to the accident, but knew it was missing on May 11, 2000 (Tr. 104-05).

Alleged Violation of §1910.212(a)(1)

Serious citation 1, item 1, as amended, alleges:

29 CFR 1910.212(a)(1): One or more methods of machine guarding shall be provided to protect the operator and other employees in the machine area from hazards such as those created by point of operation, ingoing nip points, rotating parts, flying chips or sparks.

> a) The rotating drum (tumbler) was not guarded to protect employees from being caught in the nip points between the cross bar and the drum.

Discussion

As a threshold matter, G&K argues that the general machine guarding standards at §1910.212 *et seq.* are preempted by the more specific regulations applicable to laundry operations found at §1910.264 *et seq.* (Respondent's Post-Hearing Brief, p. 6). It is well settled, however, that even where regulations specific to an industry have been promulgated, general standards remain applicable where they "provide meaningful protection to employees beyond the protection afforded" by specific standards. *See, Quinlan t/a Quinlan Enterps.*, 15 BNA OSHC 1780, 1991-93 CCH OSHC ¶29,765 (No. 91-2131, 1992), citing *Bratton Corp.*, 14 BNA OSHC 1893, 1987-90 CCH OSHD ¶29,152 (No.

83-132, 1990). It is undisputed that §1910.264 *et seq.* does not address the cited nip point hazard. Whether the general machine guarding standard at §1910.212 (a)(1) is applicable, therefore, depends upon whether the Secretary has shown the existence of a significant nip point hazard that the application of §1910.212(a)(1) would eliminate. Under Commission precedent, before the Secretary can require the abatement of an alleged hazard pusuant to §1910.212(a)(1), the Secretary must show that employee exposure to the cited hazard is more than theoretically possible. The Secretary must establish that it is "reasonably predictable" that employees have been, are, or will be in the "zone of danger," either by operational necessity or through inadvertence. *Secretary of Labor v. Fabricated Metal Products, Inc.*, 18 BNA OSHC 1072, 1997 CCH OSHD ¶31,463 (No. 93-1853, 1997).

The Secretary does not maintain that dryer operators are exposed to the cited nip point during their normal operation of the dryer. The evidence establishes that G&K employees frequently work in the general area of the Smith Grantham dryer, where the floors are wet from dripping laundry (Tr. 61-62, 123-24, 134). The record further establishes that a nip point is created between the dryer's stationary crossbar and the door, which rotates with the basket. CO Sanchez testified that, in his opinion, there is a good chance that, given the height of the crossbar, employees in the area of the dryer could catch their clothing or hair between the crossbar and rotating drum. Alternatively, Sanchez believed that employees could slip on the damp floor and fall into the nip point (Tr. 142). The Secretary maintains that a physical barrier is required to prevent the wash floor employees from approaching the dryer while it is in operation.

There is insufficient evidence in the record, however, to show that the scenario described by Sanchez is "reasonably predictable." The height of the crossbar is not clear from the record, however; based on the photographic exhibits, it is not reasonably predictable that an employee's hair or clothing could be caught in the three to four inch space between the crossbar and the slow moving basket door as the employee passed by the dryer. Moreover, it seems unlikely that an employee slipping on a wet spot while walking near the dryer would be tall enough, or close enough to the rotating door to catch a hand or arm in the cited nip point. The Secretary cited only one accident involving the nip point between the dryer's revolving door and the crossbar. That accident did not result from an employee catching his or her hair or clothing in the alleged nip point, or from a slip and/or fall. Rather the friction burns suffered by Mr. Espitia resulted from his efforts to extricate himself from clothing that was pulling his arm into the dryer basket. The extraordinary circumstances in this case do not establish that employee exposure to the alleged nip point hazard is reasonably predictable.

The Secretary's evidence does not establish the existence of a reasonably predictable hazard, and this judge cannot find a violation of §1910.212(a)(1). G&K's preemption argument is, therefore, moot.

Alleged Violation of §1910.264(d)(1)(v)

Serious citation 1, item 2 alleges:

29 CFR 1910.264(d)(1)(v): Employees were not properly instructed as to the hazards of their work and were not instructed in safe practices by bulletins, printed rules, and verbal instructions.

> a) Employees were not trained on the hazards associated with the operation of the washers and dryer and/or instructed in safe practices when operating the washers and dryers. On or about May 11, 2000 a portion of an employee's arm was amputated when he placed his fingers into the inspection port while the dryer was in operation. The employee's finger was caught by a pant belt loop which led to the amputation of his arm. The inspection port was not intended to be used as a means to check clothes for dampness but was intended to insure that the sprinkler system was operational on models equipped with a sprinkler system. This practice was used in conjunction with the dryer timer system and was not prevented or discouraged by the employer.

Section 1910.264(d)(1)(v) provides:

> *Instruction of employees.* Employees shall be properly instructed as to the hazards of their work and be instructed in safe practices, by bulletins, printed rules, and verbal instructions.

Discussion

G&K maintains that it properly instructed its employees in the hazards associated with their work and in safe work practices. G&K further maintains the cited standard is unconstitutionally vague because it requires the employer to guess at the meaning of "proper instruction" (Respondent's Post-Hearing Brief, p. 10-11).

G&K's vagueness argument is without merit. A standard is not impermissibly vague simply because it is broad in nature. The application of external objective criteria, including the knowledge and perceptions of a reasonable person may be used to give meaning to a broadly worded standard. *J.A. Jones Constr. Co.*, 15 BNA OSHC 2201, 1991-93 CCH OSHD ¶29,964 (No. 86-2059, 1993). Moreover, prior Commission decisions serve to put employers on notice of their duty under a broadly worded standard. *Corbesco, Inc. v. Dole*, 926 F.2d 422 (5th Cir. 1991). The Commission has previously interpreted training requirements to require the employer to provide instructions that a "reasonably prudent employer" would give in the same circumstances. *N&N Contractors Inc.*, 18 BNA OSHC 2121, 2126, 2000 CCH OSHD ¶32,101 (No. 96-0606, 2000). As noted by the Secretary's

counsel, the Commission has also found that an employer's instruction must be specific enough to advise employees how to avoid hazards associated with their work. *El Paso Crane and Rigging Co.*, 16 BNA OSHC 1419, 1424, 1993-95 CCH OSHD ¶30,231 (No. 90-1106, 1993).

G&K argues that its employees were informed, upon hiring, of written safety rules that prohibit reaching through guards or moving parts of machinery, and/or operating equipment unless all protective guards are in place (Respondent's Post-Hearing Brief, p. 10). It is clear from the record, however, that the formal safety training to which G&K refers was perfunctory. First, Ricardo Espitia had not been hired when a member of G&K's office staff read portions of G&K's safety handbook to him, and asked him to sign a document certifying that he had read and understood the document. Second, the training Espitia received failed to explain how the written rules actually apply to the work he was to perform. G&K's new hires received on-the-job training in the actual operation of the laundry machinery from other employees who, based on the evidence, did not understand the rules G&K relies on. Finally, Espitia was not trained at all in the proper operation of the dryers.

The Commission found a violation of the parallel training standard at §1926.21(b)(2) [construction] where the Secretary showed that Respondent had its employees affirm they read and understood manuals containing safe operating instructions for a hydraulic hopper. The employees, however, had not actually read the manuals themselves, and had never received specific verbal instructions from the employer describing safe operating practices for the hopper. *O'Brien Concrete Pumping Inc.*, 18 BNA OSHC 2059, 2000 CCH OSHD ¶32,026 (No. 98-0471, 2000). As the Commission held in *O'Brien,* a prudent employer cannot assume that the mere dissemination of a general safety handbook, will satisfy OSHA training requirements. General warnings about hazards are ineffective if unaccompanied by specific instructions describing safety precautions, and the circumstances under which such precautions are appropriate.

G&K failed to "properly" train its employees, in that it failed to effectively impart its safety rules to its employees, or to associate the general safety rules in its handbook with specific operating hazards found in its plant. G&K's night-shift production manager, Tim Cofield, is a case in point. Cofield testified that he was familiar with G&K's safety handbook, and was in charge of enforcing G&K's safety rules (Tr. 88-90). Cofield, however, received his task specific training from G&K wash floor employees, Richard Mata and Mark Gutierrez. Gutierrez trained Cofield to put his hand into the port on the dryer door, a practice G&K now maintains is specifically prohibited by its written safety rules. Cofield believed he had been shown the "proper" manner of checking dust items through the

port. Based on his on-the-job training he believed the practice was not hazardous, and was not prohibited by G&K's safety rules.

It cannot be disputed that the practice of checking the internal temperature of the Smith Grantham dryer by reaching through the port created by the missing door plate is an unsafe practice. G&K asserts that the practice was a violation of at least two safety rules it claims to have communicated to its employees. It is clear, however, that its employees were not "properly instructed," in those safety rules. As discussed above, Tim Cofield, who holds a supervisory position in G&K's commercial laundry, was so uninformed about the hazards inherent to commercial laundry operations, or the safe operation of such equipment, that he failed to recognize that reaching into an operating dryer was either hazardous or a violation of company safety rules.

G&K relies on *N&N Contractors Inc.*, *supra*, in which the Commission found that an employer's violation of OSHA regulations did not, standing alone, establish that its employees were improperly trained. This case, however, is clearly distinguishable from *N&N* on the facts. In *N&N* the Respondent employer had a safety program which included training in the corporate office and monthly meetings on site during which the disputed safety rules (in that case, fall protection) were discussed. The employer in *N&N* had both a safety manager and a safety coordinator who demonstrated an understanding of relevant OSHA regulations, and who conducted meetings with the employer's foremen to reinforce company safety rules. G&K's safety program, on the other hand, consisted of a cursory reading of the written safety rules and on-the-job training during which employees were instructed in practices which directly contravened the written program. Supervisory personnel on duty did not understand the written safety program, and so made no effort to correct the improper training that was being given to new hires.

The Secretary has established a violation of the cited standard.

Penalty

A penalty of $6,300.00 was proposed for this item.

The violation was correctly classified as high severity and serious, in that the failure to properly train employees could lead to serious injury, such as amputation. CO Sanchez proposed the maximum gravity based penalty, *i.e.*, 7,000.00 with a 10% reduction because G&K had no history of prior OSHA violations. Sanchez did not recommend that G&K be given any credit for size, or for good faith.

The penalty proposed by OSHA is appropriate and will be assessed.

Alleged Violation of §1910.264(d)(2)(i)(a)

Serious citation 1, item 3 alleges:

29 CFR 1910.264(d)(2)(i)(a): Safeguard(s), safety appliance(s) or device(s) attached to or forming an integral parts of any machinery were removed or made ineffective for purpose(s) other than making immediate repairs or adjustments:

> a) The swing plate to the inspection port on a Walter Grantham dryer serial number 422, was removed and not replaced. The internal parts of the inspection port were missing and not replaced.

§1910.264(d)(2) provides:

> *Mechanical*–(i) *Safety guards.* (a) No safeguard, safety appliance, or device attached to, or forming an integral part of any machinery shall be removed or made ineffective except for the purpose of making immediate repairs or adjustment.. . .

Discussion

G&K argues that the cited standard is not applicable because the Secretary failed to show that the missing port cover on the Smith Grantham dryer was a safeguard or safety device. This judge does not agree.

The Secretary maintains, in its pleading for citation 1, item 2, that the port in the Smith Grantham's door was an inspection port intended to be used as a means to check whether the sprinkler system was operational in the event of a dryer fire. Though the Secretary adduced no testimony in support of this theory, she did introduce a document, Dryer Fire Procedures (Exh. C-12), in support of her theory. The Secretary also introduced assembly specifications that show the port, where the ball bearing assembly that allowed the door to rotate was located, was supposed to be covered and secured with four bolts (Exh. C-1, C-20). Whether the open port on the dryer door was intended as an inspection port, or was merely a means of accessing the ball bearing assembly, the port cover was indisputably an integral part of the dryer door intended to prevent inadvertent contact with the moving parts of the dryer located behind the dryer's crossbar. The port cover is, therefore, a safeguard as contemplated by the standard.

It is undisputed that the port cover was removed, and/or made ineffective by the removal of three of the four bolts, allowing employees to reach into the moving parts of the machine. Cofield, G&K's night supervisor was not only aware that the plate was missing on the day of the accident, he knew that employees were routinely bypassing the guard for purposes other than repairing and/or making adjustments to the machine.

The Secretary has established the cited violation.

Penalty

A penalty of $6,300.00 was proposed for this item.

This violation was also correctly classified as high severity and serious, in that the removal of the cover plate could lead to serious injury, such as amputation. CO Sanchez proposed the maximum gravity based penalty, *i.e.,* 7,000.00 with a 10% reduction based on G&K's history with OSHA. Again Sanchez did not recommend that G&K be given any credit for size, or for good faith.

The penalty proposed by OSHA is appropriate and will be assessed.

ORDER

1. Citation 1, item 1, alleging violation of §1910.212(a)(1) is VACATED.
2. Citation 1, item 2, alleging violation of §1910.264(d)(1)(v) is AFFIRMED, and a penalty of $6,300.00 is ASSESSED.
3. Citation 1, item 3, alleging violation of §1910.264(d)(2)(i)(a) is AFFIRMED, and a penalty of $6,300.00 is ASSESSED.

/s/

James H. Barkley
Judge, OSHRC

Dated: July 26, 2001