

United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1924 Building - Room 2R90, 100 Alabama Street, SW
Atlanta, Georgia 30303-3104

Secretary of Labor,

Complainant,

v.

Flintstone Millworks & Hardwood Co., Inc.,

Respondent.

OSHRC Docket No. **09-0305**

Simplified Proceedings

Appearances:

Tremelle Howard-Fishburne, Esquire, Office of the Solicitor, U.S. Department of Labor, Atlanta, Georgia
For Complainant

Richard Edgerton, Jr., Representative, Flintstone Millworks & Hardwood Co., Inc, Ringgold, Georgia
For Respondent

Before: Administrative Law Judge Stephen J. Simko, Jr.

DECISION AND ORDER

Flintstone Millworks & Hardwood Co., Inc. (Flintstone) is engaged in millwork in Ringgold, Georgia. On July 29, 2008, the Occupational Safety and Health Administration (OSHA) conducted an inspection at the Respondent's workplace. As a result of this inspection OSHA issued a citation to Flintstone on January 23, 2009. Flintstone timely filed a notice contesting the citation and proposed penalties. A hearing was held, pursuant to Simplified Proceedings, in Chattanooga, Tennessee, on August 7, 2009.

At the hearing, the parties agreed to amend the two alleged violations from Failure to Abate Violations to Repeat Violations. Citation No. 1, Items 1 and 2, are therefore, affirmed as Repeat violations. The remaining issues to be decided are the appropriate penalties to be assessed. For the following reasons, a penalty of \$200.00 is assessed for Citation No. 1, Item 1 and a penalty of \$300.00 is assessed for Citation No. 1, Item 2.

Excerpts of relevant transcript pages and paragraphs, including findings of fact and conclusions of law (Tr. 21-22) are attached hereto in accordance with 29 C.F.R § 2200.209(f).

FINDINGS OF FACT AND CONCLUSION OF LAW

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

ORDER

Based upon the foregoing decision, it is ORDERED:

1. Citation No. 1, Item 1, as amended, alleging a repeat violation of 29 C.F.R. § 1910.147(c)(1) is affirmed and a penalty of \$200.00 is assessed; and
2. Citation No. 1, Item 2, as amended, alleging a repeat violation of 29 C.F.R. § 1910.178(l)(1)(i) is affirmed and a penalty of \$300.00 is assessed.

\s\ Stephen J. Simko, Jr.
STEPHEN J. SIMKO, JR.
Judge

Date: August 18, 2009

Attachment: Tr. 21-22

1 it possible at some point if we can get copies of
2 these?

3 THE COURT: Sure. We'll make copies
4 of them all if you'll remind me.

5 MS. HOWARD-FISHBURNE: Okay. Thank
6 you.

7 THE COURT: All right. Let's take a
8 few minutes and I'll go back here and I'll be back
9 with a decision momentarily.

10 (Thereupon, a brief recess was taken.)

11 THE COURT: All right. Let's go back
12 on the record. The parties have stipulated and
13 agreed to amend both items -- citation one, item
14 one and citation one, item two from an alleged
15 failure to abate violations to repeat violations.

16 Remaining at issue are the penalties
17 which were proposed for both violations. After
18 due consideration and oral testimony and financial
19 records, other documentation, documentary evidence
20 that's been received today, I find that the
21 appropriate would be the following. For the
22 repeat violation of 29 CFR 1910.147(c)(1)
23 involving lockout/tagout repeat violation, I find
24 the appropriate penalty of \$200.

25 For citation one, item two, repeat

1 violation of 29 CFR 1910.178(1)(1)(i), the repeat
2 violation of the forklift training program, I find
3 a penalty of \$300 to be appropriate.

4 So it's ordered that citation one,
5 item one and citation one, item two are affirmed
6 as repeat violations and a penalty of \$200 is
7 assessed for the first item and \$300 is assessed
8 for the second item. Total penalty assessment of
9 \$500 for both violations.

10 Anything further?

11 MS. HOWARD-FISHBURNE: No.

12 THE COURT: Anything further,
13 Mr. Edgerton?

14 MR. EDGERTON, JR.: I guess that
15 check is made out to OSHA.

16 THE COURT: That would be made out to
17 OSHA.

18 MR. EDGERTON, JR.: And do I have
19 a -- can I have some time to do that?

20 THE COURT: That's something you'll
21 have to work out with OSHA. I'll enter my
22 decision after I receive the transcript. So my
23 guess is within 30 days I'll be issuing my
24 decision.

25 MR. EDGERTON, JR.: So I have 30 days