BEFORE THE
STATE OF CALIFORNIA
OCCUPATIONAL SAFETY AND HEALTH
APPEALS BOARD

In the Matter of the Appeal of:	Inspection No. **1603753**
TESLA, INC. **dba TESLA MOTORS, INC.** **Employer**	**DECISION**

Statement of Case

Tesla, Inc. (Employer) is a car manufacturer. From June 22, 2022, to November 7, 2022, the Division of Occupational Safety and Health (the Division), through then Associate Safety Engineer Denis McComb, conducted an inspection of Employer's worksite at 45500 Fremont Boulevard in Fremont, California (the worksite).

On November 7, 2022, the Division issued a citation to Employer, alleging one violation of the California Code of Regulations, title 8.[1] Citation 1, Item 1, classified as Repeat General, alleged that Employer failed to ensure employees that an operator restraint system such as a seat belt provided by the industrial truck manufacturer was used by an employee operating a forklift.

Employer timely appealed the citation on the grounds that the safety order was not violated, the classification is incorrect, the abatement requirements are unreasonable[2], and the proposed penalty is unreasonable. Employer also raised multiple affirmative defenses.[3]

This matter was heard by Administrative Law Judge Ka H. Leung for the California Occupational Safety and Health Appeals Board (Appeals Board) on October 16, 2025. Alka Ramchandani-Raj, Esq. of Littler Mendelson, P.C., represented Employer. Lisa H. Friedman, Esq., Staff Counsel, represented the Division. The matter was submitted on February 2, 2026.

Issues

1. Did Employer fail to ensure that its employees used seatbelts while operating seatbelt-equipped forklifts?

[1] Unless otherwise specified, all references are to California Code of Regulations, title 8.
[2] Prior to the hearing, Employer abated the violation.
[3] Except where discussed in this Decision, Employer did not present evidence in support of its affirmative defenses, and said defenses are therefore deemed waived. (*RNR Construction, Inc.*, Cal/OSHA App. 1092600, Denial of Petition for Reconsideration (May 26, 2017).)

2. Is the failure to wear a seatbelt on a seatbelt-equipped forklift of Employer's employee an independent employee action not attributable to Employer?

3. Is the Repeat classification for Citation 1, Item 1, correct?

4. Is the proposed penalty for Citation 1, Item 1, reasonable?

Findings of Fact

1. Employer's forklifts were equipped with seatbelts, and an employee operated a forklift without wearing a seatbelt.

2. Employees not wearing seatbelts while operating forklifts are exposed to crushing hazard in the event of a tip over.

3. Employer employes over two thousand forklift operators at the worksite.

4. Employer did not maintain records of enforcement actions or disciplinary measures related to seatbelt violations.

5. Employer conducted five internal audits of forklift operator compliance in March 2022.

6. Each of the five internal audits identified violations of the forklift seatbelt policy.

7. Employer has no record of any disciplinary action taken in response to the violations identified during the internal audits.

8. Employer was previously cited for a violation of section 3650, subdivision (t)(33), and that citation became final on June 1, 2020.

9. The citation at issue was issued within five years of the prior citation becoming final.

10. Both the prior citation and the citation at issue involved an employee operating a forklift without wearing a seatbelt.

11. The Division calculated the penalty for Citation 1, Item 1, in accordance with sections 333 through 336.

Analysis

1. Did Employer fail to ensure that its employees used seatbelts while operating seatbelt-equipped forklifts?

Citation 1, Item 1, alleged that Employer violated section 3650, subdivision (t)(33), for failure to ensure the use of an operator restraint system, such as a seatbelt, in seatbelt-equipped forklifts. Section 3650, subdivision (t)(33), reads:

> (t) Industrial trucks and tow tractors shall be operated in a safe manner in accordance with the following rules:
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> […]
>
> (33) When provided by the industrial truck manufacturer, an operator restraint system such as seat belt shall be used.

The Division's alleged violation description reads:

> Prior to and during the course of the investigation, including, but not limited to on June 22, 2022, the employer did not ensure that an operator restraint system such as a seat belt provided by the industrial truck manufacturer was used by an employee operating a forklift in the GA4 area.
>
> Tesla, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 3650(t)(33), which was contained in OSHA inspection number 1437614, citation number 1, item number 1 and was affirmed as a final order on 6/1/2020, with respect to a workplace located at 45500 Fremont Blvd., Fremont, CA 94538.

The Division bears the burden of proving, by a preponderance of the evidence, that a cited safety order was violated. (*Lone Pine Nurseries*, Cal/OSHA App. 00-2817, Decision After Reconsideration (Oct. 30, 2001).) The Appeals Board applies a reliability-based evidentiary standard in its proceedings, offering more flexibility than the strict mechanical rules of the Evidence Code. The Appeals Board must rely on "the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs" (§376.2), ensuring it meets the necessary reliability standard. (*Sweetheart Cup Company*, Cal/OSHA App. 95-979, Decision After Reconsideration (Nov. 5, 1999).)

During a June 22, 2022, inspection, the Division's then Associate Safety Engineer, Denis McComb (McComb)[4], observed Employer's employee[5] operating a forklift without wearing a seatbelt. (Transcript page 19 line 8-15.) Photographs of the forklift and the forklift's manual confirmed that the forklift was equipped with a seatbelt. (Exh. 22.) Based on this evidence, the Division proved by a preponderance of the evidence that a violation of section 3650, subdivision (t)(33), occurred.

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[4] At the time of hearing, McComb is a District Manager for the Division.
[5] The employee in question was later identified as Jesus Gutierrez (Gutierrez) (Transcript page 62 line 4-6.)

2. Is the failure to wear a seatbelt on a seatbelt-equipped forklift of Employer's employee an independent employee action not attributable to Employer?

Employer argued that the violation was not attributable to Employer because it resulted from an independent employee action. To establish this affirmative defense, an employer must prove all five of the following elements: (1) the employee was experienced in the job being performed; (2) the employer had a well-devised safety program; (3) the employer effectively enforced the safety program; (4) the employer maintained and enforced a policy of sanctions against employees who violated the safety program; and (5) the employee committed the safety infraction knowing it was contrary to the employer's safety requirements. (*Mercury Service, Inc.*, Cal/OSHA App. 77-1133, Decision After Reconsideration (Oct. 16, 1980).)

Evidence that an employee was trained for the job, by itself, is insufficient to establish that the employee was experienced in the job for purposes of an independent employee action defense. (*Roof Structures, Inc.*, Cal/OSHA App. 91-316, Decision After Reconsideration (Oct. 29, 1992).

At the hearing, Employer presented evidence that Gutierrez received forklift training, but presented no evidence concerning Gutierrez's experience in operating forklifts. Because an employer must prove all five elements to prevail on an independent employee action defense, failure to prove any one element is fatal. Here, there is no evidence that the employee was experienced in the job being performed; therefore, Employer failed to establish the independent employee action defense.

Nevertheless, Employer devoted substantial hearing time to argue that it effectively enforces its safety program. Even assuming Gutierrez was experienced, Employer's independent employee action defense still fails. Effective enforcement requires evidence of meaningful, consistent enforcement. (*Glass Pak*, Cal/OSHA App. No. 03-0750, Decision After Reconsideration (Nov. 4, 2010).)

Employer's Director of Environmental Health and Safety, Yasmini Narasimhan (Narasimhan), testified that Employer employs more than two thousand forklift operators and that employees observed without seatbelts receive verbal reminders, but that no records of those reminders are kept. Narasimhan also testified that Employer has a progressive disciplinary program, yet no evidence of disciplinary records was presented. While disciplinary records might be scarce if violations were rare, this is not the case.

Employer introduced evidence that it conducts random internal audits of forklift safety compliance, including five audits in March 2022. Each audit identified seatbelt violations. However, Employer failed to show documentation of any disciplinary action taken in response to

those violations. In light of Employer's two thousand forklift operators, Narasimhan's testimony alone is insufficient to demonstrate meaningful and consistent enforcement of its seatbelt policy to a preponderance of evidence.

Accordingly, Employer failed to establish that the employee in violation was experienced in the job being performed and also failed to establish that it effectively enforced its safety program in support of an independent employee action defense. Therefore, the violation of section 3650, subdivision (t)(33), is attributable to Employer.

2. Is the Repeat classification for Citation 1, Item 1, correct?

Employer does not dispute the General classification but challenges the Repeat classification. Employer contends that the prior and current citations are not sufficiently similar to support a Repeat classification because the two citations involve several factual differences: the forklifts involved, the penalties assessed, the inspection locations, the operators involved, and the circumstances of the violations. Specifically, Employer contends that the prior citation was issued, in part, based on an employee sitting in a stationary forklift without wearing a seatbelt.

The elements of a Repeat violation under section 334, subdivision (d), are: (1) a prior citation issued in California; (2) within five years from the date the previous citation becomes final; (3) for a substantially similar regulatory requirement; and (4) involving essentially similar conditions or hazards. *(§334, subd. (d).)*

On May 4, 2020, the Division issued Employer a citation[6] for violating section 3650, subdivision (t)(33). That citation became final by operation of law on June 1, 2020. The citation at issue in this appeal was issued on November 7, 2022, well within five years of the prior citation. Both citations were issued under the same regulatory provision, section 3650, subdivision (t)(33), and therefore involve a substantially similar regulatory requirement. Accordingly, the Repeat classification turns on whether the two citations involved essentially similar conditions or hazards.

In determining essentially similar conditions or hazards, the Board does not look for completely identical facts. (*R. Burke Corporation,* Cal/OSHA App. No. 83-1207, Decision After Reconsideration (Oct. 25, 1985).) Rather, the determining factor is whether employees are exposed to the same hazard. (*Id*.)

Associate Safety Engineer Maja Doan (Doan) testified regarding the factual basis of the May 4, 2020 citation. She testified that on October 14, 2019, she observed an employee

[6] Inspection Number 1437614.

operating a forklift without wearing a seatbelt while moving materials, in addition to observing an employee sitting in a parked forklift without a seatbelt. Both the prior citation and the citation on appeal involve employees operating forklifts without wearing seatbelts in a warehouse environment. Accordingly, the Division proved that both citations involve essentially similar conditions.

The Division also proved that the citations involved essentially similar hazards. Section 3650, subdivision (t)(33), does not distinguish seatbelt requirements by forklift make or model. Rather, if a forklift is equipped with a seatbelt, the operator must wear it. Employer's forklift training likewise does not distinguish between forklift models and requires seatbelt use whenever a seatbelt is provided. Both Doan and McComb testified that the hazard of failing to wear a seatbelt is that, in the event of a tip over, the operator may be ejected and suffer serious injury. Employer's own training materials similarly emphasize seatbelt use regardless of a forklift's make or model.

Accordingly, the Division established that the two citations involved essentially similar conditions and hazards, and the violation is properly classified as Repeat.

3. Is the proposed penalty for Citation 1, Item 1, reasonable?

Penalties calculated in accordance with the penalty-setting regulations set forth in sections 333 through 336 are presumptively reasonable and will not be reduced absent evidence that the amount of the proposed civil penalty was miscalculated, the regulations were improperly applied, or that the totality of the circumstances warrant a reduction. (*RNR Construction, Inc.*, *supra*, Cal/OSHA App. 1092600.)

Exhibit 2 is the Division's "Proposed Penalty Worksheet." McComb testified that the penalties reflected on Exhibit 2 were calculated in accordance with the Division's policies and procedures. Employer did not produce evidence to rebut the presumptive reasonableness of the calculations. Accordingly, the penalty of $3,000 for Citation 1, Item 1, is found reasonable.

Conclusion

For Citation 1, Item 1, the Division established that Employer failed to ensure its employees wear seatbelts while operating forklifts. The Repeat General classification is correct and the penalty is reasonable.

Order

It is hereby ordered that Citation 1, Item 1, is affirmed and the penalty is sustained at $3,000, as set forth in the attached Summary Table.

/s/ Ka H. Leung
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Ka H. Leung
Administrative Law Judge

Dated: 02/27/2026

The attached decision was issued on the date indicated therein. If you are dissatisfied with the decision, you have thirty days from the date of service of the decision in which to petition for reconsideration. Your petition for reconsideration must fully comply with the requirements of Labor Code sections 6616, 6617, 6618 and 6619, and with California Code of Regulations, title 8, section 390.1. **For further information, call: (916) 274-5751.**

If no petition is filed, the penalty amount set forth in the Summary Table is due and payable 30 days after the Order or Decision is issued. If the Appeals Board approved a payment plan, all payments are due in accordance with the dates indicated in the Summary Table. If a Petition for Reconsideration is filed, no payment should be made until the final outcome of the appeal.