

**BEFORE THE**  
**STATE OF CALIFORNIA**  
**OCCUPATIONAL SAFETY AND HEALTH**  
**APPEALS BOARD**

In the Matter of the Appeal of:

PMR RACE CARS  
4721 Arrow Highway #C  
Montclair, CA 91763

Employer

Docket No. 03-R3D3-1825<sup>1</sup>

**DECISION AFTER  
RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code and having taken this matter under reconsideration on its own motion, renders the following decision after reconsideration.

**JURISDICTION**

On October 24, 2003, a representative of the Division of Occupational Safety and Health (the Division) conducted an investigation at a place of employment maintained by PMR Race Cars (Employer) at 4721 Arrow Highway, #C, Montclair, California.

On April 2, 2003, the Division issued two citations to Employer, one of which included three alleged violations. Employer filed a timely appeal contesting the citations.

This matter came on regularly for hearing on May 4, 2005 before an Administrative Law Judge (ALJ) for the Board and the matter was submitted that day.

The ALJ rendered a decision on May 26, 2005 granting Employer's appeals, including the appeal from the second citation, which was classified as serious and alleged a violation of section 4310(a)(1) (band saw guarding).<sup>2</sup> The ALJ so ruled because, applying Board precedent, she concluded that the referenced safety order pertained to woodworking only and it was undisputed that Employer was not cutting wood. The Board took the matter under

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<sup>1</sup> The order of reconsideration inadvertently and mistakenly included docket number 03-R3D3-1824. The Board's order of reconsideration only pertained to the docket number listed in the caption of this decision.

<sup>2</sup> Unless otherwise specified all section references are to Title 8, California Code of Regulations.

reconsideration on its own motion to address this finding. The Division filed an answer with the Board on July 27, 2005.

### **EVIDENCE**

During its inspection of Employer's worksite, the Division observed a "Birmingham metal band saw," which it contended lacked an adjustable guard. Employer represented that the saw was properly guarded and further alleged that the saw had not been modified following its receipt from the manufacturer. It was undisputed that Employer did not cut wood with the saw.

### **ISSUE**

Does the Appeals Board have the authority to apply section 4310(a)(1) to cover an activity other than woodworking?

### **FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION**

Section 4310 is found in the General Industry Safety Orders, Group 8, Article 59, which is entitled "Woodworking Machines and Equipment." Section 4310(a)(1) states:

- (a) Band knives and band saws (including band resaws having saw blades less than 7 inches in width or band wheels less than 5 feet in diameter) shall be guarded as follows:
  - (1) All portions of the saw or knife blade shall be enclosed or guarded except that portion between the bottom of the guide rolls and the table. The guard shall be kept adjusted as close as possible to the table without interfering with the movement of the stock. The down travel guard from the upper wheel to the guide rolls shall be so adjusted that the blade will travel within the angle or channel.

**EXCEPTION:** For meat band saw blade guarding requirements see Section 4543 of these Orders.

Prior to 1986, section 4310 bore a "Class A" designation. Historically, the Board has given this designation and its removal significance. Because a proper understanding of this term is needed to accurately evaluate the import of deleting the Class A reference from section 4310, we consider the applicable definitions. "Class A" and "Class B" are defined in Section 4188 as follows:

Classes: The designation "Class-A" with an order means that the rule applies for all kinds of work. The designation "Class-B" means that the order applies unless the nature of the work, type of machinery, or size and shape of material being worked will not permit.

The ALJ here properly noted that Board precedent interpreted the elimination of the Class A designation from section 4310 to mean that the safety order applied only to woodworking machines. *Fry's Food Stores, Inc.*, Cal/OSHA App. 84-710, Decision After Reconsideration (Aug. 17, 1987). Because Employer did not cut wood with the saw, the ALJ followed the referenced precedent and dismissed the citation.

In *Fry's Foods, supra*, the Board addressed the significance of the decision to remove the Class A label from section 4310. Its analysis concluded that the phrase "all kinds of work" used in the Class A definition meant the regulation applied to all uses of a band saw, irrespective of the material cut. Removal of the reference, it reasoned, meant the standard then only applied to use of the saw when cutting wood. The Board applied this precedent in *Jerlane, Inc. dba Commercial Box and Pallet*, Cal/OSHA App. 01-4344, Decision After Reconsideration (Aug. 20, 2007); see also, *Johnson Aluminum Foundry*, Cal/OSHA App. 78-593, Decision After Reconsideration (Aug. 28, 1979) (Class A designation means safety order applies irrespective of type of material being cut).

If the Class A definition is read separately from the definition of Class B, the interpretation of the term adopted in *Fry's Food* and *Jerlane* is reasonable. When the definitions are read together, however, we find a different understanding more compelling. Read together, these definitions indicate that a Class A designation signifies that the safety order's requirements are mandatory whenever the saw is used. A Class B label, in turn, means there may be times when the requirements do not apply, if an employer can prove that the specified circumstances exist.

Under this interpretation, the nature of the material being cut is only significant for a Class B safety order, and then only to the extent provided for in the Class B definition. A Class A reference, in contrast, means that the standard's requirements are mandatory irrespective of the type of material being cut, the nature of the work, or the type of machine used. The Board has applied this understanding of the terms Class A and Class B previously.<sup>3</sup>

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<sup>3</sup> *Tulip Corporation dba Automotive Battery Products Co.*, Cal/OSHA App. 81-537, Decision After Reconsideration (Apr. 10, 1985)(class A designation means requirements are mandatory); *Morrison Building Materials*, Cal/OSHA App. 97-278, Decision After Reconsideration (Nov. 19, 1998)(class B designation allows exception as provided for in definition); *Terry Roof Truss*, Cal/OSHA App. 96-288, Decision After Reconsideration (Oct. 4, 2000)(class B designation allows exception as provided for in definition).

The rulemaking record maintained by the Occupational Safety and Health Standards Board (Standards Board) pertaining to the removal of the Class A designation from section 4310 supports this interpretation.<sup>4</sup> Specifically, in the Final Statement of Reasons for the amendment, the Standards Board stated that the Class A label was unnecessary because Class A machinery must be guarded at all times. In other words, the safety order's requirements were mandatory whether the Class A designation was present or not, so the label was unnecessary. The rulemaking file makes no reference to changing the scope of the safety order's application by removing the Class A reference. Rather, removal of the label simply eliminated a redundancy. We find, therefore, that the Class A designation served to inform employers that the safety order's requirements were mandatory when a band saw is used and removal of the designation did nothing to change that.<sup>5</sup>

We also consider the effect of section 4310's placement in Article 59, which pertains to woodworking machinery and equipment. The Group 8 safety orders are organized into articles governing different types of machinery and equipment, such as "woodworking," "metal working," and "refuse and trash collection." It does not necessarily follow, however, that this structure restricts the application of the safety orders in each article to situations in which the material being worked is the material referenced in the article's title.

Rather, the Board has recognized the general rule of statutory construction under which a regulatory title may be used to interpret a safety order if the safety order's language is vague and ambiguous. *Spaich Brothers, Inc. dba California Prune Packing Co.*, Cal/OSHA App. 01-1630, Decision After Reconsideration (Feb. 25, 2005), citing, *Central Coast Pipeline Construction Co. Inc.*, Cal/OSHA App. 76-1342, Decision After Reconsideration (July 16, 1980); *Bryant Rubber Corp.*, Cal/OSHA App. 01-1358, Decision After Reconsideration (Aug. 21, 2003). Generally, section headings or titles may not otherwise be used for the purpose of controlling, restraining, or enlarging the positive provisions in the body of the regulation. *Id.*

The present case closely resembles the one before the Board in *Spaich Brothers, supra*, where the Board found the employer's prune dryers were covered by section 4530, which was entitled "Bakery Ovens." The Board found the safety order's language unambiguous, which obviated the need for interpretation. As a result, the regulation's heading could not be used to restrict or control its coverage and, despite the regulatory title, the safety order was found to govern the prune dryers. See also, *Cambro Manufacturing Company*, Cal/OSHA App. 84-923, Decision After Reconsideration (Dec. 31, 1986) (violation of section 4227, found in Article 56, Metal Working Equipment, upheld despite employer's use of a sheet metal shear to cut fiberglass).

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<sup>4</sup> We take official notice of the Standard Board's official rulemaking file pursuant to section 376.3.

<sup>5</sup> Although a separate safety order was later added for meat-cutting with band saws, the newer regulation was needed because different guarding requirements were required to accommodate conflicting safety needs.

While article headings and titles can, at times, be helpful to understand a regulation or article's intended scope,<sup>6</sup> the titles are not dispositive and we do not find the article heading here to be helpful in this regard. Here, the article title references woodworking machinery and equipment. The question, however, is whether section 4310(a)(1) only applies to woodworking operations. We find insufficient basis to conclude that the Standards Board intended to limit the scope of the safety orders contained in Article 59 to woodworking operations based strictly on the reference to woodworking machinery and equipment in the Article's title.

Section 4310 is not itself vague or ambiguous; its location in the woodworking machinery article is the only factor that imposes a degree of confusion. Much like in *Spaich Brothers, supra*, given the lack of ambiguity in the safety order, we find that the article heading should not restrict the safety order's application without a stronger declaration from the Standards Board that it was that Board's intent to so limit the regulation. We suspect that the article titles in Group 8 may mislead employers into believing they may disregard safety orders listed under headings that appear irrelevant to the work being performed, but changing or deleting the titles is a matter within the Standards Board's discretion to address, if it deems it to be appropriate.

We find that section 4310 applies to band saw use on various materials, including but not limited to wood. The one noted exception to section 4310's application is band saw use for meat cutting, which exception is explicitly provided for in the regulation. To the extent that *Fry's Food Stores, Inc.* and *Jerlane, Inc. dba Commercial Box and Pallet, supra*, hold otherwise, they are disapproved.

### **DECISION AFTER RECONSIDERATION**

Although Employer here would be in violation of section 4310(a)(1) under the Board's current analysis, we find that Employer may have justifiably relied on long standing Board precedent to conclude that it need not comply with section 4310(a)(1) when using its band saw to cut metal. The Board therefore concludes that the ALJ's ruling in this case will stand and the Board's holding that section 4310 applies to band saw use irrespective of the material being cut, with the exception of meat, will only apply prospectively.

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<sup>6</sup> See, *Bragg Crane & Rigging Co.*, Cal/OSHA App. 01-2428, Decision After Reconsideration (June 28, 2004); *Hood Corporation*, Cal/OSHA App. 85-673 Decision After Reconsideration (Dec. 2, 1987).

The ALJ's decision on the section 4310(a)(1) violation is affirmed and is reinstated.

CANDICE A. TRAEGER, Chairwoman  
ROBERT PACHECO, Board Member  
ART R. CARTER, Board Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
FILED ON: DECEMBER 2, 2009