

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

In the Matter of the Appeal of:

**MICHELS CORP dba**  
**MICHELS PIPELINE CONSTRUCTION**  
624 West Elkhorn Blvd.  
Rio Linda, CA 95673

Employer

Docket No. 07-R5D1-4274

**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 submission, renders the following decision after reconsideration.

**JURISDICTION**

On August 1, 2007, the Division of Occupational Safety and Health (Division) commenced an accident inspection at a place of employment in Rio Linda, California maintained by Michels Pipeline Construction (Employer). On August 8, 2007, the Division issued one citation to Employer alleging a general violation of Title 8, California Code of Regulations, section 4993(b)<sup>1</sup> [failure to provide tag or restraint lines when rotation of a load is hazardous].

Employer timely appealed the citation, and an evidentiary hearing was held on December 18, 2008, before an Administrative Law Judge (ALJ) of the Board. The ALJ issued a Decision on March 12, 2009, upholding the citation.

On April 9, 2009, Employer filed its petition for reconsideration of the Decision, and the Division timely filed an answer. The Board took Employer's petition under submission on April 30, 2009.

**ISSUE**

Is rigging equipment attached to a crane hoisting line considered a "load" within the meaning of section 4993(b)?

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<sup>1</sup> Unless otherwise specified, all references are to California Code of Regulations, Title 8.

## EVIDENCE

Employer constructs and installs underground pipelines. At this particular jobsite, Employer was using a crane to lift and place 15-foot long sections of concrete pipe into a sewer. Rigging equipment was utilized that allowed the large section of pipe to be connected to the crane's hoisting line. This rigging consisted of a hook block, a "D"-ring that attached to the hook, chains that ran from the "D"-ring to a spreader bar, and the spreader bar itself that had additional chains that thread through holes located in the top of the pipe.<sup>2</sup> (Exs. 4-6.) After the chains passed through the holes, they were secured to the pipe using a special nut and washer assembly. With the anchor points secured, the crane could then lift the section of piping.

On the day of the accident, an employee of Employer was waiting for the crane to approach a section of piping. He positioned himself atop a ladder adjacent to the pipe in order to guide the rigging into position. As the crane approached, he noticed that the spreader bar was rotating,<sup>3</sup> and reached up in an attempt to stop its movement. Instead, the employee was dragged off the ladder and fell approximately 5 feet to the ground, fracturing his hip.

No tag or restraint lines were attached to the spreader bar to help control its movement, and the Division cited Employer for violating section 4993(b) [failure to provide tag lines when rotation of a load is hazardous].

## REASONS FOR DECISION AFTER RECONSIDERATION

Section 4993(b) provides that "tag or restraint lines shall be used where rotation of the load is hazardous." Central to this dispute is whether the term "load" - itself not defined in the safety order - includes rigging equipment that is connected to the crane hoisting line but not otherwise attached to the object intended to be moved. That is, can a "load" refer to only the rigging?

We apply the principles of statutory interpretation to determine whether rigging equipment is considered a "load" within the meaning of section 4993(b). "The objective of statutory construction is to determine the intent of the enacting body so that the law may receive the interpretation that best effectuates that intent. [Citation.]" (*Fitch v. Select Products Co.* (2005) 36 Cal.4th 812, 818.) In construing intent, an interpretation that would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning. (*Orange County Scaffold, Inc.*, Cal/OSHA App 99-223, Decision After Reconsideration (Mar. 8, 2002), citing *City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47,

<sup>2</sup> Hereinafter, these items are referred to collectively as "rigging."

<sup>3</sup> The parties dispute whether the spreader bar was actually rotating (and thus subject to § 4993(b)), or whether it was "tracking forward" when Employee reached up to grab it. This dispute is irrelevant to our analysis.

54.) We may not determine the meaning of a regulation from a single word or sentence, but rather “the words must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible. (Citations.)” (*Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735; see also *People v. Craft* (1986) 41 Cal.3d 554, 561 [interpretation that renders related provisions nugatory must be avoided].)

Several regulations under the Crane Operating Rules (§§ 4990-5009) support a finding that a “load” does not include its rigging equipment. Section 4995 states that “[n]o employee shall be permitted to ride on loads, hooks, or slings of any derrick, hoist, or crane.” A hook is a type of rigging,<sup>4</sup> and therefore the regulation distinguishes riding on a load from riding on rigging. Next, section 4885 contains the phrase “*load attaching equipment* such as load blocks, shackles, slings, buckets, and magnets.” (§ 4885 [emphasis added].) This further indicates that rigging is not part of the actual physical load to be lifted, as it attaches to the load as “load attaching equipment.” Finally, section 4999(c)(1) provides that “[t]he load shall be attached to the hook by means of slings or other suitable and effective means which shall be rigged to insure the safe handling of the load.” This usage also distinguishes a load from the rigging equipment it attaches to.

Therefore, when read in context with other related safety provisions, we conclude that a “load” under section 4993(b) does not include rigging equipment. To rule otherwise would be to ignore the clear distinctions illustrated above between a load and its rigging, something we are not at liberty to do. “If the statutory language is unambiguous, ‘we presume the Legislature meant what it said, and the plain meaning of the statute governs.’ (Citations.)” (*People v. Toney* (2004) 32 Cal.4th 228, 232; see *Lungren v. Deukmejian* (1988) 45 Cal.3d at p. 735, *supra*. [words must be construed in context and related provisions harmonized]; *Orange County Scaffold, Inc., supra*. [every word given some significance].)

The ALJ reasoned that because the definition of “Load (Working)”<sup>5</sup> included “load attaching equipment such as load blocks, shackles, and slings” (section 4885), that the term “load” as used in the cited safety order also included such rigging equipment. (Decision, p. 5.) Thus, the ALJ sustained the violation, finding that rigging was a “load” under section 4993(b), and that Employer failed to use tag lines to control its hazardous rotation.

The fundamental error in the ALJ’s analysis is that the definition of “working load” under section 4885 is wholly irrelevant to a “load” as it is used in the cited safety order. Specifically, a “working load” does not determine

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<sup>4</sup> The parties agreed that the rigging consisted of a hook block, spreader bar, a “D”-ring connecting the hook to the spreader bar, and chains suspended from the spreader bar. (Employer’s Petition and Division’s Opposition.)

<sup>5</sup> For ease of reading, “Load (Working)” will hereinafter be referred to as “working load.”

what items constitute a “physical” load under section 4993(b), but rather defines a numerical weight measurement. We explain.

Section 4993(b) provides that “Tag or restraint lines shall be used where rotation of the load is hazardous.” As a noun, “load” can have several meanings, two of which are applicable to our discussion: (1) something that is put in a ship or vehicle for conveyance, or (2) a mass or weight; the forces to which a given object is subjected.<sup>6</sup> The definition of “working load” under section 4885 clearly equates to the latter meaning, as it is the “external load *in pounds* applied on the hoisting line.” (§ 4885 [emphasis added].)

Here, the ALJ properly found that “working load” included rigging equipment, but then used this term as an equivalent to the term “load” in the cited safety order. (Decision, p. 5, bottom – p. 6, top.) This was incorrect, as the terms have separate and distinct meanings. “Working load” is a mass or weight measurement used to determine whether the intended lift is within the crane’s safe operating limits, and to make that determination it is necessary to know the total weight being lifted. “Load,” on the other hand, refers to a physical object, as restraint lines require a tangible object to attach to.

Therefore, to link the two and use both interchangeably does not make sense as the items are distinct and do not assist in defining each other. This analytical flaw is even more pronounced as its application would render the safety order nonsensical: it is impossible to attach restraint lines to a “working load” which is a non-tangible, numerical weight measurement.

Employer similarly relies on the definition of a “working load,” but contends that two distinct components constitute such a load: the external load (i.e., the pipe) and the rigging equipment. Employer therefore argues that both items are *required* in order to qualify as a “working load” (Employer’s Petition, pp. 4, 6), and because the crane only had rigging attached at the time of the accident, it did not qualify as a “load” under section 4993(b), (*ibid*).

Employer’s interpretation is not supported by the language of the safety order. The definition of “working load” is clear and contains no ambiguous language. “The external load in pounds applied on the hoisting line...” means the *total* weight, in pounds, on the hoisting line. (§ 4885.) And, “... including the weight of load attaching equipment...” means the total weight on the hoisting line also includes the weight of any load attaching equipment. (§ 4885.)

Employer, tellingly, provides no analysis other than to suggest that a “careful review” will lead to such an interpretation. However, where the regulation is clear, we “will not interpret away clear language in favor of an

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<sup>6</sup> Merriam-Webster’s Collegiate Dictionary (10<sup>th</sup> ed. 2001) at p. 681.

ambiguity that does not exist.” (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; see *Nolan v. City of Anaheim* (2004) 33 Cal.4th 335, 340 [words of statute given their ordinary and plain meaning].) Contrary to Employer, there is no wording to suggest that the “external load” refers only to the physical object to be lifted. The definition of “working load” applies whether rigging is suspended with or without the concrete pipe attached, as the “working load” is the weight of the external load “applied on the hoisting line.” (§ 4885.) Consequently, Employer’s argument that a “working load” must include both the “external load” and any associated rigging fails.

### DECISION

Section 4993(b) was not violated as only rigging equipment, in itself not a “load,” was suspended from the crane. Employer’s appeal is granted and the citation is dismissed.



ART R. CARTER, Chairman



ED LOWRY, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: JUL 20 2012

