

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

2520 Venture Oaks Way, Suite 300

Sacramento, CA 95833

TOLL FREE NUMBER (877) 252-1987

(916) 274-5751

FAX (916) 274-5785

RECEIVED

MAY 07 2014

APPEAL FORM OSH Appeals Board

316819051

Inspection Number on Citation

Bay Area Rapid Transit District

Employer Name on Citation

Employer Legal Name or DBA (Optional)

300 Lakeside Drive, 18th Floor

Address

Oakland, CA 94612

DOCKET

(Leave blank- Appeals Board will fill in.)

1. You only have 15 working days from receipt of a citation to appeal.

2. A copy of this form must be attached to each citation or notification appealed. Failure to file a completed form may result in dismissal of the appeal.

FIRST READ IMPORTANT INFORMATION ON THE REVERSE SIDE THEN COMPLETE ONE APPEAL FORM FOR EACH CITATION

1. This is an Appeal of:

[X] CITATION NO(s): 1 Item No(s): 1

[] NOTIFICATION OF FAILURE TO ABATE ALLEGED VIOLATION CITATION NO(s): Item No(s):

[] SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

2. Specific ground(s) for this appeal are: (Check all that apply)

[X] The safety order was not violated.

[X] The classification (i.e. serious, willful, repeat) is incorrect.

[] The abatement requirements are unreasonable.

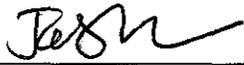
[] Required changes [] Time allowed to complete changes

[X] The proposed penalty is unreasonable.

3. Explain any other reasons for appeal or issues to be raised on appeal. Affirmative defenses must be specifically stated.

Three horizontal lines for providing additional information or reasons for appeal.

4.



(Signature of Employer or Employer's Representative)
{If there is any change in representation after you file your appeal, you must notify the Appeals Board in writing}

Jonathan Rossen

(Type or print name)

Manager of Employee Patron Safety

(Title)

300 Lakeside Drive, 18th Floor

(Address) {Address where all communications from the Appeals Board will be sent}

Oakland

CA

94612

(City)

(State)

(Zip Code)

510-464-7549

Jrossen@bart.gov

May 6, 2014

(Telephone)

(E-Mail Address)

(Date)

{All correspondence from the Appeals Board will be sent to the representative above at the address above. If there is any change in address, telephone number, and/or e-mail address after you file your appeal, you must notify the Appeals Board of the change(s). All such notifications must be in writing}

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- G. Mail each completed Appeal form and citation or notification to the Occupational Safety and Health Appeals Board, 2520 Venture Oaks Way, Suite 300, Sacramento, CA 95833.
- H. Late appeals will not be accepted unless good cause is shown.

State of California

Division of Occupational Safety and Health
Cal/OSHA Concord District Office (0950622; 4028)
1450 Civic Court, Suite 525
Concord, CA 94520

Inspection Number: 316819051
Inspection Dates: 10/19/2013-04/15/2014
Issuance Date: 04/17/2014
CSHO ID: L2006
Optional Inspection Nbr: 006-14



Phone: (925) 602-6517 Fax: (925) 676-0227

Citation and Notification of Penalty

RECEIVED

Company Name: Bay Area Rapid Transit District
Inspection Site: BART Right Way near mile post 16.1 C1, Walnut Creek, CA 94597 **MAY 07 2014**

OSH Appeals Board

Citation 1 Item 1 Type of Violation: WILLFUL SERIOUS

CCR T8 2944(c)(1) Work Near Energized Equipment and Facilities.

No person other than a qualified electrical worker shall perform work or take any conducting object within the area where there is a hazard of contact with energized conductors unless directly under the observation of a qualified person.

The employer failed to ensure that only qualified electrical workers were allowed to perform work or take any conducting object within an area where there is a hazard of contact with energized conductors.

On October 19, 2013, while inspecting a section of the C1 railway track at milepost 16.1, an employee(s) who was not a qualified electrical worker, was allowed to perform work and take a conducting object (aluminum "Track Gauge") within the area of the railway track that exposed the employee(s) to an energized 1000 Volt DC, "third-rail" conductor.

Date By Which Violation Must be Abated: Abated
Proposed Penalty: \$ 70000.00

See pages 1 through 4 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

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CITATION NO(s): Item No(s):

SPECIAL ORDER/SPECIAL ACTION NO: Item No(s):

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The safety order was not violated.

The classification (i.e. serious, willful, repeat) is incorrect.

The abatement requirements are unreasonable.

Required changes Time allowed to complete changes

The proposed penalty is unreasonable.

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Citation and Notification of Penalty

Company Name: Bay Area Rapid Transit District
Inspection Site: BART Right Way near mile post 16.1 CI, Walnut Creek, CA 94597

OSH Appeals Board

Citation 2 Item 1 Type of Violation: WILLFUL SERIOUS

CCR T8 3203(a)(7)(C) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(7)Provide training and instruction:

(C)To all employees given new job assignments for which training has not previously been received

Employer's Program was not effectively implemented with respect to the training provisions, in that the employer allowed employees, who had been given a new job assignment, to perform that job while having not completed the training.

Moreover, employees that were assigned to be "Train Operators" on a regional rail rapid transit system were allowed to operate trains with inadequate supervision during an abbreviated training course.

As a result, on October 19, 2013, two track workers were struck and killed by "Train 963" during work inspecting a section of the CI railway track at milepost 16.1, while an untrained "Train Operator" was at the controls.

Date By Which Violation Must be Abated:	Abated
Proposed Penalty:	\$ 70000.00

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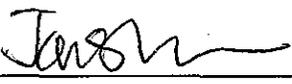
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(City) (State) (Zip Code)

510-464-7549 Jrossen@bart.gov May 6, 2014

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Citation and Notification of Penalty

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Inspection Site: BART Right Way near mile post 16.1 C1, Walnut Creek, CA 94597

OSH Appeals Board

Citation 3 Item 1 Type of Violation: WILLFUL SERIOUS

CCR T8 3332(b) Controls to safeguard personnel during railcar movement shall be instituted.

The employer did not develop and institute controls to safeguard personnel during railcar movement. The employer allowed workers to conduct work on the railway tracks where trains were travelling in excess of sixty-five (65) miles-per-hour.

Employer's control method, namely the "Simple Approval" procedure, does not safeguard personnel working on tracks during railcar movement.

Provisions of the "Simple Approval" procedure that fail to safeguard employees include, but are not limited to, the employees being made responsible for their own safety and specifically not being notified of trains actively entering their work area.

Furthermore, the requirement of the said procedure to post one of the employees working on the tracks as a "Watchperson" to warn of oncoming rail traffic was not implemented.

As a result, on October 19, 2013, two track workers, while operating under the employer's "Simple Approval" procedure, were struck and killed by "Train 963" during work inspecting a section of the C1 railway track at milepost 16.1.

- A) The employees had no warning that a train moving at more than 65 miles-per-hour was on the C1 railway track approaching the location where they were working.
- B) Neither of the two track workers was performing the duties of "Watchperson", as specified by the employer's "Simple Approval" procedure, at the time of the incident.

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Date By Which Violation Must be Abated:
Proposed Penalty:

Abated
\$ 70000.00



Michael K. Miller, Senior Safety Engineer

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