

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

In the Matter of the Appeal of:

PCC ROLLMET, INC.
1822 Deere Ave
Irvine, CA 92606

Employer

DOCKET 15-R3D1-3654

DECISION

STATEMENT OF THE CASE

On July 13, 2015, the Division of Occupational Safety and Health (the Division) through Associate Safety Engineer, Randy Johns, (Johns) conducted an accident inspection at a place of employment maintained by PCC Rollmet Inc. (Employer) at 1822 Deere Avenue, Irvine, California (the site). On September 16, 2015, the Division cited Employer for an alleged violation of the California Code of Regulations, title 8¹. The Citation alleges that Employer failed to ensure that a Mori Seiki MS-850 lathe had a guard completely enclosing the cutter blades while stock was being worked.

The Employer filed an appeal of the citation, contesting the existence of the violation and the reasonableness of the abatement requirements. Employer also pleads affirmative defenses identified in Exhibit 1.

The matter came on regularly for hearing before Clara Hill-Williams, Administrative Law Judge (ALJ) for the California Occupational Safety and Health Appeals Board, at West Covina, California on May 19, 2016. Employer was represented by Attorneys Louis Ferreira and Cory Haller. The Division was represented by District Manager, Richard Fazlollahi. The matter was submitted on May 19, 2016. The ALJ extended the submission date to August 3, 2016.

¹ Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

ISSUES

1. Did Employer fail to ensure that a Mori Seiki MS-850 lathe² operated by an employee had a hood or cover completely enclosing the cutter blades while the stock was being worked?
2. Were the abatement requirements reasonable?

FINDINGS OF FACT

1. On and before July 10, 2015, Employer's Mori Seki Model MS 850 (Mori Seki) was used by employees without a hood or cover completely covering the cutter blades. A fatal accident occurred on July 10, 2015, when a 15 pound cylindrical metal nut (part/stock) forcefully ejected from Employer's Mori Seki lathe's chuck³, striking an employee in the head as well as the wall and floor in the work area.
2. Prior to working on the lathe on July 10, 2015 and before the nut ejected from the chuck, the injured employee set the lathe's speed at 1800 RPM⁴ which is normally set at 300 RPM.
3. The Mori Seki did not have a hood completely covering the lathe.
4. The Mori Seki, a metalworking machine, does not have a point of operation where the cutter knives/blades come in contact with the nut (part/stock). The Mori Seki lathe operates by securing the part/stock inside the "chuck" (Exhibit 3C).
5. The cutter knives/blades on the Mori Seki do not rotate around the part/stock. The part/stock is guarded by location, which is the chuck enclosing the blades.
6. The hazard associated with the Mori Seki is running the machine at the maximum high speed of 1800 RPM, which can jam the machine causing a part/stock (nut) to eject from the chuck and fly in any direction, causing serious injuries or fatalities.
7. The hazard associated with running the Mori Seki at 1800 RPMs without the entire lathe guarded including the chuck created a "danger zone", where an employee could be struck by moving and stationary objects or parts of the machine.
8. Employer did not present any evidence of seeking a variance, and did not offer any evidence to demonstrate that the abatement requirements were unreasonable.

² According to the testimony received during the Hearing, a "lathe" is a machine for use in working wood, metal, etc., that holds the material and rotates it about a horizontal axis against a tool that shapes it.

³ The chuck securely held the nut,

⁴ RPM – Revolutions per minute.

ANALYSIS

1. Did Employer fail to ensure that a Mori Seiki MS-850 lathe operated by an employee had a hood or cover completely enclosing the cutter blades while the stock was being worked?

Section 4184, subdivision (b) requires:

All machines or parts of machines, used in any industry or type of work not specifically covered in Group 8 which present similar hazards as the machines covered under these point of operation orders, shall be guarded at their point of operation as required by the regulations contained in Group 8.

Referencing Section 4319, subdivision (a) (see Attachment B):

A hood or cover shall completely enclose the cutter blades while the stock is being worked. Hood or cover shall be of not less than 1/8-inch sheet steel.

The Division alleged:

Prior to and on 7/10/2015, employer failed to ensure that a Mori Seiki MS-850 lathe in use by an employee had a hood or cover completely enclosing the cutter blades while the stock was being worked resulting in a fatal injury to employee when the stock being worked came loose [and] struck the employee in the head.

In determining whether section 4184 covers the Mori Seki, the Appeals Board in *Jensen Precast* Cal/OSHA App. 05-2377 Decision After Reconsideration (Mar. 26, 2012) interpreted section 4184, subdivision (b) broadly to include any machine that “grinds, shears, punches, presses, squeezes, draws, cuts, rolls, mixes, or acts similarly ... and is used in any industry or type of work not specifically covered in Group 8.” (*Sonoma Grapevines, Inc.*, Cal/OSHA App. 99-875, Decision After Reconsideration (Sep. 27, 2001).) In *Jensen, supra*, the Board further held that safety orders are to be liberally interpreted to achieve a safe working environment. (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303.) The Board in *Jensen, supra*, stated that even if the machine did not press, roll, or squeeze per se, its actions “present similar [to squeezing, rolling or pressings] hazards as the machines covered in Group 8” and therefore fall within the scope of section 4184, subdivision (b).

To establish a guarding violation of section 4184, subdivision (b) the Division must establish that (1) it is a machine or part of a machine used in any industry or type of work not specifically covered in Group 8, which present

similar hazards as the machines covered under these point of operation orders; (2) that the machine shall be guarded at its point of operation as required by the regulations contained in Group 8; and (3) as referenced in section 4319, subdivision (b), a hood or cover (not less than 1/8 inch sheet steel) shall completely enclose the cutter blades while the stock is being worked.

In establishing the first element of the violation, at the Hearing, Associate Safety Engineer, Randy Johns (Johns)⁵ testified that he relied on the Appeals Board's (Board) holding in *Jensen Precast, supra*, whose holding looked at whether the task created a hazard of a serious injury and not the type of material being worked on in determining whether the Mori Seki was subject to the regulations contained in Group 8 above. He testified that Employer's Mori Seki Model was used by an employee without a hood completely covering the cutter blades. Johns learned that on July 10, 2015, while an employee was operating the Mori Seki performing a task of smoothing the stock, a 15 pound cylindrical metal nut,⁶ the nut suddenly discharged from the "chuck" (a machine part that securely held the nut in place) and struck the employee in the head⁷. Johns' investigation further revealed that prior to working on the lathe on July 10, 2015, the injured employee set the lathe's speed at 1800 RPM, which is normally set at 300 RPM before the nut ejected from the chuck. Johns' testimony concluded that the employee's action in setting the lathe's speed at 1800 RPMs created a hazard subject to the guarding regulations of section 4184, subdivision (b).

At the Hearing Employer's expert witness, Joseph Wood (Wood)⁸ opined that the operation of the Mori Seki did not present hazards similar to those identified in Group 8 as stated above in section 4184, subdivision (b), in which hair and body parts can become caught between the stock and the blades. Wood testified that the Mori Seki part/stock is guarded by location (the chuck enclosing the blades), which does not expose the employee operator to hair and body parts being caught between the blade and the stock (Exhibits B and D)⁹. However, Wood acknowledged in agreement with Johns' investigation findings that the hazard in operating the Mori Seki at the maximum high speed of 1800 RPM can jam the machine causing the stock (nut) to eject from the chuck and

⁵ Johns, a "certified safety professional" employed with the Division for 14 years and former safety manager for seven years with Northrop Grumman and holds a Bachelor of Science as well as an MBA, testified that he has received all of the required machine guarding training (Exhibit 2).

⁶ The "nut" is used in making ware pads in the aerospace industry (Exhibit 3C).

⁷ Uncontroverted testimony at the Hearing indicated the accident occurred when the nut broke loose from the Mori Seki lathe's chuck with a forceful discharge striking an employee in the head, as well as striking the wall and the floor in the work area.

⁸ Wood testified that he had 26 years of aerospace industry experience, and a voting member of the ANZI Standards committee, testified that he has conducted over 3,000 investigations including lathes that were metal cutting and wood cutting hazardous conditions.

⁹ Exhibits B is a video of a woodworking lathe with a guard covering the entire lathe. Exhibit D is a video of a metal working lathe as shown in Exhibit 3A and 3C.

fly in all directions, causing serious injuries or fatalities. These hazards are similar to the hazards of the machines covered under Group 8 of section 4184, subdivision (b).

The Board in *Jensen, supra*, referenced section 4188, subdivision (a) (Attachment A) which defines the terms "danger zone" and "point of operation". The Board held that a "danger zone" is "Any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving and stationary objects or parts of the machine, burned by hot surfaces or exposed to electric shock." The Board's reasoning of "danger zone" is analogous to the "point of operation" applicable to the facts herein, where the nut suddenly discharged from the Mori Seki's chuck striking the employee. Thus, the Mori Seki presents a similar hazard as the machines covered in Group 8 as defined above. Therefore, the Division established the first element that the Mori Seki, a metal working lathe, presents similar hazards as machines covered under Group 8 of section 4184, subdivision (b).

The second element of the safety order requires that the machine is guarded at the point of operation. Johns testified that the standard required the entire lathe be guarded as well as its point of operation¹⁰. Johns further testified that there should have been a guard over the chuck (Exhibit 3C) to keep the product safe. Johns gave credible testimony that during his interview with Paul Gresham (Gresham), Employer's mechanic, Gresham acknowledged that at the time of the accident the Mori Seki lathe as depicted in Exhibits 3B and 3C only had a piece of cardboard that served as a guard to protect the employee operator from the hazard of flying particles created from shaving the nut with the cutter blades of the lathe (Exhibit C)¹¹. Gresham also acknowledged that the Mori Seki did not have a hood covering the entire lathe when it was purchased¹².

Countering the Division's position that the second element of the safety order required the machine to be guarded at the point of operation, Wood asserted that the safety order did not apply to the Mori Seki, a metal working machine, because the Mori Seki does not have knives/blades that come in contact with the stock. Wood explained that the metal cutting lathe operates by putting the nut into the "chuck" with three "jaws" that lock the chuck in, which holds the nut (part/stock) (Exhibit 3A and 3C). The cutter knives/blades on

¹⁰ It was undisputed that the point of operation on the Mori Seki is where the parts are being turned; and did not have a point of operation where the knife meets the stock/material (nut).

¹¹ The Division acknowledged that Employer was not cited for cardboard observed between the chuck and the stock (nut).

¹² The statement of maintenance mechanic Gresham is a party admission. Pursuant to Evidence Code section 1220, evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity.

the Mori Seki do not rotate around the part/stock. At the Hearing Johns also acknowledged that the employee was not exposed to the Mori Seki's cutting edge of the blade.

While Employer distinguished the Mori Seki, a metal working lathe from other wood working lathes, the Board held as stated in *Jensen Precast, supra*, that a "danger zone" is "Any place in or about a machine or piece of equipment where an employee may be struck by or caught between moving and stationary objects or parts of the machine..." and that safety orders are to be liberally interpreted to achieve a safe working environment (*Carmona v. Division of Industrial Safety* (1975) 13 Cal.3d 303.). Here, Employer's failure to cover the entire Mori Seki lathe establishes a violation of the second element of the safety order. The failure to cover the Mori Seki created a danger zone because an employee could be struck by moving parts, in this case the nut that flew out from the lathe and struck the employee.

In establishing the third element defined in section 4319, subdivision (a), the safety order requires that a hood or cover completely enclose the cutter blades while the stock is being worked. The evidence as discussed above shows that the cutter blades were covered while the stock was being worked. Both the Division and Employer agreed that the cutter knives/blades on the Mori Seki did not rotate around the stock and the employee was not exposed to the Mori Seki's blades. Nevertheless, applying *Jensen, supra*, completely covering the lathe would have prevented the employee from being struck by the ejected stock and suffering a fatal injury.

Thus, the Division has established a violation of section 4184, subdivision (b), meeting the first element that the Mori Seki lathe, while not a wood working machine specifically covered in Group 8, the Mori Seki presented a similar hazard as the machines covered under the point of operation order as defined in this safety order. The second element of the safety order is met because the failure to guard the Mori Seki created a danger zone because an employee could be struck by moving parts. The third element is met because the Mori Seki did not have a hood or cover that completely enclosed the cutter blades and the chuck that held the stock/nut being worked at the time of the July 10, 2015 accident as required by section 4319, subdivision (a) as discussed above.

2. Were the abatement requirements correct?

The Occupational Safety and Health Act of 1973 [Cal. Labor Code § 6300 et. seq. (the Act)] was enacted for the purpose of assuring safe and healthful working conditions for all California working men and women by authorizing the enforcement of effective standards, assisting and encouraging employers to maintain safe and healthful working conditions, and by providing for research, information, education, training, and enforcement in the field of occupational

safety and health (Cal. Labor Code § 6300). The safety orders are to be broadly interpreted to further the purposes of the act. *Carmona v. Division of Industrial Safety, supra*.

In this matter, the Division cited Employer for a serious violation of section 4184, subdivision (b)¹³, which required abatement. In *Paso Robles Public Schools*, Cal/OSHA App. 96-1722, DAR, (Oct. 4, 2000), the Board upheld the ALJ's Decision that the regulations were clear and provided no exception and held the Division's abatement requirements were reasonable. The Board further held that the ALJ had no authority to allow noncompliance with clear regulations, and that Employer had to apply to the Standards Board for a variance if there was to be an exception to the safety orders. Further, if Employer cannot successfully abate, it may seek a permanent variance from the Occupational Safety and Health Standards Board. (See, Labor Code section 143.) The Board held that it is not authorized to "vacate a violation or citation," nor may it conclude that abatement is unnecessary where a general violation has been accepted by the employer. (See *Primary Steel*, Cal/OSHA App. 04-4105, DAR (March 14, 2007).)

Here the abatement requirements provided that the Employer's Mori Seiki MS-850 lathe in use by an employee have a hood or cover completely enclosing the cutter blades while the stock was being worked to avoid a serious or a fatal injury to employees if stock being worked came loose [and] struck an employee. If Employer could not meet these standards, Employer could have applied for a variance. Here, Employer did not present any evidence of seeking a variance and did not offer any evidence to demonstrate that the abatement requirements were unreasonable.

Since Employer did not present any evidence to demonstrate that the abatement requirements were unreasonable, the abatement requirements are found to be reasonable.

Conclusion

Employer's appeal from Citation 2, section 4184, subdivision (b) is denied.

The proposed abatement requirements are reasonable.

Order

It is hereby ordered that Citation 2 is hereby affirmed.

¹³ The Employer did not appeal the serious and accident related classification or the reasonableness of the penalty.

It is further ordered that the penalties set forth in the attached Summary Table be assessed.

Dated: August 31, 2016

CLARA HILL-WILLIAMS
Administrative Law Judge

CHW: ml

APPENDIX A

SUMMARY OF EVIDENTIARY RECORD

**PCC ROLLMET, INC.
Docket 15-R3D1-3654**

Date of Hearing: May 19, 2016

Division's Exhibits

Exhibit Number	Exhibit Description	Admitted
1	Jurisdictional Documents	Yes
2	Curriculum Vitae, Thurman R. Johns	Yes
3A	Photo Mori Seki Lathe	Yes
3B	Photo Mori Seki Lathe	Yes
3C	Photo of "chuck" of Mori Seki Lathe	Yes
3D	Photo of "nut" held in the chuck	Yes
3E	Photo of RPM control panel of Mori Seki	Yes
4	U.S. Dept. of Labor, lathe injuries '09 -'13	Yes
5	C-10 Penalty Worksheet	Yes

Employer's Exhibits

Exhibit Letter	Exhibit Description	Admitted
A	Minnesota OSHA/ANSI Point of Operation	Yes
B	Video wood working lathe	Yes
C	Diagram - hood of wood working lathe	Yes
D	Video - metal working lathe	Yes

Witnesses Testifying at Hearing

1. Randy Johns
2. Willard Joseph Wood

CERTIFICATION OF RECORDING

I, Clara Hill-Williams, the California Occupational Safety and Health Appeals Board Administrative Law Judge duly assigned to hear the above matter, hereby certify the proceedings therein were electronically recorded. The recording was monitored by the undersigned and constitutes the official record of said proceedings. To the best of my knowledge, the electronic recording equipment was functioning normally.

CLARA HILL WILLIAMS

Date

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

In the Matter of the Appeal of:

PCC ROLLMET, INC.
1822 Deere Ave
Irvine, CA 92606

Employer

DOCKET 15-R3D1-3654

TRANSMITTAL

The attached Decision was issued on the date indicated therein. If you are dissatisfied with the Decision, you have thirty (30) days from the date of service of the Decision in which to petition for reconsideration. The petition for reconsideration must be sent to:

**Occupational Safety and Health Appeals Board
2520 Venture Oaks Way, Suite 300
Sacramento, California 95833**

Your petition for reconsideration must fully comply with the requirements of Labor Code Sections 6616, 6617, 6618, and 6619 and with Title 8, California Code of Regulations, Section 390.1.

For further information, call: (916) 274-5751

OSHAB 20 (9/99)

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a citizen of the United States, over the age of 18 years and not a party to the within action; my place of employment and business address is Occupational Safety and Health Appeals Board, 100 North Barranca Street, Suite 410, West Covina, California, 91791.

On August 31, 2016, I served the attached **DECISION** by placing a true copy thereof in an envelope addressed to the persons named below at the address set out immediately below each respective name, and by sealing and depositing said envelope in the United States Mail at West Covina, California, with first-class postage thereon fully prepaid. There is delivery service by United States Mail at each of the places so addressed, or there is regular communication by mail between the place of mailing and each of the places so addressed:

Louis A. Ferreira, Esq.
William Cory Haller, Esq.
STOEL RIVES LLP
760 SW Ninth Avenue, Suite 3000
Portland, OR 97205-2584

DOSH DISTRICT OFFICE
District Manager/Santa Ana
2000 East McFadden Avenue, Suite 122
Santa Ana, CA 92705

Chief Counsel
DOSH - Legal Unit
1515 Clay Street, 19th Floor
Oakland, CA 94612

DOSH – Legal Unit
320 W. Fourth Street, Suite 400
Los Angeles, CA 90013

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 31, 2016 at West Covina, California.

Declarant

SUMMARY TABLE DECISION

In the Matter of the Appeal of:

**PCC ROLLMET INC
DOCKETS 15-R3D1-3654**

Abbreviation Key:	
G=General	Reg=Regulatory
S=Serious	W=Willful
Er=Employer	R=Repeat
Ee=Employee	DOSH=Division
A/R=Accident Related	

Inspection No. 1076936

DOCKET	CITATION	SECTION	TYPE	MODIFICATION OR WITHDRAWAL	AVFV F A I C R A M T E E D D	PENALTY PROPOSED BY DOSH IN CITATION	PENALTY PROPOSED BY DOSH AT HEARING	FINAL PENALTY ASSESSED BY BOARD
15-R3D1-3654	2 1	4184(b)	S A/R	ALJ affirms the citation	X	\$22,500	\$22,500	\$22,500
Sub-Total						\$22,500	\$22,500	\$22,500

Total Amount Due*

\$22,500

Please do not send payments to the Appeals Board.
All penalty payments must be made to:

Accounting Office (OSH)
Department of Industrial Relations
P.O. Box 420603
San Francisco, CA 94142
(415) 703-4291, (415) 703-4308 (payment plans)

*You will owe more than this amount if you did not appeal one or more citations or items containing penalties. Please call (415) 703-4291 if you have any questions.

ALJ: CHW/ml
POS: 08/31/16