

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

In the Matter of the Appeal of:

HILL CRANE SERVICE, INC.
3333 Cherry Avenue
Long Beach, CA 90807

Employer

Dockets. 12-R4D1-2475 through 2477

**DENIAL OF PETITION
FOR RECONSIDERATION**

The Occupational Safety and Health Appeals Board (Board), acting pursuant to authority vested in it by the California Labor Code hereby denies the petition for reconsideration filed in the above entitled matter by Hill Crane Service (Employer).

JURISDICTION

Commencing on February 17, 2012 the Division of Occupational Safety and Health (Division) conducted an inspection of a place of employment in California maintained by Employer.

On August 14, 2012 the Division issued three citations to Employer alleging violations of occupational safety and health standards codified in California Code of Regulations, Title 8.¹

Employer timely appealed.

Thereafter administrative proceedings were held before an Administrative Law Judge (ALJ) of the Board, including a duly-noticed contested evidentiary hearing.

On October 2, 2013, the ALJ issued a Decision (Decision) sustaining the citations and imposing civil penalties.

Employer timely filed a petition for reconsideration.

The Division filed an answer to the petition.

¹ References are to California Code of Regulations, Title 8 unless specified otherwise.

ISSUE

Was the Decision correct in sustaining the citations?

REASON FOR DENIAL OF PETITION FOR RECONSIDERATION

Labor Code section 6617 sets forth five grounds upon which a petition for reconsideration may be based:

- (a) That by such order or decision made and filed by the appeals board or hearing officer, the appeals board acted without or in excess of its powers.
- (b) That the order or decision was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order or decision.

Employer's petition argues the Decision was made in excess of the ALJ's powers, the evidence does not justify the findings of fact and the findings of fact do not support the Decision.

The Board has fully reviewed the record in this case, including the arguments presented in the petition for reconsideration. Based on our independent review of the record, we find that the Decision was based on a preponderance of the evidence in the record as a whole and appropriate under the circumstances.

Employer rents cranes to others, also providing crews to operate the cranes. The crane involved in this matter was a "hammerhead" crane. It consisted of a mobile crane body and structural components and an attached sectioned boom with rigging and mechanical components. The boom's sections were the "transition" or "butt" section which is attached to the crane body, and at another section, extending outward from the transition section called the hammerhead section. The two sections are connected by large metal pins, described as being two inches in diameter and eight inches long, fitted through matching holes at the ends of each boom section to join and hold them together.

Four of Employer's employees were involved in disassembly (to be followed by assembly) of the crane at a customer's work location. During that process one of the four removed pins which joined the transition and hammerhead sections while he was standing under the boom. When he removed the second of two pins the boom sections fell on and injured him.

As to Citation 1, Item 1 (§ 3202(a)(7) [failure to train]), Employer argues that the injured employee had years of experience, had worked for Employer from 2006 to 2008, and was considered a “Class A” journeyman by his union. Employer’s argument overlooks other factors which support sustaining the violation. The injured worker had not worked for Employer for 4 years, he was given only cursory familiarization with Employer’s safety procedures on the day he was hired, the day before the accident, and there was no safety meeting or other review of procedures and hazards conducted by the four workers involved or any representative of Employer’s management before the work was commenced on the day of the accident. Further, although the injured employee had years of experience assembling and disassembling cranes, there is nothing in the record indicating he had any, let alone recent, experience working on the type of crane involved here. The purpose of § 3203(a)(7) is to provide employees with the knowledge and ability to recognize and avoid the hazards they may be exposed to by a new work assignment. (See *Sierra Production Service, Inc.*, Cal/OSHA App. 84-1227 Decision After Reconsideration (Aug. 13, 1987).) The evidence shows Employer did not fulfill that purpose here.

Citation 1, Item 2 alleged that Employer’s assembly/disassembly director (“A/D director”) failed to ensure that the crew understood the hazards and locations to avoid, in violation of § 161.2(d)(1). That section states:

- (d) Crew instructions.
 - (1) Before commencing assembly/disassembly operations, the A/D director shall ensure that the crew members understand all of the following:
 - (A) Their tasks.
 - (B) The hazards associated with their tasks.
 - (C) The hazardous positions/locations that they need to avoid.

Section 1610.3 defines “A/D Director” as: “An individual who meets this section’s requirements for an A/D director, irrespective of the person’s formal job title or whether the person is non-management or management personnel.” The quoted definition is applicable to § 1611.2, and we need not decide whether the crane operator met the “requirements” of § 1610.3, as he was acting as and considered to be the A/D director. While section 1611.2(a) requires assembly and disassembly to “be directed by” a qualified and competent person, there was no allegation that the crane operator was not qualified, and we need not address that question here.

The crane operator did not brief the crew on the tasks and hazards. He testified that little communication was involved or needed because all four workers involved were experienced. He had never worked with the injured employee, and had little discussion with him on the day of the accident. There

was no evidence that he “ensure[d]” the crew knew their tasks, the associated hazards, or positions and locations to avoid. It appears, rather, that he assumed that the injured worker and the other crew members were experienced enough not to need any briefing or discussion of the tasks they were to perform or the risks involved. The citation was properly sustained given the evidence in the record.

Employer argues that the A/D director need not be present at the work. That is inconsistent with the apparent intent of section 1611.2. For example, § 1611.2(a)(2) states, “Where assembly/disassembly is being performed by only one person, that person shall meet the criteria for both a competent person and a qualified person. For purposes of this standard, that person is considered the A/D director.” Thus, we interpret the section as intending that the A/D director be present at the worksite. And even if Employer’s argument were correct, there is no evidence in the record indicating that the assembly/disassembly work in question was being directed by an A/D director located elsewhere who had fulfilled § 1611.2(d)(1)’s requirements. No witness testified that the necessary crew instructions had been given by anyone. The violation was established.

Citation 2 alleged a violation of § 1611.2(f)(1), which states: “When pins (or similar devices) are being removed, employees shall not be under the boom, jib, or other components.”

Employer argues that there is no evidence that the injured worker was under the boom while he was removing the pins, and further that even assuming he were, his actions were unreasonable to such a degree that Employer should not be held in violation.

Two considerations lead us to reject Employer’s arguments. First, even if the injured worker was not under the boom while removing the pins, one of the “third men” testified that he himself was under the boom and moved out of the way just in time to avoid being struck as it fell. Thus, it was established that at least one employee was under the boom while the pins were being removed, and shows a violation regardless of the reasonableness of the injured worker’s behavior. Second, the injured worker was struck by the boom sections when they fell, and was under them on the ground after they did so. His position after the accident shows that he was under the boom when it started falling. Moreover, the fact that he was struck by the falling boom is at least circumstantial evidence that he was under it at the time it fell. Circumstantial evidence may be as persuasive as direct evidence. (*R & L Brosamer, Inc.*, Cal/OSHA App. 03-4832, Decision After Reconsideration (Oct. 5, 2011).)

Citation 3 alleged a violation of § 1611.3(b), which states: “None of the pins (top or bottom) on boom sections located between the pendant attachment points and the crane/derrick body are to be removed (partly or completely) when the pendants are in tension.”

“Pendants” are the cables which extend from a component called the “bridle” to the boom to support it. An illustration is seen in Employer’s Exhibit A from the hearing. (Note that Exhibit A spells the word as “bridal.”)

Employer argues that the Division did not prove the elements of the violations, including proving what a “pendant attachment point” is. Since the evidence shows what a “pendant” is in this context, the other components of the term in question are “attachment point,” which by their plain and ordinary usage mean the place or location at which a pendant is attached or connected to the boom. Terms not defined in a statute or regulations are given their ordinary meaning. (*Orange County Fire Authority*, Cal/OSHA App. 10-3667, Decision After Reconsideration (Jan. 3, 2013), citing *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735.) We hold that the evidence shows that the pins were removed while the pendants were under tension. Among other facts so showing, it was established that the boom sections were off the ground when the pins were removed, and that the pendants extended from the bridle to the far end of the hammerhead section. Given that the boom has mass and was support at one end by being connected to the crane body, the pendants or cables connected to the far end (the hammerhead end) were necessarily under tension by virtue of the force of gravity on the far end of the boom. It was not disputed that the pendants were under tension in any event.

Employer also argues that the pendants did not extend from the bridle to the crane itself. Employer’s Exhibit A indicates that such is not a requirement. Further, other photographs of the crane taken after the accident show that cables do extend from the bridle to the crane as well as to the hammerhead section. The evidence in total establishes that the pins were removed on boom sections between the crane body and the point at which the pendants attached to the boom. Accordingly, Employer’s arguments are not persuasive.

DECISION

For the reasons stated above, the petition for reconsideration is denied.

ART R. CARTER, Chairman
ED LOWRY, Member
JUDITH S. FREYMAN, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
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