



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

SOUTHERN PAN SERVICES CO.,

Respondent.

OSHRC Docket No. 08-0866

BRIEFING NOTICE

The issues that follow have been identified by the Review Commission as of particular interest on review.

1. With respect to Citation 2, Item 1, did the judge err in finding that the requirements concerning the placement of construction loads on a concrete structure under 29 C.F.R. § 1926.701(a) do not apply to Southern Pan Services Co. ("Southern Pan")? *See* Concrete and Masonry Construction Safety Standards, 53 Fed. Reg. 22,612 (June 16, 1988). If so, did the Secretary establish that Southern Pan violated the cited standard? If the Secretary established the violation, did she also establish that the violation was willful?
2. With respect to Citation 2, Item 2, did the judge err in affirming a violation for Southern Pan's failure to have revised plans available at the jobsite under 29 C.F.R. § 1926.703(a)(2)? In addressing this issue, the parties are asked to specifically discuss whether an employer has an obligation to create such plans. If the judge properly affirmed the violation, did the Secretary establish that the violation was willful?
3. The parties are also asked to address whether the material redacted from Dr. Mohammad Ayub's May 2008 report, conclusion paragraphs 3 and 8 on pages 17 and 18, is relevant to determining whether Southern Pan violated 29 C.F.R. §§ 1926.701(a) or 1926.703(a)(2). *See, e.g., Access Equip. Sys. Inc.*, 18 BNA OSHC 1718, 1720-22 & n.8 (No. 95-1449, 1999) (noting that citation for alleged failure to determine platform load limit not dependent upon fact that platform failed). If relevant, did the judge err in withholding this information

based on the deliberative process privilege?

The parties are advised that when the merits or characterization of an item are before the Commission for review, the appropriateness of the penalty is also subject to review. Accordingly, the parties may address the amount of the penalty if they so choose.

All briefs are to be filed in accordance with Commission Rule 93.¹ The first brief is to be filed within 40 days of this notice. A party who does not intend to file a brief must notify the Commission in writing setting forth the reason therefore within the applicable time for filing briefs, and shall serve a copy on all other parties. The time for filing briefs (or similar notices of intent) of opposing parties shall commence on the date of service.

BY DIRECTION OF THE COMMISSION

Dated: May 5, 2010

/s/
Ray H. Darling, Jr.
Executive Secretary

¹ The Commission requests that all briefs include an alphabetical table of authorities with references to the pages on which they are cited, and that an asterisk be placed in the left-hand margin of the table to indicate those authorities on which the brief principally relies. The Commission also requests that copies of cited authority, other than statutes, case law, law journal articles and legal treatises, be provided to the Commission and to the opposing party. Parties should be cautioned that these materials will be considered only if appropriate.