BEFORE THE STATE OF CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

In the Matter of the Appeal of:
EEL RIVER SAWMILLS, INC.
1053 Northwestern Avenue
Fortuna, CA 95540
Employer

Docket No. 00-R2D3-3623

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 the petition for reconsideration filed in the above entitled matter by Eel River Sawmills, Inc. (Employer) under submission, makes the following decision after reconsideration.

JURISDICTION

On April 24, 2000, a representative of the Division conducted an inspection at a place of employment maintained by Employer at 1053 Northwestern Avenue, Fortuna, California (the site). On October 12, 2000, the Division issued a citation to Employer alleging a general violation of section[1] 3314(f) [energy control procedures] with a proposed civil penalty of $600.
Employer filed a timely appeal contesting the existence of the alleged violation, the abatement requirements, and the reasonableness of the proposed penalty.
On March 20, 2002, a hearing was held before Dennis M. Sullivan, Administrative Law Judge for the Board (ALJ), in Eureka, California. Steve Halterman, a Safety and Loss Prevention Consultant with TOC Management Services, represented Employer. Dennis Barker, Compliance Officer, represented the Division.
Prior to commencement of the hearing, Employer stipulated that the $600 penalty had been calculated in accordance with the Director's penalty setting regulations for the general violation alleged.
On April 19, 2002, the ALJ issued a decision denying Employer's appeal and assessing a civil penalty in the amount of $600.
On May 13, 2002, Employer filed a petition for reconsideration. On June 17, 2002, the Division filed an answer to the petition. On July 1, 2002, the Board took Employer's petition under submission and stayed the ALJ's decision pending a decision on the petition for reconsideration.

EVIDENCE

Dennis Barker, Compliance Officer for the Division (Barker), testified that he went to the site on April 24, 2000, to investigate a fatal accident that had occurred there on April 22, 2000. Barker conducted an opening conference with Vince Campbell, Employer's Safety Director, and Plant Manager Steed. They advised Barker that Ernest Alvarez (Alvarez), a millwright, was assigned to repair a chain and sprocket drive on a log conveyor that was right next to a scissor lift that lifted logs onto the conveyor. They said that Alvarez de-energized the conveyor in accordance with

Employer's lock out/tag out procedure before he began working on the chain and sprocket drive. The lifting mechanism of the scissor lift was elevated. Alvarez did not de-energize the scissor lift and follow prescribed procedures to ensure it would not descend. In the course of his work, Alvarez sat on the base of the scissor lift and the lifting mechanism descended, injuring him fatally.
Barker testified that the sawmill was highly mechanized and automated. He also testified that the power controls on and for one machine do not correspond to those of another in terms of location and operating characteristics.
Barker identified a two-page written energy control procedure Employer provided to him during the inspection that was admitted into evidence as Exhibit 3. Barker found that the energy control procedure did not identify the individual machines or types of machines to which it applied, describe the location and types of power controls on each machine, and describe the specific procedural steps that must be followed to prevent inadvertent movement of each machine. He concluded that the procedure was not clear and specific enough to comply with section 3314(f) and thus, in violation of the safety order.

ISSUES

1. Does section 3314(f) require a separate energy control procedure for each individual machine?
2. Does Employer's energy control procedure clearly and specifically outline the required provisions in compliance with section 3314(f)?

FINDINGS AND REASONS FOR DECISION AFTER RECONSIDERATION

1. Section 3314(f) Requires Machine-Specific Energy Control Procedures.
Section 3314 is a General Industry Safety Order (GISO) that provides safety measures applicable to employees performing various specified activities such as cleaning, repairing, servicing, adjusting, and setting-up operations upon prime movers, machinery, and equipment. The safety order applies to all places of employment (§ 3202). Section 3314(f) states:

> "(f) An energy control procedure shall be developed and utilized by the employer when employees are engaged in the cleaning, repairing, servicing or adjusting of prime movers, machinery and equipment. The procedure *shall clearly and specifically outline the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance, including but not limited to, the following*:
>
> > (1) A statement of the intended use of the procedure;
> > (2) The procedural steps for shutting down, isolating, blocking and securing machines or equipment to control hazardous energy;
> > (3) The procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them; and,
> > (4) The requirements for testing a machine or equipment, to determine and verify the effectiveness of lockout devices, tagout devices and other energy control devices." (italics added)

Section 3314(g) further provides that "[t]he employer's hazardous energy control procedures shall be documented in writing."

Employer maintains that the ALJ's interpretation of section 3314(f) requiring that specific procedures are required for *all* of the machines operated by Employer was erroneous. Specifically, Employer asserts that the safety order only requires the development and utilization of an "outline" of procedures for the control of hazardous energy which need not be machine specific.

Since dictionary sources variously define "outline" as "summarize" or "to indicate the chief features or parts of," Employer states that the ALJ's interpretation that *specific procedures* are required for *all* machines is inconsistent with the ordinary meaning of the word "outline." Thus, Employer interprets section 3314(f) as requiring that an employer must develop and utilize "an outline" for the control of hazardous energy.

Employer's interpretation primarily relying upon the meaning of "outline" in isolation is misplaced and does not give full effect to all the words used in the regulation. In construing regulations, we must give words their usual, ordinary, and common sense meaning based upon the language used and the evident purpose for which the regulation or safety order was adopted. (*Sierra Production Service, Inc.,* Cal/OSHA App. 84-1227, Decision After Reconsideration (Aug. 13, 1987).) An interpretation which would render terms surplusage should be avoided, and every word should be given some significance, leaving no part useless or devoid of meaning. *City and County of San Francisco* v. *Farrell* (1982) 32 Cal.3d 47, 54.

The clear purpose of section 3314(f) is to require creation and use of an energy control procedure when employees are cleaning, repairing, servicing or adjusting prime movers, machinery, and equipment. An employer is required to develop and use a procedure which "clearly and specifically outlines" several components specified in the regulation.

The adverbs "clearly and specifically" used prior to the word "outline" (used in the regulation as a verb) must be given effect. As an adverb "clear" means "in a clear manner; so as to be clear"; and "clear" means "not faint or blurred; easily seen or heard, sharply defined; distinct" and "free from confusion or ambiguity; not obscure; easily understood."[2] The word "specifically" is an adverb form of "specific" which means "peculiar to or characteristic of something" and "of a special, or particular, sort or kind."[3]

Thus, while the regulation requires an employer to "outline" the prescribed components of its energy control procedure,[4] its outline of the procedures must be sufficiently clear (unambiguous and easily understood) as well as be specific (of a particular kind or peculiar to) with respect to the machinery or equipment which the regulation addresses. We cannot give a restrictive meaning of the word "outline" as Employer suggests in disregard of the qualifying words "clearly and specifically" which precede it since to do so would have an impermissible effect of allowing a hollow outline with procedures which are not specific to any particular machinery or equipment.[5]

Employer's interpretation of section 3314(f) as not requiring a machine specific energy control procedure is at odds with providing an interpretation of the regulation in view of the protective purposes of the Cal/OSH Act. (See *Carmona* v. *Division of Industrial Safety* (1975) 13 Cal.3d 303, 312-313). It would make little sense and would not afford meaningful employee protection to interpret the safety order as simply allowing a *generalized* outline which does not specify (or purports to apply to all) machinery or equipment on which employees would perform the

protected activities; especially where, as in the instant case, various operations at the site are automated and involve different types of machines which may have different energy controls.[6]

Additionally, other language in section 3314(f) does not support Employer's interpretation. The section requires outlining "...the scope, purpose, authorization, *rules, and techniques* to be utilized for the control of hazardous energy...." This language contemplates different procedures (rules and techniques) that may apply for different machines.[7] At the most basic level, the specificity required in the outline components can only be achieved when the procedures and requirements are e*xplicitly identified* with particular machinery or equipment.

Employer further maintains that section 3314(f)(2) requiring that an employer's written procedures include steps for "shutting down, isolating, blocking, and securing machines or equipment..." does *not* include language stating that the required steps are for "each" machine or "all" of the machines or equipment. Employer submits that if machine-specific procedures were intended, then such appropriate language could have easily been inserted in the regulation. We do not agree and find Employer's interpretation which impermissibly isolates and addresses only specific language taken out-of-context in disregard of other language in the regulation which we address above, is without merit.

The words in the regulation, when read together and in view of its purpose, sufficiently communicate a requirement that the energy control procedures must be identified with the specific machinery or equipment to which it applies. We hold that the section requires a clear and specific outline of hazardous energy control procedures as prescribed therein *with respect to each machine or equipment* upon which an employee performs cleaning, repairing, servicing or adjusting. (See *Bryant Rubber Corp.,* Cal/OSHA App. 01-1358, Decision After Reconsideration (Aug. 21, 2003); Cf. *Chicken of the Sea International*, Cal/OSHA App. 01-281, Decision After Reconsideration (Feb. 28, 2003).) A generic or generalized procedure intended to apply to all machines or one that fails to be clear and specific with respect to a machine or equipment to which such procedures apply will fail to provide the specificity required in section 3314(a). [8]

Thus, we find that Employer's position that section 3314(f) does not require machine-specific procedures is contrary to both the language contained in the entire regulation and the purpose of the regulation.[9]

2. Employer's Energy Control Procedures Do Not Comply with Section 3314(f).

Employer asserts that the ALJ's decision addressing Rules 2 and 3 of Employer's written energy control procedure set forth in a two-page document (Exhibit 3, Company Wide Lockout-Tagout Policy) is erroneous because Employer's written procedure, taken has a whole, provides a sufficient outline of the "scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy" as required in Section 3314(f).

Based upon our independent review of the record in this case, we agree with the ALJ's finding that Employer's procedure lacks the specificity required in section 3314(f). Nowhere does the written procedure mention the specific machinery or equipment to which the procedure applies. Employer's written "Lockout-Tagout Policy" states the following:

What should be locked out?
Any piece of equipment that is energized by electrical, hydraulic, mechanical, pneumatic (air) or steam powers when repair or clean-up is needed. (Exhibit 3, p. 1)
This generalized statement fails to identify the specific machines or equipment used by Employer to which the subsequently stated procedure applies as required by section 3314(f) as discussed in the above analysis regarding the first issue for reconsideration.

Employer's policy further states:
How to lockout/tagout
Review lockout/tagout procedures for Zero Mechanical State information and procedures with involved employees, and each new employee is to be given a tour of the operation where he/she will be working and shown the proper way of locking out/tagging out the equipment they will be involved with during their working schedule. (Exhibit 3, p. 1)
This language in Employer's policy provides a procedure for communicating procedures to employees and new employees but does not contain clear and specific procedures employees must follow to perform the lockout/tagout. The Zero Mechanical State information and procedure referenced in the above provision (Exhibit 3, p. 2) states at Rules 2 and 3:

> 2. No matter how small the job, **the main power shall be disconnected**, and a padlock or tag put on the disconnect switch. Tags are to be used if lockout devices and/or padlocks are not practical. This applies to electrical, hydraulic, pneumatic and steam power. **First**, turn off the point-of-operations controls. (Disconnect switches should never be pulled while under load because of the possibility of arching or even explosion). Turn the main power controls switch, breaker, or valve "off." Where high voltage is involved, this is to be done by an electrician.
> 3. If there is **any doubt** about the location of the **disconnect** or the **circuits**, an electrician should be called to be **sure** the **power** source is disconnected."

We agree with the ALJ's finding that Rule 2 above does not indicate where to find power controls nor indicate the type of controls employees should expect to find, e.g. whether the controls on a specific machine or equipment can be locked out with a padlock or must be tagged out. The location of controls are ascertainable for specific machines and should be *clearly and specifically* outlined in the energy control procedure so as to remove any doubt or confusion by any employee who performs cleaning, repairing, servicing, or adjusting activities on prime movers, machinery and equipment.
Additionally, nowhere in Employer's policy are there procedures for "blocking and securing machines" as required in section 3314(f)(2) other than to generally state that "[m]achines and equipment will also be disabled to further prevent unexpected energization, startup or release of stored energy." (Exhibit 3, p. 1)[10] We find that such generalized statement fails to "clearly and specifically outline the ... rules and techniques to be utilized for the control of hazardous energy" which includes procedural steps for "blocking and securing machines or equipment" as required by section 3314(f). Accordingly, Employer’s lockout-tagout procedures do not satisfy the requirements of a written energy control procedure as contemplated by the regulation.

Our review of the evidence in view of the whole record does not justify reversal of the ALJ's findings. A general violation of section 3314(f) is sustained.

DECISION AFTER RECONSIDERATION

The Board affirms the ALJ's Decision denying Employer's appeal and assessing a civil penalty of $600.

MARCY V. SAUNDERS, Member

GERALD PAYTON O'HARA, Member

OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD

FILED ON: September 3, 2003

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

[2] Webster's New World Dictionary of the American Language, Second College Ed., 1974, p. 264.

[3] *Id.,* at page 1367.

[4] Required components include providing "the scope, purpose, authorization, rules, and techniques to be utilized for the control of hazardous energy, and the means to enforce compliance," and must include the procedures enumerated in section 3314(f)(1)-(4).

[5] "[T]he objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in [the word's] interpretation, and where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice." (*Friends of Mammoth* v. *Bd. of Supervisors of Mono County* (1972) 8 Cal.3d 247, 260)

[6] Barker's unrefuted testimony was that the sawmill was highly mechanized and automated, and further, that the power controls on one machine do not correspond to those of another in terms of location and operation characteristics. This testimony is further supported by photographs of machines at the site admitted into evidence.

[7] Additionally, the second sentence of the regulation provides for minimum required components which must be contained in the energy control procedure. A procedure must include, but is not limited to: (1) a statement of the intended use of the procedure, (2) the procedural steps for shutting down, isolating, blocking and securing machines or equipment, (3) the procedural steps for the placement, removal and transfer of lockout devices or tagout devices and the responsibility for them, and (4) the requirements for testing a machine or equipment, to determine and verify the effectiveness of lockout and tagout devices, and other energy control devices. (§ 3314(f)(1)-(4)) Each of these requirements would have little or no import if the machinery or equipment to which the procedure applies is not specifically identified in the procedure.

[8] Our finding that section 3314(f) requires control procedures for each prime mover, machine or piece of equipment does not necessarily require a separate procedure for every piece of machine or equipment upon which an employee performs cleaning, repairing, servicing or adjusting where the same "clear and specific outline" of energy control procedures apply to different machines or equipment. Thus, a single "clear and specific outline" of the procedure may apply to more than one machine or equipment so long as the machines are specifically identified and the same procedure(s) apply to such identified prime mover(s), machine(s) and equipment.

[9] Employer also argues that the Division has "proposed" changes to section 3314 to require machine specific energy control procedures which means that the Division does not interpret section 3314 as currently requiring machine-specific standards and attached documents to its petition regarding the proposed regulatory change. Employer offered this "new evidence" of the Division's regulatory proposal for the first time in its petition for reconsideration stating that it first learned of the matter in a letter dated April 17, 2002 directed to its representative inviting his input on the proposal at an Advisory Committee meeting. Since the hearing in this case was held on March 20, 2002, Employer states that it could not, with reasonable diligence, have discovered and produced the evidence. (§ 390.1(4)). However, we find that Employer failed to establish that the "new" evidence is materially relevant to the instant case. We must interpret the regulation as it existed at the time of the violation and a subsequent effort ***proposing*** to clarify or amend the regulation is not materially relevant to construing the regulation as it existed at the time of the alleged violation. Also, in interpreting a safety order, we are not bound by an interpretation by the Division. (*Bostrom-Bergen Metal Products,* Cal/OSHA App. 00-1012, Decision After Reconsideration (Jan. 10, 2003)).