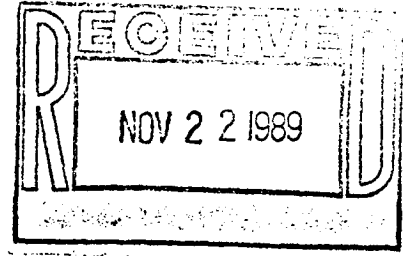


ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD
P.O. BOX 21149
JUNEAU, ALASKA 99802

STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
)
Complainant,)
)
v.)
)
GILDERSLEEVE LOGGING CO., INC.,)
)
Contestant.)



Docket No. 88-749
Inspection No. Br-5782-609-88

DECISION AND ORDER

This matter arises from an occupational safety and health citation issued by the State of Alaska, Department of Labor ("the Department") to Gildersleeve Logging Co., Inc. ("Gildersleeve") following an accident inspection of Gildersleeve's logging worksite on Prince of Wales Island on April 13-14, 1988.

The Department's citation #1 alleges that Gildersleeve violated Alaska Logging Code 07.145(a)(5) by failing to position one of its employees in a safe location as a load of logs was being landed by a Cypress swing yarder. The citation was classified as a "serious" violation and a monetary penalty of \$200 was assessed.

Gildersleeve notified the Department in a letter dated July 8, 1988, that it desired to contest citation #1.¹ A hearing was held before the Board in Ketchikan on August 16, 1989. Board members Donald Hoff and J.C. Wingfield were present and so constituted a quorum. The Department was represented by Assistant Attorney General Lisa Fitzpatrick. Gildersleeve was represented by Attorney A. Fred Miller. Both sides presented evidence in the form of witness testimony, photographs and other documentary exhibits. The evidentiary record was deemed closed at the conclusion of the hearing.

¹Gildersleeve had also been cited for a separate, non-serious safety violation which it elected not to contest.

FINDINGS OF FACT

1. On April 13-14, 1988, Department safety compliance officer Ray Brown conducted an accident inspection at Gildersleeve's logging worksite at Dora Bay on Prince of Wales Island. Brown has been a safety inspector for the Department for approximately 13 years and was involved in logging and forestry work for much of his career prior to joining the Department.

2. The purpose of Brown's inspection was to investigate a logging accident which resulted in the death of one of Gildersleeve's employees, Jeff Royer. Royer was employed as a "chaser," meaning that one of his principal tasks was to unhook cut logs as they were pulled in on a cable pulley system by a piece of heavy equipment known as a yarder. Typically, after a load of logs (a "turn") had been moved in by the yarder and unhooked by the chaser, a separate piece of heavy equipment (a loader) would place the logs onto a stack or a truck for removal. (See illustration on page 97 of Department Exhibit 14).

3. At the time of the accident, Royer was working on the front side of a Cypress swing yarder, that is, on the side where the cut logs were being landed by the yarder. (See Department Exhibit 1). Both the yarder and the nearby loader were located on a dirt haul road which was measured to be about 17 feet wide. (See Department Exhibits 1 and Gildersleeve Exhibit 3). On one side of the yarder was a relatively steep uphill slope, on the other side of the yarder was a moderate downhill slope. (See Gildersleeve Exhibit 3).

4. The Cypress swing yarder essentially consists of a large steel enclosure sitting on tank-type tracks. It has a long extended arm with which the yarder operator can manipulate various cables and rigging to move loads of cut logs that have been hooked to the cable system. The body of the yarder swivels around in short, rapid moves as the logs are maneuvered to the landing area. As the yarder swivels, the chaser must be in a safe place until the logs are landed and then he can move in to unhook each log from its cable rigging.

5. As one particular load of logs was being landed in an area immediately adjacent to the road and the yarder, a short butt log came clear up on the roadbed, pivoted on the ground and swung toward the yarder. Royer, who was working right next to one of the front tracks of the yarder, apparently failed to see the incoming short log and was pinned by the log against the track of the yarder, causing his death. (See Department Exhibits 1 through 5).

6. The three persons closest to the scene of the accident were the yarder operator (Elwood Dahlin), the loader operator (Elmo Brown) and the hooktender (Rory Wright). Neither

the yarder operator nor the hooktender testified at the hearing but each man gave a statement to the Department's investigator. (See Department Exhibits 12 and 13). The loader operator, however, did testify at the hearing.

7. Because of the yarder operator's location inside an enclosed booth, combined with the frequent swiveling of the yarder, it is apparent that he did not see Royer's position as the load of logs was coming in. Department Exhibits 3-5 and Gildersleeve Exhibit 3 illustrate the restricted vision of the yarder operator, especially of the area where Royer was working on the opposite side of the yarder from the operator's compartment. The yarder operator's statement further suggests that he did not see Royer until after he had been pinned by one of the incoming logs. The operator concluded that "the chaser was unfamiliar with this type of operation especially with the swing hazards of this type of yarder."

8. The hooktender is normally responsible for supervising the operation of the yarder and the work of the chaser. At the time of the accident, however, the hooktender was positioned approximately 300 feet away from the yarder according to the testimony of compliance officer Brown. (See also Department Exhibits 10 and 11). In his written statement, the hooktender stated: "I was watching the chaser as the logs were being landed. He was (the chaser) looking in my direction, out in the brush, unaware of the action around him."

9. The loader operator was working approximately 30 feet from the yarder when the accident occurred, but he was looking in the other direction and therefore did not see exactly what happened. He noted that Royer was a good worker but was probably not paying sufficient attention while the yarder was swinging and bringing in the next load of logs. He acknowledged, however, that the chaser has many duties to perform and that it is not always possible to be aware of every movement of the yarder and the incoming logs. It was his opinion that Royer was positioned in the safest place next to the yarder as long as he was alert and attentive.

10. Compliance officer Brown testified that because of the swinging movement of the Cypress yarder, the "zone of danger" for the chaser moves correspondingly when a load of logs is brought in. In his opinion, the front of the yarder where Royer was positioned was not a safe location; the safest place for the chaser would have been behind the yarder as it was moving (i.e. above the yarder as pictured on Department Exhibit 1 and Gildersleeve Exhibit 1; see also p. 97 of Department Exhibit 14). Brown also stated his belief that it would have been possible for Royer to get from the front to the back of the yarder by walking along the uphill side even though it was a relatively steep slope and there was not much room to get by.

11. Brown further indicated that the hooktender, as the on-scene supervisor, had the responsibility of properly positioning the chaser so he would not be at risk from a load of incoming logs. The situation was exacerbated by the fact that the yarder operator had a restricted view of the chaser's position due to the swinging movement of the yarder.

12. After completing his investigation, Brown concluded that the safety violation should be classified as "serious" in view of the fatal accident to Jeff Royer. Using the Department's penalty calculation guidelines, he calculated an unadjusted penalty of \$500, which was then reduced to \$200 in light of various mitigating factors such as Gildersleeve's good faith and good safety history. Brown specifically denied stating to company officials that they would not be cited as a result of the fatality.

13. Harvey Bell, currently the safety manager for Klukwan Forest Products, testified by telephone on behalf of Gildersleeve. His background includes two years as a logging inspector for the state of Washington OSHA program. Prior to his present employment he was the safety director for the Alaska Timber Insurance Exchange and since 1985 he has performed approximately 25 logging fatality investigations. He was assigned by the Insurance Exchange to do an investigation of the Royer fatality about two weeks after the accident. His investigation report, however, was kept confidential by the Insurance Exchange despite the Department's request for a copy of it. At the hearing, Gildersleeve offered to produce excerpts of the report to the Department but the report itself was not submitted to the Board as evidence.

14. As a result of his investigation, Bell concluded that the primary responsibility for the accident rested with Jeff Royer. Bell felt that the area where Royer was positioned was not unsafe but was actually the most safe location next to the yarder if only he had been paying attention to the incoming turn of logs. Bell reiterated the hooktender's statement that Royer was not watching the incoming logs but rather was looking away from the yarder toward the hooktender. In addition, Bell was of the opinion that moving Royer from the front to the side or back of the yarder would have placed him in even greater danger from being crushed by the yarder's counterweight or hit by the swinging cables or slipping and falling on the steep slope along the side of the yarder. Bell also confirmed that the yarder operator could not see Royer's position from his enclosed compartment on the yarder.

15. Keaton Gildersleeve, owner of the company, testified that his logging experience had included all the principal logging tasks in the field. He was familiar with Royer and thought he was qualified to work as a chaser. He noted,

however, that the chaser must be especially attentive when the yarder is moving, as the zone of safety changes with the yarder's movement. He concurred in Bell's opinion that Royer was located in the safest place he could have been next to the yarder.

16. In its presentation, the Department relied on several excerpts from the 1981 edition of the Yarding and Loading Handbook published by the Workers' Compensation Board of British Columbia (Department Exhibit 14). Over Gildersleeve's objection, the excerpts were admitted to help explain logging industry practices and standards, with the understanding that the British Columbia standards do not have the force of law in Alaska. Keaton Gildersleeve acknowledged that he was familiar with the British Columbia handbook but noted that the handbook uses as an example a stationary spar yarder rather than the swiveling Cypress yarder used by Gildersleeve. Despite this difference, we are persuaded that the British Columbia handbook sets forth relevant safety principles and practices followed in the logging industry in the Pacific Northwest and serves as a useful reference to interpret and understand the citation in contest.

CONCLUSIONS OF LAW

The central question we must address in this case is whether or not Jeff Royer was positioned in a safe location while a load of logs was being landed by the Cypress swing yarder.

Alaska Logging Code 07.145(a)(5) states: "Employees shall be positioned in a safe location, such as above or behind the turn, where they will not be exposed to the hazards of moving logs, root wads, chucks, or rigging before the 'go ahead' signal is given and they shall remain in a safe location at all times while the rigging is moving."

The 1981 edition of the Yarding and Loading Handbook, acknowledged by Gildersleeve as a primary reference source on logging in the Pacific Northwest, elaborates on safety principles and practices relevant to this case. On page 49 of the Handbook it states: "Whatever action is necessary to land the turn safely, the chaser must be in the clear, out of all danger zones, particularly the area between the spar and the incoming turn. He must be in view of the operators or the operators must be sure he is in a safe location." Other excerpts identified by the Department in the Handbook further reinforce the basic safety principles that the chaser must be removed from the zone of danger and that the yarder operator must be aware of the chaser's position while yarding is in progress.

After considering the evidence and the arguments of the parties, we conclude that the weight of the evidence establishes that Gildersleeve failed to position Jeff Royer in a safe

location while a load of logs was being landed by the Cypress swing yarder. The fact that Royer was pinned by an incoming log against the yarder, causing his death, is tragically persuasive evidence that he was not in a safe location during the yarding operation.

Moreover, the Logging Code provision cited by the Department indicates that placement of employees "above or behind the turn" would be safe locations. Royer, however, was not positioned either above or behind the landing area for the incoming logs. Nor was he removed from the "zone of danger" created by the operation of the swing yarder and the movement of the incoming logs. We agree with the Department that the safest location for Royer under the circumstances would have been to place him behind the yarder while it was in operation, even if that meant slowing down the yarding process.

We are unpersuaded by Gildersleeve's argument that moving Royer from the front to the back of the yarder would have exposed him to even greater hazards. From the photographs of the accident scene it appears to us that there was sufficient clearance to get around the side of the yarder despite the slope and that ground conditions were not especially muddy or hazardous. We find that the risks of such re-positioning would have been far less than those in allowing Royer to remain in front of the yarder.

Gildersleeve's witnesses almost uniformly place the blame for the accident on Royer's alleged lack of attention to what was going on around him. Even if true, however, such allegations ignore the primary responsibility for safety that OSHA laws place on employers, not on their employees. The Logging Code clearly requires the employer to be responsible for the positioning of employees during yarding operations. In this case, if the supervising hooktender had been closer to the working area or if the yarder operator had been aware of the chaser's position, the fatal accident may have been prevented. Proper employer supervision is especially important in situations where employees are exposed to dangerous working conditions that demand a high degree of alertness and attention. Because the risks of employee inattention can have such serious consequences in logging operations, the law clearly requires that the employer must bear the primary responsibility for safety.

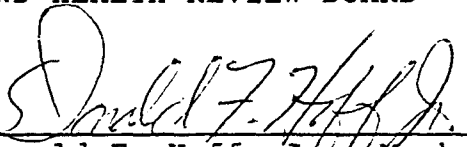
Despite our conclusion, we recognize that Gildersleeve has a good safety record and appears to take its safety responsibilities quite seriously in an industry that ranks among the most hazardous in Alaska. We feel that such mitigating factors were properly taken into consideration in the reduction of the Department's proposed monetary penalty. Moreover, we are confident that the company will take every precaution to ensure that a similar accident does not occur in the future.

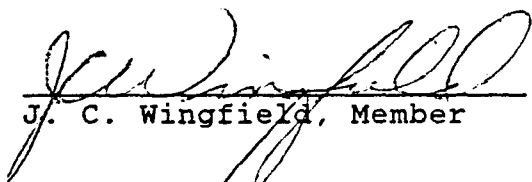
ORDER

1. Citation #1 is affirmed as a "serious" violation and the proposed penalty of \$200 is also affirmed.

DATED this 17th day of November, 1989.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD


Donald F. Hoff, Jr., Member


J. C. Wingfield, Member