

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

MARTIN J. WALSH, Secretary of)
Labor, United States Department)
of Labor)
)
Complainant,)
v.)
) OSHRC Docket No. 22-0021
SEABOARD FOODS LLC)
and its Successors,)
)
Respondent.)
) Inspection No. 1534564

SETTLEMENT AGREEMENT

Come now Complainant and Respondent and submit the following Settlement Agreement pursuant to Rule 2200.100 of the Commission's Rules of Procedure:

This Settlement Agreement specifies the terms of settlement as set out below for each contested item and disposes of all issues in the case.

Affected employees have not filed objections to the reasonableness of any abatement time.

1. Complainant amends the Citation as follows:

Citation No.	Item No.	Amendment	Original Penalty	Amended Penalty
1	1	No changes.	\$13,653.00	\$6,826.50
2	1	Withdraw.	\$13,653.00	\$0

The withdrawal of Citation 2, Item 1 is not intended to affect the Secretary's interpretation of the standard nor its application to this employer.

2. Respondent promises to pay the \$6,826.50 in assessed penalties no later than thirty (30) days after the date of this Agreement, which shall be the date of the last signature hereto. Respondent shall tender payment to www.pay.gov. If Respondent is unable to use www.pay.gov, Respondent shall mail a check to U.S. Department of Labor – Occupational Safety and Health Administration, 5104 N. Francis Ave., Ste. 200, Oklahoma City, OK 73118. The check shall be made payable to "U. S. Department of Labor - OSHA."

3. Respondent states that the specific conditions described in Citation 1, Item 1 will be corrected by the abatement dates provided in this Settlement Agreement.

4. As interim abatement, Seaboard will take the following actions in the area that is the subject of Citation 1, Item 1 (referred to in the citation as the “single quantity SKU area”). These actions will relieve employees’ exposure to strain from bending with heavy loads below the waist:

- a. Retrain employees who work in the single quantity SKU area and their supervisors on proper/ergonomic lifting techniques.
- b. Install one hydraulic pallet lift on the single quantity SKU area line as a pilot test, train employees to properly operate the lift, and divert at least the heaviest boxes (e.g., those that may weigh approximately 100 pounds) to the section of the line where the pilot lift is installed. Seaboard has one hydraulic lift currently in inventory that can be used for the pilot.
- c. Implement on a temporary basis an employee rotation program for the single quantity SKU area.

i. The temporary rotation program will be memorialized in writing.

Evidence of the written rotation program will be provided to OSHA with Seaboard's abatement certification.

ii. Seaboard will assure that employees participating in the temporary rotation program are trained in the jobs they are rotating in and out of.

iii. The training on the jobs involved in the temporary rotation program will be effective considering the skills and languages spoken by the relevant employees.

d. Seaboard will complete the interim abatement within 30 days of the date of settlement. Seaboard will provide OSHA with abatement documentation within 10 days of completing the interim abatement.

5. As long-term abatement, Seaboard will redesign and reconstruct the line in the single quantity SKU area. The redesign will eliminate bending below the waist and lifting over shoulder height boxes weighing approximately 50 pounds or more. The modifications include:

a. Constructing an elevated work platform on the existing section of the single quantity SKU line.

b. Installing a total of two hydraulic pallet lifts so the pallets can be raised and lowered as boxes containing product and weighing over approximately 50 pounds are stacked on them.

c. Constructing a new section on the single quantity SKU line to divert lighter boxes weighing less than approximately 50 pounds.

d. The long-term abatement will be completed on or before August 31, 2022. Seaboard will provide OSHA with documentation within 10 days of completing the long-term abatement.

e. In the event Seaboard is unable to meet the August 31, 2022 abatement deadline, Seaboard will petition OSHA for an extension of the deadline. In the petition, Seaboard will provide the reasons for the delay in meeting the August 31, 2022 abatement deadline, the new date by which Seaboard will complete the abatement, and a statement confirming that the interim measure detailed in Paragraph 4 of this Agreement will remain in effect until the long-term abatement is completed. OSHA agrees that it will in good faith review Seaboard's request for an extension and will not unnecessarily deny a reasonable extension request.

6. Respondent will implement the following enhancements:

a. Seaboard will require Dr. Holdeman, who provides deep tissue massage to employees, to revise his treatment form to better reflect that his sessions are limited to such massage.

b. Seaboard will provide employees scheduled to visit Dr. Holdeman written information before the visit explaining that Dr. Holdeman will provide deep tissue massage and that employees are not required to see Dr. Holdeman.

c. Within 12 months of the effective date of the Settlement Agreement, Seaboard agrees to evaluate its existing training on stretches incorporated into its employee onboarding program. Seaboard will maintain records of such evaluation and make them available to OSHA upon request.

7. Respondent will comply with all applicable abatement verification provisions of 29 C.F.R. § 1903.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification shall be accomplished within 10 calendar days after the abatement dates in this Settlement Agreement by mailing a letter to Occupational Safety and Health Administration, 5104 N. Francis Ave., Ste. 200, Oklahoma City, OK 73118, stating that abatement has been completed, the date and method of abatement, and that affected employees and their representatives have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.

8. Respondent withdraws its notice of contest.

9. Neither this Settlement Agreement nor Respondent's consent to entry of a final order by the Commission pursuant to this agreement constitutes any admission by Respondent of violation of the Occupational Safety and Health Act or regulations or standards promulgated there under. Neither this Settlement Agreement nor any order of the Commission entered pursuant to this Settlement Agreement shall be offered, used, or admitted in evidence in any proceeding or litigation, whether civil or criminal, except for proceedings and matters brought by the United States Government. Respondent is entering into this Settlement Agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before this Commission. Respondent retains the right to assert in any subsequent action or proceeding that any future existing conditions identical or similar to those alleged in the original citation, the citation as amended or the complaint do not violate the Occupational Safety and Health Act or any standard promulgated there under. By entering into this Settlement Agreement, Respondent does not admit the truth of any alleged facts, any of the characterizations of Respondent's alleged

conduct or any of the conclusions set forth in the citation or amended citations issued in this matter.

10. The parties agree that the citations are amended by this Settlement Agreement to include the full terms of this Settlement Agreement including the abatement actions and dates stated in paragraphs 4 and 5. The parties further agree that the citations as amended and the specific abatement measures set forth in paragraphs 4 and 5 of this Settlement Agreement, including all subparts therein, shall be considered required abatement of the conditions cited in Citation 1, Item 1 and that the failure to perform the measures required in paragraphs 4 and 5 may be cited as failure to abate under Section 10(b) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. (“the Act”), 29 U.S.C. § 659(b), to the same extent as if these abatement measures had been set forth from the outset in Citation 1, Item 1 issued in this matter.

11. Respondent promises to permit Complainant access to the workplace at issue herein subsequent to the date fixed for abatement for the specific and limited purpose of determining if the conditions described in the citations at issue herein have been corrected.

12. Respondent promises to continue its good-faith efforts to comply with the Occupational Safety and Health Act.

13. Respondent certifies that the names and address of all authorized employee representatives of affected employees are:

The United Food and Commercial Workers International Union Local 2

c/o Martin Rosas, President

3951 N. Woodlawn Ct.

Bel Aire, KS 67220

14. Respondent further certifies that there are no other unions representing affected employees except those set forth above.

15. The Secretary certifies that service of the fully executed Settlement Agreement was made on each authorized employee representative on the ____ day of _____, 2022.

16. Each party agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Equal Access to Justice Act, as amended.

17. The parties agree that this Settlement Agreement shall become a final order of the Commission on the same date that the Order Terminating Proceeding becomes a final order, as set forth in the Notice of Docketing to be issued by the Executive Secretary of the Commission.

Respectfully submitted,

Respectfully submitted,

SEEMA NANDA
Solicitor of Labor

JOHN RAINWATER
Regional Solicitor

SEABOARD FOODS LLC

LINDSAY A. WOFFORD
Counsel for OSHA

by:

by:

JAMES HUBLER
Vice President and General Counsel
james.hubler@seaboardfoods.com

JOHN M. BRADLEY
Trial Attorney
bradley.john.m@dol.gov

Signed this _____ day of

Signed this _____ day of

_____, 2022.

Senior Director of Environmental Affairs
9000 W. 67th Street, Suite 200
Shawnee Mission, KS 66202
Telephone: (913) 261-2600

_____, 2022.

Attorneys for Complainant
U. S. Department of Labor
Office of the Solicitor
525 Griffin Street, Suite 501
Dallas, Texas 75202
Telephone: (972) 850-3138
Facsimile: (972) 850-3101

Respectfully submitted,

UFCW DISTRICT LOCAL 2

by:

MARTIN ROSAS
President
mrosas@ufcw2.org

Signed this _____ day of
_____, 2022.

3951 N. Woodlawn Ct.
Bel Aire, KS 67220
Telephone: (316) 941-4053
Facsimile: (316) 941-4582

**NOTICE TO AUTHORIZED EMPLOYEE REPRESENTATIVES
OF AFFECTED EMPLOYEES**

EACH AUTHORIZED EMPLOYEE REPRESENTATIVE OF AFFECTED EMPLOYEES IS HEREBY GIVEN NOTICE THAT ANY OBJECTION TO THE ENTRY OF AN ORDER TERMINATING THIS LITIGATION MUST BE FILED WITHIN TEN (10) DAYS OF THE DATE OF SERVICE OF THE SETTLEMENT AGREEMENT ON THEM, BY SETTING FORTH SUCH OBJECTIONS IN WRITING AND MAILING THEM TO COVETTE ROONEY, ADMINISTRATIVE LAW JUDGE, OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION, ONE LAFAYETTE CENTER, 1120 20TH STR., N.W. – 9TH FLOOR, WASHINGTON, D.C. 20036-3419 WITH COPIES TO COMPLAINANT AND RESPONDENT.