

October 15, 2021

Empty bucket a poor ladder substitute: Is Supervisor at fault?

Worker injured in fall says he copied Supervisor

“Hey Boss, I’m looking for a ladder,” said Bill Jenkins, a facility employee. “Do you know if there’s one nearby or should I go head back to the main plant?”

“For crying out loud,” sighed Anthony Miller, the Safety Supervisor.

“I’ve told you guys about planning ahead and making sure you’ve got what you need,” Anthony continued.

“You’re going to waste at least 20 minutes heading over to the main building!” said Anthony.

“I’m sorry,” said Bill. “I was running late this morning and I know we’re on a

tight schedule with all the renovation work we still need to wrap up.”

“Well look, if you do go grab a ladder, check with the rest of the crew first to see if they need you to bring them anything,” said Anthony.

“Good idea,” said Bill.

Clock’s ticking to finish project

As Bill turned to head out, Anthony yelled out to him.

“I forgot, Marie’s on the second floor and I know she’s been using a ladder on

(Please see Empty bucket ... on Page 2)

Sharpen Your Judgment

Did Supervisor have right expertise for the job?

“We need to get to the bottom of this fine,” Safety Director Chris Taylor said. “Tell me about the accident.”

“Chuck was on call as a service technician that weekend,” Supervisor Trey Maple said. “He went out on a call and brought a broken part back here to the shop to fix.

“Later the customer called to say he hadn’t come back,” Trey said. “I came to the shop and found Chuck’s body lying by a machine.”

Technicians needed expert supervision?

“So Chuck was here alone?” Chris asked.

“Yeah,” Trey said. “And from the looks of

things, he had taken some shortcuts with his work. He had removed a key safeguard, which breaks a cardinal safety rule.”

“OSHA said our safety program is deficient,” Chris said. “They said that since we have expert technicians, they should only have Supervisors who are also experts in the field.”

“I’ve been a Supervisor 20 years, and I run a tight ship,” Trey said. “I train employees and enforce our rules. But this time a worker violated a rule while I wasn’t around. What more could I have done?”

The company fought to have the fine dismissed. Was it successful?

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Make your decision, then please turn to Page 4 for the court’s ruling.

Empty bucket ...

(continued from Page 1)

and off,” Anthony said. “See if you can borrow it.”

“Good deal, I’ll do that right now,” said Bill.

When Bill found Marie, she was pulling wires above ceiling tiles.

“No can do,” said Marie. “I’m going to need the ladder for at least another hour.”

“All right,” Bill replied.

The employee didn’t want to take any more time away from the tasks he needed to complete. And that’s when he noticed an empty five-gallon plastic bucket nearby.

Forget the ladder! Bill thought. *The bucket’s about 18 inches high, it’ll do in a pinch.*

I’m pretty sure I’ve seen Anthony use a bucket once or twice when ladders were scarce, Bill thought.

Murphy’s Law in full effect

Standing on the bucket worked just fine for Bill for a while.

Then when he reached a little too far to handle a wire, the bucket tipped over and he fell.

Lying on the ground, Bill didn’t want to move an inch. “Think I broke a rib,” he muttered.

Bill needed medical attention at the hospital for his injuries.

His employer fired him for ignoring its safety policy and using a bucket in lieu of a ladder.

But Bill didn’t take the firing

lying down – he sued for damages and lost pay.

Supervisor under microscope

“Do you remember ever using a bucket to work on?” the company lawyer asked the Supervisor.

Anthony took a deep breath and exhaled. “I’ve used a bucket once or twice in my career,” said the Supervisor. “Very rarely and only for a few seconds.”

“Bill claims he saw you do it,” said the company lawyer. “It may hurt our defense that we consistently enforced our ladder policy.”

Result: The company asked the court to dismiss the case, but the court let it go forward.

The company will most likely pay out a settlement to the employee rather than take a chance in front a sympathetic jury.

Supervisors can’t take shortcuts

Workers will parrot the actions of Supervisors even it deviates from what they hear in training or read in company safety rules.

Key: Supervisors can’t just walk the talk, they need to set the right example at all times for their team members.

Companies lose injury lawsuits just like this one if an employee can raise a reasonable doubt about safety rules being bent for some and not others.

Based on Portillo v DRMBRE.

What you need to know:

To prevent injuries like slips, trips and falls or workers taking shortcuts on safety, it’s a good idea to keep plenty of certain items in multiple spots for easy access. They include:

- step, extension and/or A-frame ladders
- orange safety cones and caution tape, and
- most commonly-used PPE.

TEST YOUR KNOWLEDGE

Preventing painful falls

Whether it’s the top of a tall building or just a walkway at work, a fall can result in devastating injuries or even death.

Test workers’ knowledge of fall protection by having them answer *True* or *False* to the following:

1. Guardrails or toeboards must be installed on any open-sided platform that is 6 feet or higher off the ground.
2. No more than three employees can be attached to the same vertical lifeline.
3. Fall arrest equipment shouldn’t be used to hoist materials.
4. Each part of a fall arrest system should be inspected once a month.
5. Any employee who uses fall protection must be trained on how to set it up and be able to demonstrate proper use, storage and inspection of equipment.

ANSWERS

1. *False.* Guardrails and toeboards are needed for a platform that is 4 feet or higher off the ground, or next level for general industry workplaces.
2. *False.* When using vertical lifelines or lanyards, each employee must be provided with his or her own line. These fall-protection devices must have a tensile strength of 5,000 pounds or greater.
3. *True.* Fall arrest systems should only be used for their intended purpose, which is protecting employees.
4. *False.* Equipment should be inspected before each use for mildew, wear, damage or deterioration. Defective equipment must be removed from service or discarded immediately.
5. *True.* Workers must be able to demonstrate a working knowledge of fall PPE.

Answers to the quiz:

Fines, accidents and damage supervisors could've prevented

News you can use to head off safety mishaps

In this regular section we highlight situations that led to fatalities, injuries, near-misses, damaged equipment or fines that frontline supervisors could've prevented.

Knocked by dump truck into a trench: 2 killed

What happened: Two workers died when a dump truck struck them and pushed them into a nine-foot deep trench at a sewer repair site in Boston.

What people did: Employees weren't trained to recognize and avoid work-related hazards including the risks of being struck by construction vehicles and other traffic. The host company, Atlantic Coast Utilities, has been fined for similar safety mistakes on job sites before. The company's also paying fines for crushing and engulfment hazards in an unguarded trench, and failure to address oxygen-deficient or toxic atmospheres in a trench and adjacent manhole.

Result: Atlantic was issued 28 citations for a \$1.3 million penalty. Its financial woes aren't over as the families of the deceased workers are almost certain to file lawsuits.

LOTO safety isn't an option - it's a must-have: \$220K

What happened: Lockout/tagout deficiencies weren't a secret to the owners/operators of this Ohio steel plant – they've been fined by OSHA previously for LOTO. Why they didn't shore up the problems when they had a chance is a mystery, but they're lucky none of their employees were seriously hurt in the interim.

What people did: An anonymous tip spurred an OSHA inspection. Republic Steel in Canton got written up for not:

- using energy-isolating devices to lock out equipment
- ensuring authorized employees used lockout/tagout devices
- guarding pulleys less than 7 feet above the floor
- installing fixed wiring rather than use flexible extension cords, and
- repairing cranes before putting them back in service.

Result: \$220,399 in fines is liable to drive the steel plant to make safety improvements.

Firm put a little too much on young workers' plates

What happened: Young workers are often eager to please and prove themselves capable of handling a variety of duties in a short amount of time. But employers must be careful to restrict them from certain jobs if the law calls for it to avoid fines and potential injuries.

What people did: Journeys Shoe Store in Dothan, Alabama, let their trust in 16-to-17-year-old workers go too far. The underage employees were allowed to drive vehicles at night (a violation of the Fair Labor Standards Act) and load operating trash compactors (against federal child labor laws). OSHA was tipped off to the company's practices.

Result: The violations led to \$37,280 in fines. Journeys has additional stores throughout the South that could be inspection targets for OSHA very soon.

SAFETY TRAINING TIPS

■ Effective safety talks: 2 golden rules to follow

Keeping workers' attention during training and toolbox talks can be challenging enough. The last thing you want is to extend a meeting longer than it needs to be.

Here are a couple of ways to keep meetings focused and from running longer than necessary:

1. **Set an end time and stick to it.** There may be some points that need to be covered, especially mandatory safety topics. But try not to make too many exceptions to the general rule. Some topics can be tabled for a follow-up meeting.
2. **Use a visible timer or meet in a room with a clock.** People are more likely to stay on topic if they have a reminder of how much time is left. You don't have to be extreme with the timer. It's simply a way to keep things moving.

(For more help with running safety meetings, go to our website and click on the "Training Jumpstarters" tab at the top left-hand corner of the SSB home page.)

■ Workers doing more: Time to re-think training?

Fact: Almost half of all managers say their staff took on different or greater responsibilities throughout the pandemic.

Employees had to find ways to work smarter and harder, whether they worked remotely alone or in a different situation on-site.

Now that the baptism by fire is over, employees likely need proper cross-training.

Try this: Pull together a group of managers and peers to assess training needs at least quarterly.

Look at department or job-specific needs and try to uncover what's common so you can maximize effectiveness with cross-training.

Scaffold collapse sends 3 workers to the hospital, results in \$295K OSHA fine

Was set-up an accident waiting to happen?

Move over, will ya?” Mac Gramble asked as he climbed to the top level of a 19-foot scaffold. “I’m coming up.”

“I hope you didn’t have a big breakfast,” Ron Mercer joked. “Paul’s already crowding me up here.”

“Real funny,” Paul said. “You’re just jealous your wife can’t cook like mine. If she did, you’d be happy to have a gut like this.”

The three workers shared a laugh as Paul slapped his massive gut. They were in a rush to finish repairing a roof, so the scaffold was crowded that day.

Too much weight to bear

“Are you using that shingle remover?” Mac asked his co-workers.

“Nope,” replied Paul. “Have at it.”

“OK,” Mac said. “Watch out.”

Mac walked toward the center of the scaffold plank to get the tool. But as he got closer to his co-workers, the board began to sag in the middle and creak.

“Whoa,” Paul said. “I think maybe we

should get ... ”

Before he could finish his sentence, the board snapped in the middle, sending all three workers tumbling down almost 20 feet. They hit planks and railings along the way, landing at the bottom of the scaffold in a horrifying mess of debris and blood.

Unsafe materials, conditions

The workers were rushed to the hospital with spinal, rib, eye, facial and chest fractures. OSHA investigated the accident.

Result: Safety inspectors found numerous fall hazards. The plank the workers were standing on couldn’t support their weight – its invoice even read “not for scaffold use.”

Because the same company had been cited for scaffold hazards in the past, the employer was fined \$294,500.

Key: Companies can’t gamble with worker safety when setting up scaffolds. They must be built to OSHA’s standards by qualified professionals.

Based on an accident at A.C. Castle/Provencher.

What you need to know:

In order to keep workers safe, scaffolds must be:

- designed by a qualified person
- erected and dismantled only by qualified, trained personnel under the supervision of a competent person
- set up on sound, firm footing or anchorage
- capable of supporting at least four times their maximum intended load, and
- inspected prior to each work shift for any damage, shifting, etc.

Sharpen Your Judgment – The Decision

(continued from Page 1)

Yes. The Occupational Safety and Health Review Commission (OSHR) tossed the fine.

OSHA claimed that the company’s safety program was deficient. It said the company had expert technicians working for it, and therefore the Supervisors should’ve also been experts in the field.

The company argued that wasn’t the case.

It said its Supervisors observed workers and disciplined them for rule violations.

It said the accident happened when a worker didn’t follow a cardinal safety rule when he was out of sight of a Supervisor.

The OSHRC agreed. It ruled there was no evidence that the company didn’t

enforce its safety policies.

It also said the Supervisor was capable of determining whether workers were obeying rules and following safety procedures – there was nothing that said he had to be a certified expert as well.

Analysis: Safety is job No. 1

Some workers will have expertise and additional training you might not. But as a Supervisor, the primary job is always to make sure they’re safe and following the rules.

Provide evidence you’re doing this with documentation and good record-keeping.

Based on Secretary of Labor v. Tire Centers.

EDITOR-IN-CHIEF:
SCOTT BALL
sball@safetynewsalert.com

MANAGING EDITOR:
FRED HOSIER

PRODUCTION EDITOR:
P.J. FRONZEO

EDITORIAL DIRECTOR:
CURT BROWN

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