

FILE NAME: Westinghouse (WH)

DATE: 1991 Oct 11

DOC#: WH087

DOCUMENT DESCRIPTION: Legal - Answer to Complaint with Cover Letter
from Lawyer - Presented to OSHA

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OSHA/cob
citations 1991



Westinghouse
Electric Corporation

Law Department

Westinghouse Building
Gateway Center
Pittsburgh, Pennsylvania 15202
Telecopier 412 642 4905

October 11, 1991

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Honorable Edwin G. Salyers
Administrative Law Judge
Occupational Safety and Health
Review Commission
1365 Peachtree Street, N.E., Room 240
Atlanta, Georgia 30367

Re: Martin v. Westinghouse Electric Corporation, Docket No. 91-1874

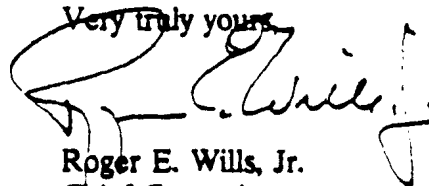
Dear Judge Salyers:

In accordance with the Rules of the Commission, I enclose the originals and one copy of the Answer to the Complaint, received by Westinghouse Electric Corporation on September 13, 1991, in the above-referenced matter and the Notice of Appearance of the undersigned counsel for Westinghouse.

I request that the originals be filed and that a conformed copy of each be returned to me in the enclosed preaddressed envelope.

As shown in the Certificate of Service attached to the Answer, I have served copies of the enclosed documents on the Complainant and the Steward of the Millwrights Union Local 1544.

Very truly yours,


Roger E. Wills, Jr.
Chief Counsel

Enclosure



Honorable Edwin G. Salyers
October 11, 1991
Page 2

cc: (w/enclosures)

Ralph D. York, Esq.
Associate Regional Solicitor
United States Department of Labor
2002 Richard Jones Road, Suite B-201
Nashville, Tennessee 37215

Mr. Harry Roberts, Steward
Millwrights Union Local 1544
295 Plus Park Boulevard, Suite 203
Nashville, Tennessee 37217

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U.S. DEPT. OF LABOR
NASHVILLE, TENN.
1100 JONES ROAD, SUITE B-201
NASHVILLE, TENN. 37215

Journal of Interpersonal Violence 19(9)

OSHRC DOCKET NO.

91-1874

REGION IV

ANSWER TO COMPLAINT

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I.

II.

III.

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business in Pittsburgh, Pennsylvania. Further, Respondent is not required to admit or deny the allegations in Paragraph II of the Complaint to the extent that they set forth conclusions of law as to jurisdiction.

IV.

The Respondent admits in part and denies in part the allegations of Paragraph III of the Complaint. The Respondent admits that an inspection of the workplace took place on May 30 and 31, 1991 by a representative of the Complainant and that it received a form entitled Citation and Notification of Penalty.

V.

The Respondent admits in part and denies in part the allegations of Paragraph IV of the Complaint. Respondent admits that the form entitled Citation and Notification of Penalty is attached as Exhibit A and denies the allegations that the violations, which are the subject of the Notice of Contest, occurred at the workplace.

VI.

The Respondent admits in part and denies in part the allegations of Paragraph V of the Complaint. The Respondent admits that Respondent submitted a notification of intent to contest the Citation and Notification of Penalty Items No. 1 and 2b. The Respondent is without sufficient information and knowledge to form an opinion or belief as to the date the Complainant received the Respondent's notification. The Respondent neither admits or denies the remainder of Paragraph V in that these allegations set forth conclusions of law.

VII.

The Respondent admits in part and denies in part the allegations of Paragraph VI of the Complaint. The Respondent admits that it employed employees at the workplace and that one

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2. With respect to Paragraph VIII C 2 of the Complaint, Respondent admits that initial airborne monitoring was not conducted prior to the initiation of repairs on turbine units 1, 2 and 3. Respondent denies that the work on turbine units 1, 2 and 3 involved asbestos.

D. Respondent denies the allegations of Paragraph VIII D except that employees were engaged in maintenance and repair work on the turbine units 1, 2 and 3 referred to above.

E. Respondent denies the allegation of "cited conditions, circumstances, practices, or operations" and admits the remainder of the allegations of Paragraph VIII E.

F. Respondent denies the allegations of Paragraph VIII F.

G. Respondent denies the allegations of Paragraph VIII G.

H. Respondent denies the allegations of Paragraph VIII H.

X.

DEFENSES TO PARAGRAPH VIII OF THE COMPLAINT

A. Respondent alleges that through the data in its possession prior to the encapsulation it was not required to monitor the air. This data consisted of:

1. Its knowledge of the design of the Westinghouse turbines and the fact that the fixed cloth insulation was "non-friable;"

2. That the fixed cloth insulation at the relevant times was non-friable and did not present a risk of exposure of asbestos fibers to the employees; and

3. The condition of the fixed cloth insulation was verified and confirmed by a representative of the Tennessee Environmental Protection Agency before the encapsulation operation was conducted by one employee.

4. Respondent further alleges that only after this data was obtained and reviewed did one employee encapsulate the fixed cloth insulation.

B. The provisions of 29 CFR Sections 1926.58(f)(2)(i) and (ii) authorize encapsulation without airborne monitoring if data is available with respect to the work to be performed. The provisions of 29 CFR Section 1926.58(f)(2)(ii) applied to this work.

C. The employees engaged in the repair operations on turbine units 1, 2 and 3 were not engaged in activities that required work that could release asbestos fibers in excess of the action level and/or excursion limit.

D. Prior to initiation of work on turbine units 1, 2 and 3 Respondent had bulk samples taken from the areas covering the bolts and flanges to determine if asbestos was present in these areas. Prior to work on these units Respondent received the test results of the samples taken on each unit and these tests demonstrated that asbestos was not present in these areas.

E. The workplace was not subject to 29 CFR 1926.58 since the repair operations on turbine units 1, 2 and 3 did not involve asbestos. The articles, or class of articles, that were being repaired are not identified in 29 CFR 1926.58.

F. The diligence of Respondent and its knowledge of the turbine units 1, 2 and 3 made it clear that the employees would not be exposed to asbestos.

XI.

A. Respondent denies the allegations contained of Paragraph IX A.

B. The Respondent admits in part and denies in part the allegations of Paragraph IX B of the Complaint. The Respondent admits that, under contract, its employees were engaged in the performance of maintenance and repair at a facility operated by the Tennessee Valley Authority. Respondent lacks sufficient information and knowledge as to the remaining allegations of Paragraph IX B of the Complaint.

C. Respondent denies the allegations in Paragraph IX C of the complaint.

D. Respondent denies the allegations contained in paragraph IX D.

E. Respondent denies the allegations contained in paragraph IX E.

F. Respondent denies the allegations contained in paragraph IX F.

G. Respondent denies the allegations contained in paragraph IX G.

XII.

DEFENSES TO PARAGRAPH IX OF THE COMPLAINT

A. The Respondent maintained an office in a mobile trailer that was within 60 feet of the workplace. There were also trailers used for change rooms. The workplace was generally subject to the weather and climatic conditions since the walls and roofs over the turbines were generally removed before work began.

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DATE 10/13/2011 BY 60322 AUC/ML/STP

B. The Respondent maintained material safety data sheets in a red three ring binder in the trailer office.

C. The employees had daily access to the trailer office which contained:

1. The only telephone for the employees to use;
2. The employees' timecards;
3. The shop drawings for the turbines and the project;
4. All payroll activities; and
5. The manuals that the employees were required to use from time to time in order to perform their assigned jobs.

D. The office was the only feasible structure in which documents could be maintained on the worksite that was accessible to Respondent and its employees; that was heated/air conditioned; that was indoors; and that was not subject to adverse weather conditions.

E. The Employees also had access to the trailer office to obtain tools or materials from time to time as the employees required.

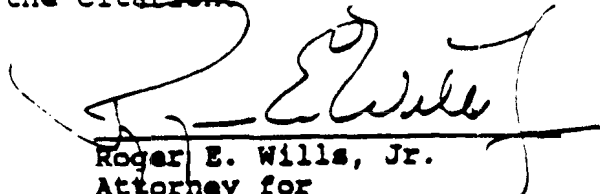
F. The employees had access to the trailer office to also review the material safety data sheets in the red three ring binder.

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DATE 11/13/03 BY 60322 UCBAW/MIC

DECLASSIFIED 1999

RELIEF REQUESTED

Respondent respectfully requests that the Commission dismiss the complaint and vacate the citation.



Roger E. Wills, Jr.
Attorney for
Westinghouse Electric Corporation
Room 2100
Westinghouse Building
11 Stanwix Street
Pittsburgh, PA 15222
(412) 642-5815

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Nashville, Tennessee

NOTICE OF APPEARANCE

In the Matter of: Martin v. Westinghouse Electric Corporation
Docket No. 91-1874

The undersigned hereby enters an appearance as a representative
of Westinghouse Electric Corporation in the above-captioned matter.

Name: Roger E. Wills, Jr.Date: October 11, 1991Title: Chief CounselSignature: Roger E. Wills

Employer/Organization: _____

Westinghouse Electric Corporation

Nature of Organization: _____

Manufacturing

Address: _____

Westinghouse Building, Room 210011 Stanwix StreetPittsburgh, PA 15222

Phone: _____

(412) 642-5815DESIGNATION OF REPRESENTATIVE

I hereby certify that Roger E. Wills, Jr., whose
appearance is noted above, is authorized to act as my representative
in the above matter, to discuss all facts and information related
thereto, to negotiate a settlement, and to accept service of pleadings
and other legal process on my behalf.

Name: Robert E. PetersDate: October 11, 1991Title: Assistant SecretarySignature: Robert E. Peters

Employer/Organization: _____

Westinghouse Electric Corporation

Nature of Organization: _____

Manufacturing

Address: _____

Westinghouse Building, Room 172811 Stanwix Street, Pittsburgh, PA 15222

Phone: _____

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