

State of Tennessee

Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
Phone: 615-741-2793 Fax: 615-253-1623



Citation and Notification of Penalty

To:
Tennessee Valley Railroad Museum
and its successors
4119 Cromwell Road
Chattanooga, TN 37421

Inspection Number: 1641715
Inspection Date (s): 01/04/2023
Issuance Date: 04/24/2023
Reporting ID: 0454713
CSHO ID: L1455
Optional Report #: 013-2023

Inspection Site:
2202 North Chamberlain Avenue,
Chattanooga, TN 37406

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

On 01/04/2023, an inspection of your establishment/workplace was conducted by the Tennessee Occupational Safety and Health Administration (TOSHA) pursuant to Tennessee Code Annotated §§ 50-3-101 through 50-3-918. This Citation and Notification of Penalty (hereafter referred to as this Citation) allege violations of standards and/or rules promulgated under the provisions of the Code. These alleged violations must be corrected on or before the date indicated with each violation description.

Under the Code, employers have certain responsibilities and rights regarding citations for alleged violations.

EMPLOYER RESPONSIBILITIES

POST THIS CITATION

T.C.A. § 50-3-307(a)(4) and Department of Labor and Workforce Development Rules require this Citation (or a copy) to be immediately posted at or near the location where each alleged violation occurred, or if not practicable, in a prominent place visible to all employees. This Citation must remain posted until the alleged violations are corrected but for no less than three (3) working days. Equipment, referenced in this Citation, that is moved during the correction period, must have a copy of this Citation attached. Failure to post this Citation subjects the employer to a penalty of up to \$3,000.00 for each Citation not posted.

CORRECT THE VIOLATIONS

You must correct each violation by the date listed in this Citation unless you request an extension or file a notice of contest. (See "Formal Contest" below.)

EXTENSION OF CORRECTION DATES

1) You may request an extension of the correction date(s) set forth in this Citation(s) when you cannot correct the alleged violation(s) by the date listed because of circumstances beyond your control. The request must be in writing and filed with the TOSHA area office supervisor no later than the end of the business day on the day after the original abatement date. The request must include the following information:

- a) Steps taken to-date to correct the cited conditions.
- b) Additional time needed to achieve compliance.
- c) The reasons additional time is necessary.
- d) All interim steps being taken to safeguard employees against the cited hazard.
- e) A dated certification that a copy of the request has been posted and, if appropriate, served on the authorized representative of affected employees.

The employer shall post a copy of the request in a conspicuous place for a period of twenty (20) calendar days. The area supervisor then has ten (10) days after the posting period to grant or deny the request and will inform the employer of such, in writing, by the end of the ten (10) day period.

To request an extension of correction date(s), contact Jon Morris, Area Supervisor via email at Jon.Morris2@tn.gov, at telephone (423) 634-3173 or fax (423) 634-8179.

NOTIFY TOSHA OF CORRECTIVE ACTION

You must notify Jon Morris, in writing, when correction of each alleged violation has been completed. Enclosed is the Abatement Certification Form to be used to report corrective action taken for each violation. Instructions for completing this form are also enclosed.

You must also notify your employees and their representatives (if represented) of corrective action taken by posting the Abatement Certification Form, or by other effective means.

For items identified in this Citation as “**Abatement Verification Required**”, you must include additional documentation such as photographs, receipts, work orders, etc. to verify the corrective action taken. Failure to provide this additional documentation to TOSHA will subject the employer to additional penalties of up to \$1,000.00. This additional documentation must also be posted at or near where the violation occurred. Failure to post the additional documentation will subject the employer to additional penalties of up to \$3,000.00.

PAYMENT OF PENALTY

Payment for the penalty is **due in full thirty (30) days from the date of receipt of this Citation and Notification of Penalty** unless a notice of contest is filed. Correction of alleged violation(s) does not excuse you from payment of any penalty which has become a final order of the Department of Labor and Workforce Development. Penalties not paid within thirty (30) days from the date of receipt will be assessed late fees and interest (see the Penalty Notice enclosed). Penalties may be paid online by visiting www.tnosha.gov or by check or money order made payable to: “Treasurer State of Tennessee.” Mail payments to the following address:

**State of Tennessee, Department of Labor and Workforce Development
Division of Occupational Safety and Health
Attn: Penalty Payments
220 French Landing Drive
Nashville, TN 37243-1002**

EMPLOYER RIGHTS

INFORMAL CONFERENCE

You may request an informal conference to discuss the alleged violations and/or penalties. Informal conferences **must be held within twenty (20) days of the receipt of this Citation and Notification of Penalty**. To schedule an informal conference, contact Jon Morris, Area Supervisor at telephone (423) 634-3173 or fax (423) 634-8179. Twenty four (24) hours prior to the informal conference post the “Notice to Employees of Informal Conference” and bring a copy of the notice to the informal conference. A copy of the notice is enclosed.

FORMAL CONTEST

You have the right to contest any or all parts of this Citation and/or the penalties before the Tennessee Occupational Safety and Health Review Commission. If you choose to contest, you must submit written notification to the Commissioner of Labor and Workforce Development stating what parts of this Citation and Notification of Penalty you are contesting. Notification **must be received within twenty (20) calendar days of receipt of this Citation and Notification of Penalty**. If you do not contest within the twenty (20) calendar day period, this Citation and Notification of Penalty shall be deemed a final order and not subject to further review by any agency or court (T.C.A. §§ 50-3-307(b) and 50-3-407, and Tennessee Department of Labor and Workforce Development Rules Chapter 0800-01-04).

ADDITIONAL INFORMATION

For additional information, contact Jon Morris, Area Supervisor, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 1301 Riverfront Parkway Suite 202, Chattanooga, TN 37402 or via email at Jon.Morris2@tn.gov.

ABATEMENT CERTIFICATION FORM

INSTRUCTIONS

- 1) Complete this form for each cited violation item as follows:
 - a) Enter the citation number and item number in the first column
 - b) Enter the date the item was corrected in the second column
 - c) Explain in detail how each cited violation item was corrected in the third column (See examples below)
- 2) You may request an extension of the correction date(s) set forth in this Citation(s) when you cannot correct the alleged violation(s) by the date listed because of circumstances beyond your control. The request must be in writing and filed with the TOSHA area office supervisor no later than the end of the business day on the day after the original abatement date. The request must include the following information:
 - a) Steps taken to-date to correct the cited conditions.
 - b) Additional time needed to achieve compliance.
 - c) The reasons additional time is necessary.
 - d) All interim steps being taken to safeguard employees against the cited hazard.
 - e) A dated certification that a copy of the request has been posted and, if appropriate, served on the authorized representative of affected employees.

The employer shall post a copy of the request in a conspicuous place for a period of twenty (20) calendar days. The area supervisor then has ten (10) days after the posting period to grant or deny the request and will inform the employer of such, in writing, by the end of the ten (10) day period.
- 3) To request an extension of abatement/correction, contact Jon Morris, Area Supervisor via email at Jon.Morris2@tn.gov, or at telephone (423) 634-3173 or fax (423) 634-8179.
- 4) Email to Jon.Morris2@tn.gov; you may also mail or fax the completed form to the Area Office shown on the form.
- 5) Contact the Area Office Supervisor for additional information or if you have any questions
- 6) Additional copies can be obtained electronically at:
http://tn.gov/assets/entities/labor/attachments/TOSHA_Abatement_Form_2001.pdf

Examples of How to Complete the Form

Citation & Item #	Date Corrected	HOW CORRECTED
1/1	02/16/2008	<p>The unguarded band saw #1234 located in the maintenance area was fitted with a factory made guard purchased from Ajax Equipment Co. The unused portion of the blade is now fully enclosed in a metal guard. Employees have been trained in the proper use of safety equipment.</p> <p>(NOTE: This item was identified as “Abatement/Correction Documentation Required” - We have also enclosed photographs of the newly guarded saw and a copy of the purchase documents from Ajax Equipment the parts supplier.)</p>
2/1a	02/18/2008	A plumbed emergency eyewash and drench shower were installed by ABC Plumbing Co in the acid mixing area. Employees have been trained in the proper use and maintenance of this emergency equipment.
2/1b	02/24/2008	A written hazard communication program has been developed (copy enclosed). All employees have been trained about the haz com program and its components. They have also been trained in the proper use of the specific chemicals they may use in performing their jobs.
2/4	REQUEST EXTENSION OF ABATEMENT PERIOD	<p>We ordered deluge showers on 12/15/15 (P.O. #76) and were informed that they would be shipped 12/16/15. Request extension until 01/17/16. As an interim safety precaution, we temporarily provided rubber water hoses at faucets near the plating tanks. Personal protective equipment is mandatory for this area.</p> <p><i>I certify that a copy of this request was posted on the employee’ bulletin board on (date) and that employees have been informed of their rights under the Act.</i></p> <p>OR</p> <p>We ordered deluge showers on 12/15/15 (P.O. #76) and were informed that they would be shipped 12/16/15. Request extension until 01/17/16. As an interim safety precaution, we temporarily provided rubber water hoses at faucets near the plating tanks. Personal protective equipment is mandatory for this area.</p> <p><i>I certify that a copy of this request was posted on the employees' bulletin board on (date) and that employees have been informed of their rights under the Act.</i></p>

ABATEMENT CERTIFICATION FORM

AREA SUPERVISOR

Tennessee Department of Labor and Workforce Development
Division of Occupational Safety and Health
1301 Riverfront Parkway Suite 202
Chattanooga, TN 37402

SUBMITTED BELOW IS THE ACTION(S) TAKEN TO CORRECT THE ALLEGED VIOLATION(S) LISTED ON THE CITATION(S) AS THE RESULT OF INSPECTION NUMBER: 1641715 ISSUED TO:

Tennessee Valley Railroad Museum, 4119 Cromwell Road, Chattanooga, TN 37421

Citation & Item #	Date Corrected	How Corrected

A COPY OF THE CITATION(S) WAS (WERE) POSTED AS REQUIRED BY TENNESSEE CODE ANNOTATED §50-3-307(a)(4).

Employer Official's Signature

_____/_____/_____
Date

Job Title



State of Tennessee
Department of Labor and Workforce Development
Division of Occupational Safety and Health (TOSHA)

**NOTICE TO EMPLOYEES
OF
INFORMAL CONFERENCE**

An informal conference has been scheduled with TOSHA to discuss the Citation and Notification of Penalty. The conference will be held at the TOSHA office located at 1301 Riverfront Parkway Suite 202, Chattanooga, TN 37402 on _____ (date) at _____ (time). Employees and/or representatives of employees have a right to attend an informal conference.

Post this notice twenty-four (24) hours prior to the informal conference.

A copy of this notice must be brought to the informal conference.

State of Tennessee

Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
Phone: 615-741-2793 Fax: 615-253-1623

Inspection Number: 1641715
CSHO ID: L1455
Optional Report #: 013-2023
Inspection Date(s): 01/04/2023
Issuance Date: 04/24/2023

**Citation and Notification of Penalty**

Company Name: Tennessee Valley Railroad Museum
Inspection Site: 2202 North Chamberlain Avenue Chattanooga, TN 37406

Citation 1 Item 1 **Type of Violation: Serious**

29 CFR 1926.453(b)(2)(v): A body belt was not worn and/or a lanyard was not attached to the boom or basket when working from an aerial lift:

In that two employees did not wear fall protection while ascending in a Snorkel TB-A42RDZ aerial lift to access the roof, exposing the employees to an ejection hazard and falling approximately 37 feet to the concrete/gravel ground below.

<u>Date By Which Violation Must be Abated:</u>	<u>May 08, 2023</u>
<u>Proposed Penalty:</u>	<u>\$1200.00</u>

Citation 1 Item 2 **Type of Violation: Serious**

29 CFR 1926.501(b)(1): Each employee on a walking/working surface with an unprotected side or edge which was 6 feet (1.8 m) or more above a lower level was not protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.

In that an employee was working from an approximate 37-foot-high roof fixing roof leaks without fall protection that resulted in a fatality.

<u>Date By Which Violation Must be Abated:</u>	<u>May 08, 2023</u>
<u>Proposed Penalty:</u>	<u>\$5400.00</u>

State of Tennessee

Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
Phone: 615-741-2793 Fax: 615-253-1623

Inspection Number: 1641715
CSHO ID: L1455
Optional Report #: 013-2023
Inspection Date(s): 01/04/2023
Issuance Date: 04/24/2023

**Citation and Notification of Penalty**

Company Name: Tennessee Valley Railroad Museum
Inspection Site: 2202 North Chamberlain Avenue Chattanooga, TN 37406

Citation 1 Item 3 **Type of Violation: Serious**

29 CFR 1926.501(b)(4)(i): Each employee on walking/working surfaces was not protected from falling through holes (including skylights), more than six feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.

In that the fiberglass skylights on the roof were not guarded before an employee fixed the roof leaks, exposing an employee to an approximate 37-foot fall hazard that resulted in a fatality.

Date By Which Violation Must be Abated:

May 08, 2023

Proposed Penalty:

\$5400.00

A handwritten signature in blue ink that reads "Wendylee K. Fisher".

Wendylee K. Fisher, Administrator
Division of Occupational Safety and Health

State of Tennessee

Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
Phone: 615-741-2793 Fax: 615-253-1623

Inspection Number: 1641715
CSHO ID: L1455
Optional Report #: 013-2023
Inspection Date(s): 01/04/2023
Issuance Date: 04/24/2023

**Citation and Notification of Penalty**

Company Name: Tennessee Valley Railroad Museum
Inspection Site: 2202 North Chamberlain Avenue Chattanooga, TN 37406

PENALTY NOTICE

PENALTY PAYMENT DUE

Pursuant to T.C.A. §§ 50-3-402 through 408 your company has been assessed a monetary penalty. To avoid the addition of interest and delinquent fees, payment of this penalty is due in full no later than thirty (30) calendar days from the date you received this Citation and Notification of Penalty unless a notice of contest is filed. Penalties should be paid by check or money order payable to "Treasurer State of Tennessee." Mail payment to the following address:

**State of Tennessee, Department of Labor and Workforce Development
Division of Occupational Safety and Health
Attn: Penalty Payments
220 French Landing Drive
Nashville, TN 37243-1002**

DELINQUENT FEES AND INTEREST

Pursuant to T.C.A. § 50-3-107 interest and delinquent fees will be assessed for all unpaid penalty amounts that are over thirty (30) calendar days from the date you received this Citation and Notification of Penalty.

Interest charges will be assessed every thirty (30) days, at an interest rate established pursuant to T.C.A. § 67-1-801(a)(1). In addition to the interest applied, a delinquent fee of ten percent (10%) will be assessed for each penalty unpaid at thirty (30), sixty (60), and ninety (90) days to a maximum of thirty percent (30%).

Unpaid penalties are referred to the Attorney General for collection at one hundred eighty (180) days past due.

State of Tennessee
Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
Phone: 615-741-2793 Fax: 615-253-1623

Inspection Number: 1641715
CSHO ID: L1455
Optional Report #: 013-2023
Inspection Date(s): 01/04/2023
Issuance Date: 04/24/2023




Citation and Notification of Penalty

Company Name: Tennessee Valley Railroad Museum
Inspection Site: 2202 North Chamberlain Avenue Chattanooga, TN 37406

SUMMARY OF PENALTIES FOR INSPECTION NUMBER 1641715

Citation 1 Item 1, Serious	\$1200.00
Citation 1 Item 2, Serious	\$5400.00
Citation 1 Item 3, Serious	\$5400.00
TOTAL PROPOSED PENALTIES:	\$12000.00


Wendylee K. Fisher, Administrator
Division of Occupational Safety and Health

MAY 02 2023

Date

SUBMIT PAYMENT BY:

JUN 01 2023

TO OUR NASHVILLE OFFICE

STATUS OF COMPLAINT/REFERRAL ITEMS (if applicable):

Complaint #: 1983996

Inspection #: 1641715

Item 1: TN OSHA received notification of a fatality from the Chattanooga Fire Department after an employee fell through a skylight to the ground below.

Status: It was determined that the employee was on the roof caulking holes to stop the roof from leaking. The employee did not have on fall protection. As he was walking back to the aerial lift basket to retrieve some more caulking, he fell through a skylight approximately 37 feet to the concrete ground below. See citation for details in regard to this item.

Inspection #: 1641715

Establishment Name: Tennessee Valley Railroad Museum

Optional Report Number: 013-2023

Investigation Summary

On 01-04-2023, [Witness Identity/Identifiable Information TCA 50-3-302(d)], contacted TN OSHA by phone to report a fatality. The TOSHA 36 form was completed by Chattanooga Health Area Supervisor Susan Vaughn. CSHOs Ball and Holmes arrived at the work site on the evening of 01-04-2023 to conduct an investigation. Upon arrival at the work site, contact was made with [Witness Identity/Identifiable Information TCA 50-3-302(d)], and [Witness Identity/Identifiable Information TCA 50-3-302(d)]. We were directed inside where an opening conference was held with [Witness Identity/Identifiable Information TCA 50-3-302(d)] and [Witness Identity/Identifiable Information TCA 50-3-302(d)]. The process of the inspection was explained, and that employee interviews and photographs would be taken.

Findings

A fatality occurred after an employee fell through a skylight approximately 37 feet to the concrete ground below and was fatally injured. The incident occurred at the Tennessee Valley Railroad Museum. The building the incident occurred in was the Soule Shop that was approximately 13,500 square feet and contained skylights on the roof that were approximately 9 feet long and 3 feet wide. The shop was used to maintain rail cars.

On the day of the incident, the victim was attempting to fix leaks in the roof of the shop. [Witness Identity/Identifiable Information TCA 50-3-302(d)]

[Witness Identity/Identifiable Information TCA 50-3-302(d)] drove the aerial lift to the north side of the shop and elevated the lift to access the roof. [Witness Identity/Identifiable Information TCA 50-3-302(d)]

[Witness Identity/Identifiable Information TCA 50-3-302(d)] The victim caulked the edge of the roof from the center point to the east side. This took him approximately 30 minutes. [Witness Identity/Identifiable Information TCA 50-3-302(d)]

[Witness Identity/Identifiable Information TCA 50-3-302(d)] stated that the victim mentioned since he was already up on the roof, he was going to walk around to see if there were any other holes. The victim found an additional hole south of where he was originally caulking. The victim started walking forward back to the aerial lift basket located on the north side of the building to retrieve more caulk. [Witness Identity/Identifiable Information TCA 50-3-302(d)]

[Witness Identity/Identifiable Information TCA 50-3-302(d)] stated he was reaching down to get the caulk out of the tool bag and when he looked up, he saw the victim in the skylight up to his chest trying to grab something to hold onto. The victim then fell all the way through the northeastern most skylight approximately 37 feet to the concrete ground below. [Witness Identity/Identifiable Information TCA 50-3-302(d)] stated that he saw the employee in the aerial lift basket and the victim on the roof as he entered the shop. The employee went to the break room and as he was coming out of the break room, he saw the victim's feet hanging from the skylight and then fall.

Neither the employee nor the victim had fall protection on at any point during this job. When asked, [Witness Identity/Identifiable Information TCA 50-3-302(d)] and [Witness Identity/Identifiable Information TCA 50-3-302(d)] stated that there were no anchor points on the roof that the employees could have used. There were multiple fall protection harnesses and lanyards observed on site. The victim was the General Manager of the site.

Conclusion

On the day of the incident, the victim was trying to repair the roof because it was leaking. The victim did not have fall protection on, and the skylights on the roof were not guarded. The victim fell through the northeastern most skylight approximately 37 feet and sustained fatal injuries on site. The employer did not ensure that employees were protected when working in an aerial lift, working at heights six feet or greater, and that the skylights were properly guarded/covered.

Recommendations

Based on the information received during the inspection, I am recommending that serious citations be issued for the following items:

- A body harness shall be worn, and a lanyard attached to the boom or basket when working from an aerial lift.
- Each employee on a walking/working surface (horizontal and vertical surface) with an unprotected side or edge which is 6 feet (1.8 m) or more above a lower level shall be protected from falling by the use of guardrail systems, safety net systems, or personal fall arrest systems.
- Each employee on walking/working surfaces shall be protected from falling through holes (including skylights) more than 6 feet (1.8 m) above lower levels, by personal fall arrest systems, covers, or guardrail systems erected around such holes.