

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**EDDIE THOMPSON,**

**Appellant,**

**v.**

**ICI AMERICAN HOLDING f/k/a NATIONAL STARCH & CHEMICAL,**

**Respondents.**

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DOCKET NUMBER WD72374

**Date: August 9, 2011**

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Appeal from:  
Labor and Industrial Relations Commission Circuit Court

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Appellate Judges:  
Division One: Mark D. Pfeiffer, P.J., Thomas H. Newton and Alok Ahuja, JJ

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Attorneys:  
Wilson R. Stafford, Kansas City, MO, for appellant.  
Douglas M. Greenwald, Kansas City, KS, for respondent.

# MISSOURI APPELLATE COURT OPINION SUMMARY

## COURT OF APPEALS -- WESTERN DISTRICT

**EDDIE THOMPSON**

**Appellant,**

**v.**

**ICI AMERICAN HOLDING f/k/a NATIONAL STARCH & CHEMICAL,**

**Respondents.**

WD72374

Labor and Industrial Relations Commission

Affirmed/Denied:

Eddie Thompson was injured when he and another employee attempted to replace three drive belts on a “blending blower” at National Starch’s North Kansas City plant. Thompson suffered injuries to three fingers on his right hand when they were pinched between a drive belt and a pulley. Thompson and his co-worker had cut the electrical power to the blower prior to beginning work on the broken belts. They failed, however, to eliminate the reverse air flow to the blower. As a result, a sheave within the blower continued to rotate. Instead of shutting off the air valve to the blower or seeking help from a supervisor, Thompson and his co-worker inserted an aluminum broom handle into the machine to stop the sheave from rotating. The broom handle broke shortly after Thompson began working on the blower, resulting in his injury.

National Starch argued that Thompson caused his own injury by failing to follow its Lock-Out-Tag-Out safety rules. The Lock-Out Rules require that workers completely de-energize and isolate a piece of equipment from energy sources before any maintenance or repair work is conducted on the equipment.

An administrative law judge (ALJ) awarded Thompson \$72,834.39 in benefits. The ALJ also assessed a 37.5% reduction to Thompson’s award pursuant to § 287.120.5, however, based on his finding that Thompson’s injury was caused by his failure to follow National Starch’s Lock-Out Rules. After deducting amounts previously paid by National Starch, the ALJ calculated total benefits due to Thompson of \$19,856.84. The Commission affirmed and adopted the ALJ’s award, findings of fact, and conclusions of law. Thompson appeals.

**AFFIRMED AS MODIFIED.**

Opinion Holds:

Thompson first argues that the evidence was insufficient to establish that his failure to follow National Starch's Lock-Out Rules caused his injury. The purpose of those rules, however, is to prevent injuries caused by the unexpected startup of machinery while employees are working on it – precisely the situation which occurred here. In addition, Thompson acknowledged in his testimony that his hand was injured when the sheave began to rotate due to reverse air flow, pulling his fingers between a drive belt and pulley. A National Starch employee similarly testified that Thompson's failure to lock-out the reverse air flow was one of the causes of his injury. The fact that other circumstances, such as Thompson's attempt to replace a drive belt while the belt was at full tension, may have contributed to his injuries does not negate the causal connection between his safety rule violation and his injury.

Thompson next argues that the evidence failed to show that he knew that the reverse air flow was an energy source subject to the Lock-Out Rules. Thompson had been trained repeatedly on the Lock-Out Rules over a period of more than ten years. Thompson's testimony indicates that he was aware that reverse air flow was powering the sheave even though electrical energy had been cut, as evidenced by the fact that the sheave continued to rotate. Thompson also acknowledged that the air flow was a type of energy in use at the National Starch plant, and that this energy could be locked out using control valves. A National Starch witness testified specifically that the Lock-Out Rules applied to air flow. Even if Thompson did not know precisely how to de-energize this air flow, the evidence indicated that National Starch's policy required him to contact a supervisor before proceeding with maintenance work. The Commission's finding that Thompson violated a safety rule of which he was aware is supported by sufficient competent evidence.

Thompson also argues that the evidence was insufficient to show that National Starch had engaged in reasonable efforts to cause employees to obey the Lock-Out Rules. However, while there is no evidence of National Starch actually disciplining employees for their failure to follow the rules, the evidence indicates that Thompson received virtually annual training on the rules, and was tested to confirm his understanding of the rules. Further, National Starch advised employees that they would be subject to discipline, including potential termination, if they violated the rules. This evidence supports the Commission's determination that National Starch had engaged in reasonable efforts to enforce employee compliance with the rules.

Thompson argues that § 287.120.5, which authorizes a reduction of an award by between 25% and 50% where a claimant's safety-rule violation caused his injuries, violates his Equal Protection rights, because the increase to an award authorized by § 287.120.4 where an injury is caused by an employer's failure to follow statutes or orders is only 15%. Employers subject to the 15% increase under § 287.120.4 are not similarly situated to employees subject to the 25% to 50% reduction under § 287.120.5, however. At the time the increase is triggered, an employer has already been held liable to fully compensate the employee for his or her injury; the 15% increase is not compensatory, but a penalty. On the other hand, when the § 287.120.4 reduction comes into play, an employee has to that point assumed no financial responsibility for the costs of his or her own injury. The reduction authorized by § 287.120.4 is thus comparable to a determination of an employee's comparative fault, not a penalty. Because employers and employees are not similarly situated, the disparity between the percentage reductions and additions authorized by §§ 287.120.4 and .5 is not irrational, and does not violate Thompson's equal protection rights.

Finally, Thompson correctly points out a \$300.00 arithmetical error in the Commission's award. We accordingly modify the award pursuant to § 287.495.1, to increase the benefits owing to Thompson by \$300.00.

Before: Division One: Mark D. Pfeiffer, P.J., Thomas H. Newton and Alok Ahuja, JJ

Opinion by: Alok Ahuja, Judge

**August 9, 2011**

**THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.**