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LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	CASE NO. OSAB 96-068 (H)
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO No. C4756)
AND INDUSTRIAL RELATIONS,)	(Report No. 120606009)
Complainant,)	
)	
vs.)	
)	
COUNTY OF HAWAII,)	
DEPARTMENT OF PUBLIC WORKS,)	
BUILDING DIVISION,)	
Respondent.)	

FILED
 JAN 19 9 48 AM '99
 COUNTY OF HAWAII

DECISION AND ORDER

This Occupational Safety and health case is before the Board on a written notice of contest filed by the COUNTY OF HAWAII, DEPARTMENT OF PUBLIC WORKS, BUILDING DIVISION ("Respondent"), to contest a Citation and Notification of Penalty issued by the DIRECTOR of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, Via the Division of Occupational Safety and Health ("Complainant").

Whether Respondent violated Occupational Safety and Health Standards 29 CFR Section 1926.501(b)(1) and 29 CFR Section 1926.503(a)(2), are not issues before the Board.

The issues before the Board are:

(1) Whether the proposed \$3,500.00 penalty for Respondent's violation of Standard 29 CFR Section 1926.501(b)(1) is appropriate; and

(2) Whether the proposed \$3,500.00 penalty for Respondent's violation of Standard 29 CFR Section 1926.503(a)(2) is appropriate.

For the reasons stated below, we modify the Citation as to the amount of the penalties.

FINDINGS OF FACT

1. On October 28, 1996 and October 29, 1996, Charles Clark, one of Complainant's compliance officers, inspected the construction site of the Keauhou Fire Station at Kuakini Highway and Puuloa Road on the Island of Hawaii.

2. The fire station was being constructed by Keauhou Kona Resort Construction ("KKRC") for Kamehameha Investment Corporation ("KIC"), both subsidiaries of Bishop Estate.

3. Although the County of Hawaii ("County") would ultimately use the facility, it had no proprietary interest in the building or the project during the construction.

4. At the time of his inspection, Mr. Clark observed Rodney Crusat, one of Respondent's building inspectors, proceed to conduct an inspection of the building under construction.

5. Mr. Crusat climbed up a ladder and walked on an elevated formwork to inspect a steel reinforced cross beam.

6. The formwork was nine and a half (9 1/2) feet above the ground.

7. Mr. Crusat was not protected from falling off the formwork by the use of guardrail, safety net, or personal fall arrest systems.

8. Mr. Crusat came within four (4) inches of the unguarded edge.

9. Standard 29 CFR Section 1926.501(b)(1) requires employers to provide fall protection systems to all employees on a walking/working surface (horizontal and vertical) with an unprotected side or edge which is six (6) feet or more above a lower level.

10. Respondent does not dispute its violation of 29 CFR Section 1926.501(b)(1) or Complainant's characterization thereof as "serious."

11. Under the circumstances of this case, we find that a reasonable penalty for Respondent's violation of 29 CFR Section 1926.501(b)(1) is \$1,750.00.

12. Mr. Crusat had not received any training on fall protection prior to October 28, 1996.

13. Standard 29 CFR Section 1926.503(a)(2) requires employers to provide training on fall protection to all employees who might be exposed to a fall hazard.

14. Respondent does not dispute its violation of 29 CFR Section 1926.503(a)(2) or Complainant's characterization thereof as "serious."

15. Under the circumstances of this case, we find that a reasonable penalty for Respondent's violation of 29 CFR Section 1926.503(a)(2) is \$1,750.00.

CONCLUSIONS OF LAW

1. We conclude that a penalty of \$1,750.00, for Respondent's violation of 29 CFR Section 1926.501(b)(1), is appropriate.

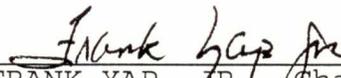
2. We conclude that a penalty of \$1,750.00, for Respondent's violation of 29 CFR Section 1926.503(a)(2), is appropriate.

ORDER

The Citation issued on December 3, 1996, is hereby modified as to the penalties.

JAN 19 1999

Dated: Honolulu, Hawaii, _____.


FRANK YAP, JR., Chairman

EXCUSED
CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

