

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of
DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,
Complainant,

vs.

LA'AU STRUCTURES, INC.,
Respondent.

CASE NO. OSAB 96-031
(OSHCO No. C4756)
(Report No. 120609920)

DECISION AND ORDER

This occupational safety and health case is before the Board on a written notice of contest filed by LA'AU STRUCTURES, INC. (Respondent), to contest a Citation and Notification of Penalty (Citation) issued by the DIRECTOR of the DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, via the Division of Occupational Safety and Health (Complainant), on May 14, 1996.

By Order of the Board, Complainant's exhibits 3 and 4, attached to Complainant's position statement filed with the Board on October 24, 1997, were stricken from the record.

The issues to be determined are:

- (1) Whether Respondent violated Standard 29 CFR §1926.501(b)(11).
 - (a) If so, is the characterization of the violation as "serious" appropriate.
 - (b) If so, was the imposition and amount of the proposed \$1,400.00 penalty appropriate.

The Citation is affirmed as to the violation of the above-noted standard and the characterization of such violation as serious and affirmed as to the amount of the penalty.

FILED
LABOR AND INDUSTRIAL RELATIONS BOARD
STATE OF HAWAII

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FINDINGS OF FACT

1. On April 11, 1996, Complainant inspected a work site in Waianae, Hawaii. A preschool was being constructed at the work site.

2. The general contractor of the project was Keahou Kona Resorts (KKR). Respondent was a roofing subcontractor.

3. On May 14, 1996, Complainant issued a Citation against Respondent for an alleged serious violation of Standard 29 CFR §1926.501(b)(11) and assessed a proposed penalty of \$1,400.00.

4. On the date of the inspection, Complainant's compliance officer observed an individual on the roof of the building without any type of fall protection. Because the roof had a slope greater than 4 in 12 (vertical to horizontal), the roof was a steep roof.¹ The unprotected sides and edges of the roof were more than six feet above the ground.²

5. The Citation issued against Respondent was based only upon this one individual on the roof.

6. The compliance officer identified the individual observed on the roof as Al Mapa, who was an employee of KKR and not Respondent, on the date of the inspection. Based on the testimony presented by Respondent and other evidence in the record, however, we find that the individual on the roof on the

¹The roof had a pitch of 5/12 to 8/12.

²The roof had a ground-to-eave height of eight to eleven feet.

date of the inspection was Urban Mapa, who was an employee of Respondent on that date.

7. Urban Mapa had been instructed by James Nicklaus, Respondent's jobsite foreman, to go onto the roof to retrieve tools left by another employee of Respondent, Jason MacMurray, who had gone home earlier that day because of illness. While retrieving the tools, Urban Mapa tacked down a sheet of plywood to prevent it from flying off the roof. Urban Mapa was not secured to a personal fall arrest system. There was no guard rail system or safety net system.

8. The employee observed on the steep roof without fall protection could have fallen from the roof. If the employee fell, there was a substantial probability that the employee could suffer serious physical harm, such as a fracture, or even death.

CONCLUSIONS OF LAW

1. We conclude that Respondent violated Standard 29 CFR §1926.501(b)(11). This standard provides that:

Each employee on a steep roof with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems with toeboards, safety net systems, or personal fall arrest systems.

Complainant has established a prima facie violation of the cited standard. Respondent's employee, Urban Mapa, was on a steep roof with unprotected sides and edges six feet or more above ground, without the required fall protection.

Respondent has not refuted Complainant's showing of a prima facie violation. Respondent admits that Urban Mapa was on the roof, but contends that because he was engaged in a clean-up

errand and was not working on the roof, there was no violation of the standard. Based on our reading of the standard,³ however, fall protection is required in this case, because the employee was on the steep roof, even if the employee was not performing work on the roof.

2. We conclude that the characterization of the violation as serious was appropriate, because there was a substantial probability that serious physical harm or death could result if the employee fell from the steep roof.

3. We conclude that a penalty of \$1,400.00, is appropriate.

ORDER

The Citation issued on May 14, 1996, is hereby affirmed as to the violation and the characterization of the violation as serious and affirmed/modified as to the penalty.

Dated: Honolulu, Hawaii, DEC 22 1998.


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


VICENTE F. AQUINO, Member

Leo Young, Esq.
for Complainant

Roy Anderson, Esq.
for Respondent

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



³The Board takes official notice of the fall protection standard, Chapter 121.2 of the Hawaii Administrative Rules.