

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
STATE OF HAWAII

DIR., DEPT. OF LABOR AND IND. RELS.,)

Complainant,)

vs)

ALBERT STIGLMEIER AND BERNARD THOMPSON,)

Respondents.)

CASE NO. OSAB 75-4(K))
OSAB 75-6(K))
(5-76 & 9-76))

DECISION AND ORDER

This occupational safety and health case came before the Labor and Industrial Relations Appeals Board on appeal by Albert Stiglemeier and Bernard Thompson, a joint venture (hereinafter Respondents) from a citation and proposed penalty issued by the Director of Labor and Industrial Relations, State of Hawaii, (hereafter Director), dated July 28, 1975 and from a notification of failure to correct violation and of proposed additional penalty dated October 10, 1975. Both appeals have been consolidated.

There are two issues before the Board. The first is whether there was a violation of the Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes (HRS). The second is if there was a violation, whether the penalty was correct.

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FINDINGS OF FACT

1. On July 10, 1975, the Occupational Safety and Health Compliance Officer made a job site inspection of a commercial office building constructed by Respondents. Four of Respondents' employees were handling lumber while dressed in shorts and without shirts.

2. On July 28, 1975, a citation and proposed penalty was issued by the Director for violation of §205.1-1 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. The alleged violation was to be corrected immediately upon receipt of the citation. The proposed penalty was \$25.00.

3. On August 1, 1975, a reinspection of the job site was made by the same occupational safety and health officer. Three of Respondents' employees were not wearing shirts but they were wearing pants.

4. On August 12, 1975, Respondents' filed a letter of contest of the citation and proposed penalty.

5. On October 10, 1975, the Director issued a notification of failure to correct violation and of proposed additional penalty.

6. On October 14, 1975, the Respondents' filed a letter of contest of the October 10th notification.

7. A hearing was held on May 11, 1976. The Special Deputy Attorney General for the Director pointed out that the handling of lumber without protective clothing such as pants and shirts may be hazardous to employees.

8. Archie Ikehara, Occupational Safety and Health Compliance Officer, testified at the hearing that in the first

inspection (July 10, 1975) he felt that Respondents' employees were handling chemically treated wood since that was the type of wood used in construction in that area.

CONCLUSIONS OF LAW

Pursuant to Section 396-4, HRS^{1/}, the Department of Labor and Industrial Relations promulgated rules and regulations to carry out the purposes and provisions of the Hawaii Occupational Safety and Health Law. The respondent in this case has allegedly failed to meet Section 205.1-1 of those rules and regulations. That section reads as follows:

GENERAL PROVISIONS
CHAPTER 205-PERSONAL PROTECTIVE AND LIFE SAVING
EQUIPMENT

§205.1-1 GENERAL.

205.1-1. Application. Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

The hazards to be encountered under Section 205.1-1 are listed as: 1) hazards of processes or environment, 2) chemical hazards, 3) radiological hazards, or 4) mechanical irritants. For protection against such hazards, personal protective clothing

^{1/} §396-4 Powers and duties of department. (a) Administration. The department shall be responsible for administering occupational safety and health standards throughout the State.

(1) The department shall prescribe and enforce rules and regulations under Chapter 91 as may be necessary for carrying out the purposes and provisions of this chapter.

is required. In this case the Director considered such protective clothing to consist of pants and shirts.

At the hearing there was no mention of the hazard of mechanical irritants. Therefore, this hazard is not a part of the Board's considerations.

The possible harmful effect of sunlight was noted as a radiological hazard. However, no scientific or medical proof was offered as to the effect of sunlight on employees in general and on Respondents' employees in particular. There was no evidence concerning the length of exposure and the intensity of the exposure and its relationship to safety and health.

The Occupational Safety and Health Compliance Officer stated at the hearing that he thought that the Respondents' employees were handling chemically treated wood. No proof was offered that the wood was indeed chemically treated. Furthermore, if the wood was chemically treated, it was not shown that it would have been harmful to the employees. Under the circumstances the more proper personal protective equipment would have been gloves as required under Section 205.8 of the Rules and Regulations.

The final hazard was that generated by the process or the environment. The danger, if any, encountered by the work activity observed on the first inspection was not clearly shown. In addition no history of on the job injuries was offered. There was no explanation of how the activity or process could possibly be hazardous.

Without proof of the existence of a hazard, there can be no finding of violation.

There is no need for this Board to consider whether

the penalty was correct. There is also no need to discuss the notification for failure to correction violation and of proposed additional penalty, since it is no longer applicable.

The Board concludes that there was no proof of a violation.

ORDER

The citation and penalty and the notification of failure to correct violation and of proposed additional penalty of the Director are dismissed.

Dated: Honolulu, Hawaii, December 17, 1976.



NADAO YOSHINAGA, Chairman

I CONCUR:


EDNA T. TAUFASAASU, Member


YUKIO TAKEMOTO, Member

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


Darlene Y. Kinoshita