

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 )  
 Director, Department of Labor and )  
 Industrial Relations, Complainant, )  
 )  
 vs )  
 )  
 STATE OF HAWAII, DEPT. OF )  
 TRANSPORTATION, HIGHWAYS DIVISION, )  
 RESPONDENT. )  
 )  
 )

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CASE NO. OSAB 77-15 (H)  
(65-77)

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LIR APPEALS BOARD  
STATE OF HAWAII  
FILED

DECISION AND ORDER

This occupational and health case came before the Labor and Industrial Relations Appeals Board on appeal by the Department of Transportation, Highways Division, Hawaii District, State of Hawaii, from a Citation and Notification of Proposed Penalty issued by the Director of Labor and Industrial Relations, State of Hawaii, dated August 11, 1977.

The only issue before the Board is whether the proposed penalty is appropriate.

FINDINGS OF FACT

1. At all times in issue the Highways Division, hereinafter referred to as Respondent, on the Big Island was responsible for work done at Hakalau Bridge by employees covered by a work agreement with the United Public Workers (UPW). Said agreement provided that joint efforts be made by both Respondent and UPW with respect to work safety.

2. As part of such ongoing efforts Respondent through its representative, Fred Fukuchi, requested a courtesy inspection for the Hilo baseyard which was conducted by Dean Matsumura, Educator for Occupational Safety and Health on June 24, 1977.

3. The work safety committee was also concerned with the condition of Hakalau Bridge and consequently, Jack Konno, Hawaii Division Director for UPW, during his conversation with Dean Matsumura requested an evaluation of the bridge site. Since he did not have such expertise, Dean Matsumura suggested that Jack Konno submit a request to the Honolulu office to provide the necessary expertise.

4. In his letter to Richard E. Peterson, Acting Administrator for Occupational Safety and Health, dated July 14, 1977, Jack Konno wrote:

"We would like to formally request the services of Mr. Robert Jackson and if possible retain his services for a day or two. With his knowledge, we're confident that he would be able to point out the deficient areas regarding safety."

A copy of the letter was also sent to Respondent's representatives, Charles Schuster, District Engineer, and Haruo Murakami, Highway Bridge Maintenance Supervisor.

5. In his inter-office memorandum dated September 20, 1977, Richard E. Peterson relates that after receiving the letter he verbally advised Jack Konno that Robert Jackson, who was a compliance officer, would be obligated to issue citations should he make an inspection. Peterson said that Konno agreed that his request be treated as a complaint. Peterson said that he then informed Konno that compliance Officer, Cup Choy, who was already in Hilo would do the inspection.

6. On July 27 and 28, 1977, Cup Choy conducted the inspection of Hakalau Bridge and consequently Respondent was issued a Citation and Notification of Proposed Penalty in the amount of \$220. Thereafter Respondent took affirmative steps to comply with the Citation and abatement of conditions ensued.

7. The violations consisted of a failure to provide a secured lifeline on the first 20 feet of runway pursuant to §205.9-2 of Occupational Safety and Health Rules and Regulations and §223.2-3A which is a failure to provide a standard railing on an open platform four or more feet above the ground.

8. Respondent contested the appropriateness of the proposed penalty and a hearing before the Board was held in Hilo on April 12, 1979 at which time documents were admitted into evidence and testimony was taken of Jack Konno and Haruo Murakami.

9. Jack Konno testified that UPW wanted an evaluation of the situation at Hakalau Bridge and in conjunction with Respondent, he wrote the letter requesting the services of Robert Jackson for the purpose of a consultant inspection. Konno also testified that at the time he spoke with Peterson he was not fully aware of the distinction between a consultant inspection and a compliance inspection. Konno said the intent of his letter was not to request a compliance inspection.

10. Haruo Murakami testified that at the time Cup Choy made the inspection no one was assigned to work at Hakalau Bridge. He also testified that UPW members were involved in Respondent's work safety committee.

CONCLUSIONS OF LAW

Based on the law in effect and all the evidence presented, the Board concludes that Jack Konno's letter dated July 14, 1977 was written pursuant to joint efforts and concerns of the work safety committee and that the intent of the letter was to request a consultant inspection of the situation at Hakalau Bridge.

The Board also concludes that Respondent acted in good faith at all times and its efforts were designed to permit and encourage reduction of injury and disease arising out of employment. The work safety committee is to be commended for its efforts to improve existing programs for providing safe and healthful working environments.

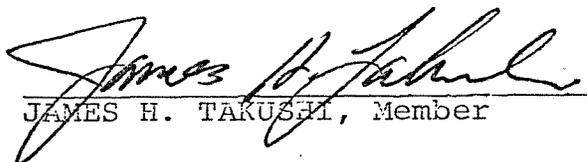
ORDER

Based on the foregoing findings of fact and conclusions of law, and in accordance with Chapter 396, HRS, it is ordered that the proposed penalty in the amount of \$220 be and hereby is vacated.

Dated: Honolulu, Hawaii, May 23, 1979.

  
YUKIO TAKEMOTO, Member

I CONCUR:

  
JAMES H. TAKUSHI, Member

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

