

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)
)
 Director, Department of Labor)
 and Industrial Relations,)
 Complainant,)
)
 vs)
)
 DEREGO'S TRUCKING,)
 APPELLANT.)
 _____)

CASE NO. OSAB 77-16(M)

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LIR APPEALS BOARD
STATE OF HAWAII
FILED

DECISION AND ORDER

This occupational safety and health case came before the Labor and Industrial Relations Appeals Board on appeal by DEREGO'S TRUCKING from a Citation and Notification of Proposed Penalty issued by the Director of Labor and Industrial Relations, State of Hawaii, dated August 22, 1977 pursuant to §383.5-4(f), Occupational Safety and Health Standards, Rules and Regulations, State of Hawaii.

The issues before the Board include:

1. Determining whether there was a violation of §383.5-4(f), OSHS, Rules and Regulations, State of Hawaii; and
2. Determining whether the proposed penalty for said alleged violation is appropriate.

The parties have stipulated that the entire file be received in evidence.

FINDINGS OF FACT

1. In pertinent part §383.5-4(f), OSHS, Rules and Regulations reads:

"Special Precautions Against Electrical Shock

F. Provisions for preventing accidents due to proximity of high voltage lines.

- (1) General Provisions. No person, firm or corporation, or agent of same, shall require or permit any employee to perform any function in proximity to high-voltage lines; to enter upon any land, building, or other

premises and there to engage in any excavation, demolition, construction or repair, or other operation; or to erect, install, operate, or store in or upon the premises and tools, machinery, equipment (including house moving, well drilling, pile driving, or hoisting equipment), materials, or structures unless and until danger from accidental contact with the high-voltage lines has been effectively guarded against in the manner hereinafter prescribed. The department may act in an advisory capacity to any employer contemplating any operations near high-voltage lines; however, full responsibility for compliance with this order rests with the employer.

- (2) Clearance or Safeguards required. The operation, erection, or transportation of any tools, machinery, or equipment, or any part thereof capable of vertical, lateral, or swinging motion; the handling, transportation, or storage of any supplies, materials or apparatus; or the moving of any house or other building or any part thereof, under, over, by or near high-voltage lines is expressly prohibited, if at any time during the operation, transportation or other manipulation it is possible to bring such equipment, tools, materials, building or any part thereof within ten feet of such high-voltage lines; except when the high-voltage lines have been effectively guarded against danger from accidental contact, either by:
 - (a) The erection of mechanical barriers to prevent physical contact with high-voltage conductors, or
 - (b) De-energizing of the high-voltage conductors and grounding where necessary."

2. John Santos was an employee of DeRego's Trucking one of several haulers engaged by Hawaiian Dredging, the general contractor for the Kapalua Project on West Maui.

3. Prior to August 15, 1977, Santos had delivered dump loads to various locations at the Kapalua Project and most recently had unloaded fill approximately one hundred yards from any high-voltage wires.

4. On August 15, 1977 Santos was directed by James Nakamoto, an employee of Hawaiian Dredging to a dump site near high-voltage wires and subsequently was injured when his dump truck struck the lowest of three high-voltage wires which was less

than 20 feet from ground level. Hawaiian Dredging was responsible for de-energizing the high-voltage wires in the vicinity of the Kapalua Project, but, did not de-energize the wires on the day of the incident. No mechanical barriers were erected to prevent contact with the wires.

5. Daniel Rollins, Occupational Safety and Health Compliance Officer, testified that while Eugene DeRego of DeRego's Trucking knew of the "live wire" situation at Kapalua, he did not have an approved written OSHA safety program in effect at the time of the incident. Furthermore, the only expressed work rule regarding high-voltage wires was a verbal directive from Eugene DeRego to his employees that they should look out for high-voltage wires and thus, it was left up to the individual employee to decide whether dumping should be made near high-voltage wires.

6. Eugene DeRego testified that upon approaching Maui Electric, owner of the high-voltage lines about their policies of de-energizing during construction activity, he was informed that major trunk lines such as those involved are not de-energized during construction, but lesser lines sometimes are de-energized. While Eugene DeRego also testified that he had in the past inspected the job site and had been satisfied that dumping was not being done near any high-voltage lines, he did not inspect the location where the incident occurred. Eugene DeRego further testified that he had fulfilled all safety requirements set by the Public Utilities Commission.

7. Consequently DeRego's Trucking was cited for a serious violation pursuant to §333.5-4(f) and assessed an adjusted penalty of three hundred and twenty dollars (\$320.00).

CONCLUSIONS OF LAW

Based on the law in effect and the evidence presented the Board concludes that Appellant violated the spirit of

§383-5.4(f) because it did not take reasonable steps to insure that Hawaiian Dredging provide for a safe work environment. Also, Appellant did not have an adequate OSHA safety program in effect at the time of the citation. The proposed penalty of \$320.00 should be affirmed because there is a need to assure so far as possible, every working person in the State safe and healthful working conditions.

ORDER

Based on the foregoing findings of fact and conclusions of law and in accordance with Chapter 396, HRS, it is ordered that Appellant pay to the Director of Labor and Industrial Relations, State of Hawaii, the sum of \$320.00.

Dated: Honolulu, Hawaii, APR 2 1980.


YUKIO TAKEMOTO, Member


JAMES H. TAKUSHI, Member

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


Carol Kawehiro