

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 )  
 Director, Department of Labor and )  
 Industrial Relations, Complainant, )  
 )  
 vs )  
 )  
 MASONRY, INC., )  
 APPELLANT. )  
 \_\_\_\_\_ )

CASE NO. OSAB 79-9  
(211)

FILED  
LIR APPEALS BOARD  
STATE OF HAWAII

80 OCT -9 P3:32

DECISION AND ORDER

This occupational safety and health case is before the Board on a written contest by Masonry, Inc. of the Director's citation and notification of proposed penalty issued June 8, 1979. The citation charges that on May 25, 1979 the company violated Section 330.2-1B of the State Occupational Safety and Health Standards by failing to provide guardrails or equivalent protection on all open sides and ends of scaffolding platforms more than four feet above the ground.

FINDINGS OF FACT

1. On May 25, 1979 employer Masonry, Inc. was engaged in the construction of a masonry wall at the Hauula Civic Center, 54-010 Kukana Road, Hauula, Oahu, Hawaii.
2. In order to construct the wall employees of Masonry, Inc. erected a tubular type scaffold in three stages to a height of fifteen feet above the ground.
3. At approximately 9:30 a.m. on May 25, 1979 construction of the wall had been substantially completed and the guardrails on the scaffold were removed in preparation for its dismantling.

4. After the guardrails had been removed two employees of Masonry, Inc., Romeo Cacholo and Hisao Sakaue, completed brushing the wall. Brushing is the final stage of the work and requires just a few moments to complete.

5. Brushing must be performed as each stage of the scaffold is dismantled. Since guardrails are not installed on lower stages of the scaffold, in order to provide protection to employees doing the very brief brushing work guardrails would have to be installed at each stage and then almost immediately removed as that stage is dismantled.

#### CONCLUSIONS OF LAW

Employer Masonry, Inc. did not violate §330.1-1B on May 25, 1979 and the citation and proposed penalty are accordingly vacated.

While we appreciate the Director's contention that work, i. e. brushing, was being performed on a scaffold without guardrails if only for a few moments, we believe that the standards should not be so strictly construed as to require manifestly unreasonable and impractical actions on the part of employers. Here a literal application of the standard would require the employees to install the guardrail (an operation which requires more time than brushing) before the brushing could be done. The guardrails would thereupon have to be immediately removed. The act of installing the guardrails itself exposes the employee to some risk of falling. This risk does not appear substantially less than the simple and brief task of brushing the wall.

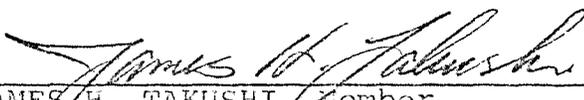
ORDER

The citation and proposed penalty issued on June 8, 1979 relative to violation of Section 330.2-1B are hereby set aside.

Dated: Honolulu, Hawaii, OCT 9 1980.

  
E. JOHN McCONNELL, Chairman

  
YURIO TAKEMOTO, Member

  
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.

