

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)	
)	
Director, Department of Labor and)	CASE NO. OSAB 79-12(M)
Industrial Relations, Complainant,)	(149-79)
)	
vs)	
)	
HOME MAID BAKERY,)	
RESPONDENT,)	
_____)	

DECISION AND ORDER

FILED
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STATE OF HAWAII

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This occupational safety and health case came before the Labor and Industrial Relations Appeals Board on appeal pursuant to §396-11, HRS, by Homemaid Bakery from the Notification of Failure to Correct Violation and of Proposed Penalty issued by the Director on September 7, 1979.

The sole issue before the Board is determining whether the remaining proposed penalty of \$900.00 is appropriate.

The parties have stipulated that the Board may receive the contents of the file in evidence.

FINDINGS OF FACT

1. An onsite inspection was conducted at Homemaid Bakery's Lahaina Square Delicatessen and Bakery outlet by occupational safety and health compliance officer Daniel Rollins on July 18, 1979. As a result of the inspection Homemaid Bakery was found in violation of eight nonserious offenses and assessed a proposed penalty of fifty dollars (\$50.00) on condition that abatement of the violations be completed within the recommended time. The violations included failure to post occupational safety and health information, failure to maintain galvanized hood above stove, failure to have an effective safety

plan in operation, failure to post emergency telephone numbers, failure to post exit sign at back of storeroom, failure to cover floor drainage opening measuring 2-1/4" in diameter, failure to equip a flight of stairs with standard railing on the open side, and failure to ground a duplex percolator.

2. A reinspection conducted on August 21, 1979 revealed that Homemaide Bakery had failed to comply with the previously issued Citation and Notification of Proposed Penalty which was served upon the manager of the Lahaina outlet. Consequently on September 7, 1979 the Director increased the proposed penalty to fifteen hundred dollars (\$1,500.00). Thereafter, Homemaide Bakery appealed.

3. At the hearing on the merits held on Maui on May 9, 1980, it was established that while the citations were initially nonserious and no substantial penalty was assessed at first, Homemaide Bakery did not comply with the order of the Director until more serious action was taken by the Director. It was agreed to by the parties that the remaining proposed penalty in dispute amounted to \$900.00 based on the citations relating to the galvanized hood above the stove, floor drainage opening, and duplex percolator.

4. Although contesting the remaining nine hundred dollar (\$900.00) proposed penalty, Alan Kozuki on behalf of Homemaide Bakery admitted to violations including failure to maintain the galvanized hood above the stove, failure to cover the floor drainage opening, and failure to ground the duplex percolator. Furthermore while Kozuki testified that all conditions were abated sometime after the September 7, 1979 order, the exact dates of abatement were not established. Kozuki testified that had he known of the initial citations he would have corrected them sooner and further expressed his willingness to pay the fair penalty.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact the Board concludes that the proposed penalty of nine hundred dollars (\$900.00) must be affirmed. In the interest of assuring that so far as possible safe and healthful conditions be afforded to working people, it is mandatory that legislation designed to permit and encourage employer and employee efforts to reduce injury and disease arising out of employment be properly enforced by this Board. The evidence shows that Homemaide Bakery not only admits to the violations for which it was cited, no action to correct those violations was taken until extraordinary efforts were taken by the Director. Kozuki testified that the large increase in the proposed penalty "opened his eyes" to the importance of complying with the order of the Director. It is no defense to the proposed penalty that the citation and notification of proposed penalty was not personally served on Alan Kozuki since service was properly made on the manager of Homemaide Bakery's Lahaina outlet.

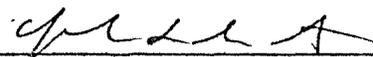
ORDER

IT IS THEREFORE ORDERED that Homemaide Bakery pay the penalty assessed by the Director in the amount of \$900.00.

Dated: Honolulu, Hawaii, NOV 7 1980.



E. JOHN McCONNELL, Chairman

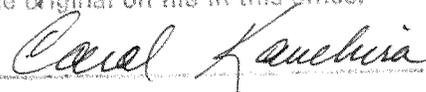


YUKIO TAKEMOTO, Member



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.



Carol Kauchua