

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of )  
 )  
Director, Department of Labor )  
and Industrial Relations, )  
Complainant, )  
 )  
vs )  
 )  
TOWN AND COUNTRY DEVELOPMENT )  
COMPANY, )  
RESPONDENT, )  
\_\_\_\_\_ )

CASE NO. OSAB 80-11  
(151-80)

FILED  
LIR APPEALS BOARD  
STATE OF HAWAII

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DECISION AND ORDER

This occupational safety and health case is before the Board on written contest by Town and Country Development Company of the Director's citation and notification of proposed penalty issued April 17, 1980. The citation charges that on April 3, 1980, an employee of Town and Country Development Company worked on a roof twenty-five feet high without a safety belt or equivalent protection thereby violating Section 205.8 of the State Occupational Safety and Health Standards.

FINDINGS OF FACT

1. On April 3, 1980, an employee of Town and Country Development Company was working on a flat roof twenty-five feet above the ground.
2. The employee was doing layout work for a fence on the roof. The roof was approximately thirty-six by seventy-five feet in area. The line marked for the layout of the fence was approximately nineteen inches from the edge of the roof. The layout required driving nails at certain points and tying a string between them in a rectangular pattern.

3. In the center of the roof was a structure from which a safety belt might have been secured. The line to be marked off was to one side of the structure. In order to reach all points on the line to be marked off, the length of the rope to the safety belt would have to be adjusted several times. This was because in order to reach further points the safety belt would have to be of sufficient length so as to extend well over the edge at closer points.

4. At no time was the employee required to work closer than nineteen inches from the edge of the roof.

5. The employee did not use a safety belt because of numerous adjustments in its length which would be necessary if it were to be effective.

#### CONCLUSIONS OF LAW

Employer Town and Country Development Company did not violate Section 205.8 of the State Occupational Safety and Health Standards and the citation and proposed penalty are accordingly vacated.

In S&H Riggers and Erectors, Inc., OSHRC Docket No. 15855, 23480 CCH Occupational Safety and Health Decisions, 1979, the Review Commission in construing a safety belt provision stated:

The critical question in determining whether a hazardous condition exists within the meaning of Section 1926.28(a) is whether a reasonable person familiar with the factual circumstances surrounding the allegedly hazardous condition, including any facts unique to a particular industry, would recognize a hazard warranting the use of personal protective equipment.

This Board adopted a similar reasonableness standard in Director, Department of Labor and Industrial Relations v. Masonry, Inc., Case No. OSAB 79-9, October 9, 1980, where we said that "the standards should not be so strictly construed

as to require manifestly unreasonable and impractical actions on the part of employers."

We believe it manifestly unreasonable to require the use of a safety line requiring repeated adjustment where the roof is flat, the exposure is for such a short period, the work is light and the employee is not required to come closer than nineteen inches from the edge.

ORDER

The citation and proposed penalty issued on April 17, 1980 relative to the violation of Section 205.8 are hereby dismissed.

Dated: Honolulu, Hawaii, JAN 13 1981.

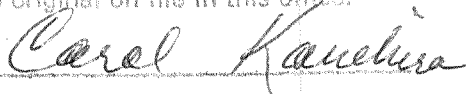
  
\_\_\_\_\_  
E. JOHN McCONNELL, Chairman

I CONCUR:

  
\_\_\_\_\_  
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.

  
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Carol Kautera