

Ashi File

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
STATE OF HAWAII

In the matter of:)
)
DIRECTOR, DEPARTMENT OF LABOR)
AND INDUSTRIAL RELATIONS,)
)
Complainant,)
)
vs)
)
ISLAND AIRLINES-HAWAII, INC.,)
)
Respondent.)
)
)
)

CASE NO. AB 81-2
(38-81)
FILED
LIR APPEALS BOARD
STATE OF HAWAII
FEB 22 1981 9:57

DECISION AND ORDER

This occupational safety and health case is before the Board on appeal by Respondent ISLAND AIRLINES-HAWAII, INC. from a Citation and Notification of Proposed Penalty issued on January 30, 1981 by the Director of Labor and Industrial Relations. The Citation charges that on January 26, 1981, Respondent committed numerous violations of the State Occupational Safety and Health Standards, Rules and Regulations.

The violations themselves are not contested. The sole defense offered by Respondent is the contention that under Section 386-16, Hawaii Revised Statutes, the Director lacks jurisdiction because the Federal Aviation Administration exercises authority to prescribe and enforce standards affecting the occupational safety and health of its employees.

FINDINGS OF FACT

1. Respondent ISLAND AIRLINES-HAWAII, INC. is a

corporation engaged in the business of air cargo transport in the State of Hawaii.

2. On January 26, 1981, a compliance officer from the Department of Labor and Industrial Relations, Division of Occupational Safety and Health (hereinafter "DOSH") conducted an inspection of Respondent's place of employment located at 391 Aolewa Place, Honolulu. As a result of this inspection and pursuant to H.R.S. §386-10, A Citation and Notification of Proposed Penalty was issued to Respondent on January 30, 1981. The Citation charges numerous violations of the State Occupational Safety and Health Standards, Rules and Regulations, including violation of Section 383.8-4 D(3)(d) for improper electrical grounding for which a penalty of \$45 was imposed. The facts set forth in the citation are not in dispute.

3. On February 5, 1981, Respondent contested the DOSH's jurisdiction to inspect its workplace for compliance with state job safety and health regulations claiming that the Federal Aviation Act pre-empted state and federal OSHA laws in matters involving air carrier operations.

4. In a report dated November 9, 1981, Attorney Joseph Standell of the Federal Aviation Administration stated, "The Federal Aviation Administration does not have or enforce standards or regulations of the type involved in the attached DOSH citation, which is the subject of the above-referenced appeal."

CONCLUSIONS OF LAW

Respondent ISLAND AIRLINES-HAWAII, INC. has failed to demonstrate that the Federal Aviation Agency has exercised statutory authority to prescribe and enforce standards or regulations affecting the occupational safety and health of

its ground employees. Consequently Chapter 386, Hawaii Revised Statutes is applicable to the working conditions of Respondent's employees.

Section 386-16 provides:

"Exception for Federal Jurisdiction. Nothing in this Chapter shall apply to working conditions of employees with respect to which any federal agency exercises statutory authority to prescribe and enforce standards or regulations affecting occupational safety or health."

Respondent has offered no evidence whatever that the Federal Aviation Administration has exercised statutory authority to prescribe and enforce standards or regulations affecting occupational safety and health. Further, the Federal Aviation Act contains nothing to indicate a policy or a purpose to protect ground maintenance employees.

The issue before us was considered by the California Occupational Safety and Health Appeals Board in In the matter of the Appeal of United Airlines, Docket No. 78-RIDI-1393. In upholding State jurisdiction over United Airlines ground employees, the California Board stated:

"[I]t is concluded that FAA's jurisdiction over flight safety and air commerce pursuant to the Federal Aviation Act did not extend to ground safety of employees and that the Division's exercise of jurisdiction over the sites was valid."

It is plain the Respondent has failed to meet its burden to show that it comes within the exception of Section 396-16. State vs. Russell, 62 Hawaii 474 (1980).

We conclude that the State Occupational Safety and Health Law is not pre-empted by the Federal Aviation Act and that the inspection of Respondent's work place was within the jurisdiction of the Department.

ORDER

The Citation and Notification of Proposed Penalty dated January 30, 1981 is hereby affirmed. Respondent ISLAND AIRLINES-HAWAII, INC. is hereby ordered to pay the sum of forty-five dollars (\$45.00).

FEB 22 1983

Dated: Honolulu, Hawaii, _____.



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.

