

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In The Matter of,
DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

vs.

HUNT BUILDING CORPORATION,

Respondent.

CASE NO. OSAB 94-030
(OSHCO ID M0685))
(Inspection #120636261)

FILED
LABOR APPEALS BOARD
STATE OF HAWAII

96 MAR -5 P1:47

DECISION AND ORDER

This Occupational Safety and Health case is before the Board on a notice of contest from a Citation and Notification of Penalty, issued against HUNT BUILDING CORPORATION ("Respondent") by the DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS ("Complainant") on December 30, 1993.

The issues to be determined are:

- (1) Whether Respondent violated Standard §12-110-2(f)(1)(A);
- (2) If so, is the characterization of the violation as "serious" appropriate; and
- (3) If so, is the imposition and amount of the proposed \$500.00 penalty appropriate.

For the reasons stated below, we vacate the Director's December 30, 1993 Citation and Notification of Penalty.

FINDINGS OF FACT

1. Respondent was the general contractor on a construction project to build military housing.

2. Respondent subcontracted with Certified Construction, Inc. ("CCI") to perform the roofing work on the project and with American Traditional Homes ("ATH") to perform the siding and gutter work. ATH did not do any roofing work on the project.

3. On December 30, 1993, Complainant inspected Respondent's construction site. As a result of the inspection, Complainant issued a Citation and Notification of Penalty against CCI for an alleged violation of §12-121(4)(a) of the Hawaii Occupational Safety and Health Standards. According to Complainant, CCI violated this standard when its employee worked on the roof of a structure that had a ground-to-eave height of more than sixteen feet, without proper fall protection. Complainant also issued a Citation and Notification of Penalty against ATH for a violation of §12-114-9. This section requires construction employees who are exposed to hazards to wear life lines or safety belts if these devices are expected to prevent injury.

4. After citing CCI and ATH, Complainant sought to hold Respondent liable for the violations of its subcontractor by issuing a Citation and Notification of Penalty against Respondent

for its alleged failure to comply with §12-110-2(f)(1)(A) of the standards. The Citation and Notification of Penalty stated that Respondent violated §12-110-2(f)(1)(A) when it failed to ensure subcontractor compliance with the standards to wear fall protection while performing roofing work.

5. Given the reference to "roofing work" in the Citation and Notification of Penalty against Respondent and the fact that CCI was cited for performing roofing work without proper fall protection, we find that the Citation and Notification of Penalty against Respondent was based on CCI's alleged noncomplying conduct.

6. On November 29, 1994, the Board issued a Decision and Order dismissing and/or vacating Complainant's Citation and Notification of Penalty against CCI.

CONCLUSIONS OF LAW

1. Having found that Respondent was cited for its alleged failure to secure CCI's compliance with the standards and that the Citation and Notification of Penalty against CCI was subsequently dismissed and/or vacated, we conclude that the Citation and Notification of Penalty issued against Respondent must also be vacated.

2. Given our conclusion above, we do not reach the remaining issues.

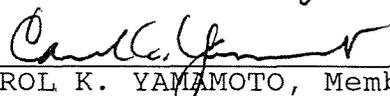
ORDER

The Citation and Notification of Penalty issued against Respondent on December 30, 1993, is hereby vacated.

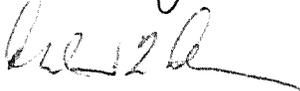
Dated: Honolulu, Hawaii, MAR - 5 1996 .



FRANK YAP, JR., Chairman



CAROL K. YAMAMOTO, Member



CHARLES T. AKAMA, Member

Herbert B.K. Lau
for Complainant

J.B. Waters
for Respondent

NOTICE TO EMPLOYER:

You are required to post a copy of this Decision and Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted. Further, you are required to furnish a copy of this Decision and Order to a duly recognized representative of the employees.

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

