

LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

STATE OF HAWAII

In the Matter of)
 DIRECTOR, DEPARTMENT OF LABOR)
 AND INDUSTRIAL RELATIONS,)
 Complainant,)
 vs.)
 MONTGOMERY ELEVATOR COMPANY,)
 Respondent.)

CASE NO. OSAB 93-022
 (OSHCO No. J5687)
 (Report No. 103851549)

FILED
 APPEALS BOARD
 STATE OF HAWAII

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DECISION AND ORDER

This occupational safety and health case is before the Board on a notice of contest by Respondent, MONTGOMERY ELEVATOR COMPANY, from the Amended Citation and Notification of Penalty issued by Complainant, DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, on July 13, 1993.

The sole issue on appeal is whether the imposition and amount of the proposed amended penalty of \$625.00, is appropriate.

FINDINGS OF FACT

1. On June 10, 1993, Complainant issued a Citation and Notification of Penalty (Citation) against Respondent for an alleged serious violation of Standard §12-114-3(a) of the Hawaii Occupational Safety and Health Law. Respondent was cited because two of its employees had allegedly failed to wear required head protection. Complainant assessed Respondent a proposed penalty of \$1,250.00.
2. Respondent received the Citation on June 14, 1993.
3. Pursuant to Hawaii Revised Statutes §396-11(a),



Respondent had until July 6, 1993, to file a written notice of contest of the Citation. Because Respondent did not file a written notice of contest within the specified time period, the Citation became final and conclusive against Respondent.

4. On July 6, 1993, Complainant conducted an informal conference at which representatives of Complainant and Respondent were present.

5. On July 13, 1993, Complainant issued an Amended Citation and Notification of Penalty (Amended Citation), amending only the penalty portion of the June 10, 1993 Citation. The proposed penalty was reduced from \$1,250.00 to \$625.00, based on additional information presented at the informal conference.

6. Respondent received the Amended Citation on July 14, 1993.

7. On July 26, 1993, Respondent filed a written notice of contest of the Amended Citation.

8. On October 29, 1993, the Board entered a first amended pretrial order identifying the sole issue on appeal to be whether the imposition and amount of the proposed amended penalty of \$625.00, is appropriate.

9. The characterization of the alleged violation of Standard §12-114-3(a) as "serious" is not an issue before the Board. Given the characterization of the alleged violation as "serious", we find that the imposition of a penalty is appropriate.

10. Complainant used the proper criteria and adjustment factors in calculating the proposed penalty of \$1,250.00, and that the proposed penalty was reduced to \$625.00, based on Respondent's good faith representation at the July 6, 1993 informal conference, to take remedial measures.

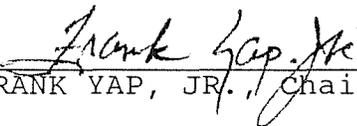
CONCLUSIONS OF LAW

We conclude that the imposition and amount of the proposed amended penalty of \$625.00, is appropriate.

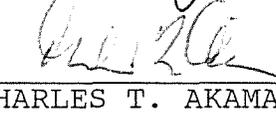
ORDER

The Amended Citation and Notification of Penalty issued against Respondent on July 13, 1993, is hereby affirmed.

Dated: Honolulu, Hawaii, MAR 12 1996


FRANK YAP, JR., Chairman


CAROL K. YAMAMOTO, Member


CHARLES T. AKAMA, Member

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 fo this Decision and Order to a duly recognized representative of the employees.

Bruce Rudeen
for Complainant

Jared Jossem
for Respondent

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