



**EFiled: Mar 09 2012 01:30PM HAST**  
**Transaction ID 55805016**  
**Case No. OSH 2011-21**

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

DONALDSON ENTERPRISES, INC.,

Respondent.

CASE NO. OSH 2011-21

ORDER NO. 464

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference/settlement conference held in this matter by the Hawaii Labor Relations Board (Board) on March 9, 2011, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Thomas M. Otake, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial are:

1. Citation 1, Item 1: HAR § 12-60-2(a)(3)

Whether the characterization as "Serious" and the associated penalty of \$5,600 of Citation 1, Item 1, resulting from Inspection No. 313082299, was valid and proper.

Citation 1, Item 1 alleged:

HAR § 12-60-2(a)(3) was violated because:

Employees were exposed to explosion hazards while working with pyrotechnic (explosive) materials that may have become more shock, heat, and friction sensitive due to the use of sparking tools, unknown materials in the pyrotechnic formulation, uncontrolled environmental conditions within the bunker.

2. Citation 1, Item 2: HAR § 12-60-2(b)(4)(C)

Whether the characterization as “Serious” and the associated penalty of \$5,600 of Citation 1, Item 2, resulting from Inspection No. 313082299, was valid and proper.

Citation 1, Item 2 alleged:

HAR § 12-60-2(b)(4)(C) was violated because:

The employer did not ensure that the supervisors and managers reinforced employee training on the nature of potential hazards and required protective measures: i.e. (sic) Although employees were aware of the dangers of using ferrous tools, of sweeping potentially explosive powders with broom with metal components, and of the various ignition sources brought into the work area containing loose black powder, and had been trained to understand that pyrotechnic materials are sensitive so (sic) heat, shock, and friction, management did not reinforce the training through discipline and/or recognition.

3. Citation 1, Item 3: 29 CFR 1910.36(b)(1)

Whether the characterization as “Serious” and the associated penalty of \$5,600 of Citation 1, Item 3, resulting from Inspection No. 313082299, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.36(b)(1) was violated because:

Bunker A-21 of Waikele Business Center was being used as a workplace for Donaldson Enterprises Inc’s (sic) employees and they had their only exist blocked by fire/smoke.

4. Citation 1, Item 4: 29 CFR 1910.106(d)(5)(i)

Whether the characterization as “Serious” and the associated penalty of \$5,600 of Citation 1, Item 4, resulting from Inspection No. 313082299, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.106(d)(5)(i) was violated because:

55 gallon drums of diesel in storage and used to soak disassembled components of class 1.3g fireworks were located at the only entrance/exit of bunker A-21 of the Waikele Business Center.

5. Citation 2, Item 1: HAR § 12-60-2(a)(3)

Whether the characterization as "Willful" and the associated penalty of \$56,000 of Citation 2, Item 1, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 1 alleged:

HAR § 12-60-2(a)(3) was violated because:

Employees were exposed to explosion hazards while working with pyrotechnic (explosive) materials due to the presence of sources of static electricity as potential ignition sources.

6. Citation 2, Item 2: 29 CFR 1910.109(b)(1)

Whether the characterization as "Willful" and the associated penalty of \$56,000 of Citation 2, Item 2, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.109(b)(1) was violated because:

Pyrotechnic materials were separated and maintained inside the bunker in close proximity to other explosives.

7. Citation 2, Item 3: 29 CFR 1910.109(b)(1)

Whether the characterization as "Willful" and the associated penalty of \$56,000 of Citation 2, Item 3, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 3 alleged:

29 CFR 1910.109(b)(1) was violated because:

Ferrous tools were stored inside a facility where pyrotechnic materials were being separated and maintained.

8. Citation 2, Item 4: 29 CFR 1910.109(b)(1)

Whether the characterization as "Willful" and the associated penalty of \$56,000 of Citation 2, Item 4, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 4 alleged:

29 CFR 1910.109(b)(1) was violated because:

Combustible materials were present in an area where pyrotechnic materials were being disassembled and maintained, i.e. (sic) empty packing materials and rubbish.

9. Citation 2, Item 5: 29 CFR 1910.109(b)(1)

Whether the characterization as "Willful" and the associated penalty of \$56,000 of Citation 2, Item 5, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 5 alleged:

29 CFR 1910.109(b)(1) was violated because:

Spark producing devices were permitted within an area where pyrotechnic (explosive) materials were present; i.e. (sic) the employer permitted employees to park their vehicles within 20 feet of the bunker where pyrotechnic materials were being disassembled and maintained.

10. Citation 2, Item 6: 29 CFR 1910.109(b)(1)

Whether the characterization as “Willful” and the associated penalty of \$56,000 of Citation 2, Item 6, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 6 alleged:

29 CFR 1910.109(b)(1) was violated because:

Appropriate warning signs were not posted on access roads leading tot (sic) the bunker where pyrotechnic materials was (sic) present and being disassembled.

11. Citation 2, Item 7: 29 CFR 1910.132(d)(1)(i)

Whether the characterization as “Willful” and the associated penalty of \$56,000 of Citation 2, Item 7, resulting from Inspection No. 313082299, was valid and proper.

Citation 2, Item 7 alleged:

29 CFR 1910.132(d)(1)(i) was violated because:

The employer allowed employees to wear “Modified Level D” personal protective equipment when the employer required “Level D” personal protective equipment.

12. Citation 3, Item 1: 29 CFR 1910.132(d)(1)

Whether the characterization as “Other” and the associated penalty of \$800 of Citation 3, Item 1, resulting from Inspection No. 313082299, was valid and proper.

Citation 3, Item 1 alleged:

29 CFR 1910.132(d)(1) was violated because:

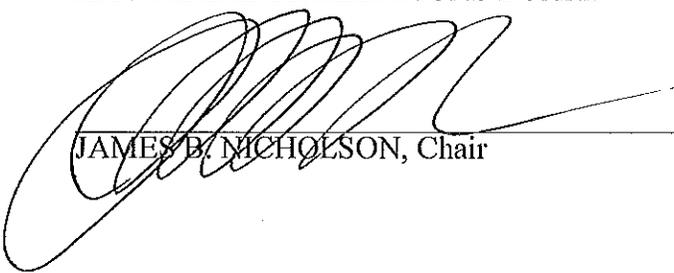
The employer did not conduct a hazard assessment for personal protective equipment that selected appropriate personal protection equipment to protect employees from detonation hazards associated with the

dismantling of class 1.3g fireworks identified in the Activity Hazard Analysis.

- B. The deadline for filing of the parties' final naming of witnesses is **July 2, 2012**. Each party shall provide a list of the names of witnesses it plans to call at trial, along with each witness's addresses and the general subject to which the witness will testify, to the other party and to the Board by this date.
- C. If Respondent intends to rely on any affirmative defenses, Respondent's counsel shall so notify Complainant's counsel by **May 8, 2012**.
- D. The parties may engage in discovery without prior motion or showing of good cause. The discovery cut-off date is **August 1, 2012**. The discovery cut-off is the date by which all responses to written discovery, including requests for admissions, shall be due and by which all depositions shall be concluded. The parties are advised to initiate discovery requests and notice depositions sufficiently in advance of the cut-off date to comply with this requirement.
- E. The deadline to file pretrial motions is **July 2, 2012**. The deadline to file responses to the motions is **July 14, 2012**.
- F. Trial in this matter is scheduled for **September 11-14, 2012 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed. The parties shall submit to the Board four copies of all exhibits identified and offered into the record. Additional copies for opposing counsel or parties shall also be provided.
- G. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, March 9, 2012

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS and  
DONALDSON ENTERPRISES, INC.  
CASE NO. OSH 2011-21  
ORDER NO. 464  
PRETRIAL ORDER

  
ROCK B. LEY, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General  
Thomas M. Otake, Esq.

