

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR
AND INDUSTRIAL RELATIONS,

Complainant,

and

MATSUYAMA BROTHERS TRUCKING,
INC.,

Respondent.

CASE NO. OSH 2012-8

ORDER NO. 470

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference/settlement conference in this matter held by the Hawaii Labor Relations Board (Board) on May 7, 2012, and attended by Lawrence H. Nakano, Deputy Attorney General, for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Complainant)¹, IT IS HEREBY ORDERED THAT:

A. The issues to be determined at trial is:

1. Citation 1, Item 2: 29 CFR 1910.106(e)(9)(iv)

Whether the violation and penalty of \$30,000 resulting from the Notification of Failure to Abate Alleged Violations, Citation 1, Item 2, of Inspection No. 313082687, was valid and proper.

¹In the Board's Notice of Initial Conference/Settlement Conference, dated March 7, 2012, Respondent's representative was instructed to telephone the Board on May 7, 2012 at 9:00 a.m. to participate in the Initial Conference/Settlement Conference. On May 7, 2012, at 9:00 a.m., Respondent's representative did not telephone the Board and at approximately 9:05 a.m., the Board attempted to contact Respondent's representative at her telephone number and left a message on her answering machine for her to call back. At approximately 9:10 a.m., the Board proceeded with the initial conference/settlement conference and scheduled further proceedings in this matter. Thereafter, Respondent's representative telephoned the Board at approximately 9:15 a.m. after the conference was adjourned.

Citation 1, Item 2 alleged:

29 CFR 1910.106(e)(9)(iv) was violated because:

Oily rags, wooden pallets, and weeds were not kept clear of the diesel fuel storage/dispenser tank.

2. Citation 1 Item 4a: 29 CFR 1910.215(a)(4)

Whether the violation and penalty of \$24,000 resulting from the Notification of Failure to Abate Alleged Violations, Citation 1, Item 2, of Inspection No. 313082687, was valid and proper.

Citation 1, Item 4a alleged:

29 CFR 1910.215(a)(4) was violated because:

The tool rest was missing on a Sears Craftsman 1/2 hp bench grinder. An opening of 1.5 inches was measured.

3. Citation 2 Item 2: 29 CFR 1910.22(b)(1)

Whether the violation and penalty of \$12,000 resulting from the Notification of Failure to Abate Alleged Violations, Citation 1, Item 2, of Inspection No. 313082687, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.22(b)(1) was violated because:

Boxes of files, computer CPU's computer monitor, and a paper shredder were stored on the stairway landing creating a trip & fall hazard to employees using the stairway to enter and exit the building.

4. Citation 2 Item 4: 29 CFR 1910.244(a)(1)(ii)

Whether the violation and penalty of \$12,000 resulting from the Notification of Failure to Abate Alleged

Violations, Citation 2, Item 4, of Inspection No. 313082687, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.244(a)(1)(ii) was violated because:

A MVP Super floor hydraulic lift and a Napa Blue transmission jack both did not have their rated capacities marked prominently on the jacks.

- B. The deadline for the parties' final naming of witnesses is **June 19, 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. The parties may engage in discovery without prior motion or showing of good cause. The discovery cutoff date is **July 18, 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.
- D. Trial in this matter is scheduled for **August 29, 2012 at 9:00 a.m.** in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii, 96813. The trial may be continued by the Board until completed.
- E. 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.

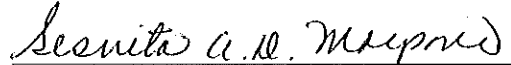
DATED: Honolulu, Hawaii, May 8, 2012.

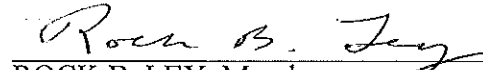
HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair

DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v.
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SESNITA A. D. MOEPONO, Member


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:

Lawrence H. Nakano, Deputy Attorney General
Rebecca Kauwe