

OS H
Decisions
11/21/88

ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

P. O. BOX 1149, JUNEAU, ALASKA 99802

STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
Complainant,)
vs.)
LEASE KISSEE,)
Contestant.)

RECEIVED

Department of Law

DEC 6 1988

Office of the Attorney General
Anchorage Branch
Anchorage, Alaska

Docket No. 88-724
Inspection No. RU-2218-516-87

DECISION AND ORDER

Introduction

This matter came before the board for a hearing on May 25, 1988 in Anchorage, Alaska, Alaska. The State of Alaska, Department of Labor, Division of Labor Standards and Safety, Occupational Safety and Health Section (hereafter "the Department") was represented by Assistant Attorney General Peggy Mentele. Lease Kissee ("the contestant") was represented by Eugene Kissee. The record was deemed closed at the conclusion of the hearing.

At issue before the Board are two citations which were issued by Compliance Officer Mike Russell following an inspection of a worksite under the control of the contestant at the Performing Arts Center in Anchorage, Alaska on November 17, 1988. Citation #1 asserts a violation of Alaska Construction Code 05.090(a)(2)(A) which directs that guards shall be installed on

power operated tools whenever such tools are designed to accommodate guards. Citation #1 was issued as "SERIOUS." Citation #2 recites a violation of Alaska Construction Code 05.030(g)(1) and alleges that the area around the table saw and the miter saw was littered with debris, scrap lumber and a thick layer of sawdust. Citation #2 was issued as "NONSERIOUS." Both violations were cited as "REPEAT" violations.

Discussion

The fact of the violations is not disputed by the contestant. Kissee admitted at the hearing that the violations occurred as cited. However, he testified that he took a lot of precautions to protect his employees who were working on the PAC site. In fact, he stated that he went out of his way to be safe. Even to the point of inconvenience. Kissee testified that he does not believe he is being given enough credit for his safety efforts. He argued that Lease Kissee was merely a collateral contractor on the jobsite. Peter Kiewit was the general contractor. Kissee pointed out that his crew held regular safety meetings and that his company does have a general policy mandating the use of saw guards. However, he admitted that the saw guard disciplinary policy is not as strong as the disciplinary policy which exists with respect to other safety matters.

Compliance Officer Mike Russell, the Department's inspector, testified as to the existence of the violations, but also acknowledged that the contestant, Lease Kisse, has "one of the best safety programs in the state."

Findings of Fact and Conclusions of Law

On the basis of undisputed evidence, we find that the contestant failed to guard the Rockwell miter saw and the Rockwell table saw, as alleged in Citation #1. We likewise find undisputed the inspector's statement that the contestant failed to maintain "housekeeping" as alleged in Citation #2. Furthermore, on the basis of Exhibits 1 and 2 (introduced and admitted without objection), we find that Citations #1 and #2 were "REPEAT" violations.

Accordingly, we conclude that Citations #1 and #2 should be affirmed as issued. Although we wish to note for the record that we were impressed with contestant's apparent strong concern for safety and safe practices, we also wish to reiterate that this Board will not permit Alaskan employers to "pick and choose" regarding safety enforcement. Every employer maintains a legal responsibility to comply to the full extent of the law. Even good faith and wholehearted adherence to one part of the safety codes cannot excuse a failure to adhere to another.

ORDER

1. Citation #1 and the penalty therefore, are affirmed as issued.
2. Citation #2 and the penalty therefore, are affirmed

as issued.

DATED at Juneau, Alaska this 21ST day of November, 1988.

ALASKA OSHA REVIEW BOARD

By: Guy Stringham
Guy Stringham, Chairman

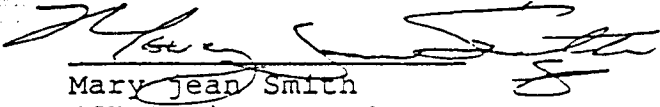
By: Don Hoff, Jr.
Don Hoff, Jr., Member

NOTICE TO ALL PARTIES

A person affected by an Order of the OSH Review Board may obtain a review of the Order by filing a complaint challenging the Order in superior court. The affected person must file the complaint within 30 days from the date of the issuance of the Order by the OSH Review Board. After 30 days from the date of the issuance of the Order, the order becomes final and is not subject to review by any court. AS 18.60.097(a).

CERTIFICATION

I hereby certify that the foregoing is a full, true and correct copy of the Decision and Order in the matter of the Alaska Department of Labor vs. Lease Kisse, Docket No. 87-724, filed in the office of the OSH Review Board at Juneau, Alaska, this 21st day of November, 1988.


Mary Jean Smith
OSH Review Board

MJS:kms
1161

Alaska Department of Labor

Division of Labor Standards and Safety
Occupational Safety and Health Section

P.O. Box 7022
Anchorage, AK 99503

Citation and Notification of Penalty

AMENDED

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

| | |
|---------------------------------|-----------------------------------|
| 3. Issue Date 12/02/87 | 4. Inspection Number 103658894 |
| 5. Reporting ID 1050210 | 6. CO ID R2218 |
| 7. Optional Report No 516-87 | 8. Page No 1 of 1 |

10. Inspection Date(s):
11/9/87 - 11/9/87

11. Inspection Site:
PAC 5th & G St.
Anchorage, AK 99501

| 1. Type of Violation(s) | 2. Citation Number |
|-------------------------|--------------------|
| Repeat Serious | 01 |

9. To:
Lease Kisee Construction
and its successors
7801 E. 36th
Anchorage, AK 99504

Penalty
Are Due
Within 15
Working
Days of
Receipt
of This
Notification
Unless
Contested

(See
enclosed
Booklet)

This Section
May Be
Detached
Before
Posting

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays) whichever is longer. This Citation describes violations of the AS 18-60. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and State holidays) from your receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

| 12. Item Number | 13. Standard, Regulation or Section of the Act Violated | 14. Description | 15. Date by Which Violation Must Be Abated | 16. Penalty |
|-----------------|---|--|--|-------------|
| | 05.090(a)(2)(A): | When power operated tools are designed to accommodate guards, they shall be equipped with such guards when in use. | Immediately Upon Receipt | 700.00 |
| | | For example: There were two instances of missing blade guards: The lower guard on a Rockwell miter saw, serial number 81K65191, and the blade guard on a Rockwell table saw, no serial number. | | |
| | | Repeat of: Inspection #Ko-1791-812-87 Citation #1, Item #1 Issued 6/23/87 | | |

17. Chief *Raymond L. [Signature]* 1st Deputy *Demetri [Signature]*

NOTICE TO EMPLOYEES — The law gives an employee or representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The contest must be mailed to the Alaska Department of Labor Office at the address shown above within 15 working days (excluding weekends and State holidays) of the receipt by the employer of this citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION — The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

18. \$700.00
Total
Penalty
for This
Citation
Make Check or
Money Order
Pay to:
"00. 5"

Indicate
Inspection
Number
on
Remittance

Alaska Department of Labor

Division of Labor Standards and Safety
Occupational Safety and Health Section

P.O. Box 7022
Anchorage, AK 99503

EXHIBIT A

| | |
|----------------------------------|-----------------------------------|
| 3. Issuance Date 12/02/87 | 4. Inspection Number 103658894 |
| 5. Reporting ID 1050210 | 6. CO ID R2218 |
| 7. Optional Report No. 516-87 | 8. Page No. 1 of 1 |

Citation and Notification of Penalty

The violation(s) described in this Citation are alleged to have occurred on or about the day the inspection was made unless otherwise indicated within the description given below.

10. Inspection Date(s):

11/9/87 - 11/9/87

| 1. Type of Violation(s) | 2. Citation Number |
|-------------------------|--------------------|
| Repeat Other | 02 |

11. Inspection Site:

PAC 5th & G St.
Anchorage, AK 99501

12. To: Lease Kissee Construction
and its successors
7801 E. 36th
Anchorage, AK 99504

Penalties Are Due Within 15 Working Days of This Notification Unless Contested (See enclosed Booklet)

This Section May Be Detached Before Posting

THE LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) cited below. The Citation must remain posted until the violations cited below have been corrected, or for 3 working days (excluding weekends and State holidays) whichever is longer.

This Citation describes violations of the AS 18-60. The penalty(ies) listed below are based on these violations. You must correct the violations referred to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding weekends and State holidays) from your receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at the address shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conjunction with this form.)

| 12. Item Number | 13. Standard, Regulation or Section of the Act Violated | 14. Description | 15. Date by Which Violation Must Be Abated | 16. Penalty |
|-----------------|---|--|--|-------------|
| | 05.030(g)(1): | During the course of construction, alteration, or repairs, form and scrap lumber with protruding nails, and all other debris, shall be kept cleared from work areas, passageways, and stairs, in and around buildings or other structures. For example: The area around the table saw and the miter saw on the stage of auditorium number one, next to the contractor's job office, was littered with debris, scrap lumber and a thick layer of sawdust all over the floor. | Immediately Upon Receipt | 140.00 |
| | Repeat of: | Inspection #Ko-1791-893-87 Citation #1, Item #2 Issued 10/8/87 | | |

17. Chief

[Signature]

18.

\$ 140.

NOTICE TO EMPLOYEES — The law gives an employee or representative the opportunity to object to any abatement date set for a violation if he believes the date to be unreasonable. The contest must be mailed to the Alaska Department of Labor Office at the address shown above within 15 working days (excluding weekends and State holidays) of the receipt by the employer of this citation and penalty.

EMPLOYER DISCRIMINATION UNLAWFUL — The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Law. An employee who believes that he has been discriminated against may file a complaint no later than 30 days after the discrimination with the Alaska Department of Labor Office at the address shown above.

EMPLOYER RESPONSIBILITIES AND COURSES OF ACTION — The enclosed booklet outlines employer responsibilities and courses of action and should be read in conjunction with this notification.

Total Penalty for This Citation
Make Cheque Money Order Payable "DOLLARS"
Index Inspection Number on Receipt

Supervisory Safety & Health
 Anchorage, Alaska

PHONE (907) 264-2500
 MAKE CHECK PAYABLE TO:
 STATE OF ALASKA

Use K-1000 Construction Bill
 1115 successors
 01 E. 3017
 Anchorage, Alaska 99515

IMPORTANT
 1. Please reference bill number on your check.
 2. Submit part two of this form with your payment.

AMENDED
 12/10/87
AMENDED

| DESCRIPTION | QUANTITY | UNIT PRICE | | AMOUNT |
|--|----------|------------|-----|----------|
| | | COST | PER | |
| 1/87 Citation #1 Item #1 05.03 (g) (1) | | | | \$700.00 |
| 2/87 Citation #1 Item #1 05.03 (g) (1) | | | | \$140.00 |
| 3/87 Citation #3 Item #1 05.13 (e)(1)(A)(iv) | | | | |
| (Citation #1, Item #1 penalty reduced) | | | | |
| (Vacate Citation #3, Item #1) | | | | |

8-98
88

AMENDED

AMENDED
 12/17/87

AMENDED

State of Alaska/DIV. ADMIN: Fiscal
 P.O. Box 1124, Juneau, Alaska 99801

AMOUNT DUE THIS BILL \$840.00

| NUMBER | AMOUNT | DATE | COMMENTS |
|-----------|----------|----------|----------|
| 88-516-87 | \$840.00 | 12/10/87 | |

| AMOUNT | SY | CC | PGM | LC | ACCT | FY | DATE | |
|----------|----|--------|---------|-------|------|----|------|----|
| | | | | | | | DS | LC |
| \$840.00 | 01 | 004705 | 7050720 | 65040 | | | | |

AUTHORITY'S NAME: S. L. Smythe, Chief, Safety Compliance
 TITLE: Chief, Safety Compliance
 BILLING AUTHORITY'S SIGNATURE: [Signature]
 TELEPHONE NUMBER: (907) [Number]

RECIPIENT