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ALASKA OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

P. O. BOX 1149, JUNEAU, ALASKA 99802

STATE OF ALASKA, DEPARTMENT OF LABOR,

Complainant,

vs.

JOHN CABOT TRADING COMPANY,

Υ.

Contestant.

Docket No. 87-712 Inspection No. Ru-2218-462-87

DECISION AND ORDER

Introduction

This matter came before the board for a hearing on March 1, 1988 in Anchorage, 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 Jan Hart DeYoung. John Cabot Trading Company ("the contestant") was represented by its president, Hank Lind. By stipulation of the parties Board Member J.C. Wingfield, who was unable to attend the hearing due to a prior business commitment, was excused from participation in the case and it was agreed that the decision in this matter would be rendered by the two remaining and participating board members.

At issue are five (5) alleged violations of Alaska safety and health regulations which were observed and cited by departmental compliance officer Mike Russell during an inspection which he performed of the contestant's worksite in King Salmon, Alaska on or about July 10, 1987. The citations, which carry a total proposed penalty of \$360.00, are discussed individually below.

The record closed upon completion of the hearing.

ALASKA OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD P.O. 402 114 JUNEAU, ALASKA 99802

SUMMARY OF FACTS

Compliance officer Russell testified that he conducted a duly authorized inspection of the contestant's worksite on July 10, 1987. He further testified that during the course of that inspection he observed the following conditions, each of which is a violation of the occupational safety and health regulation cited in brackets.

a. Open electrical breaker panels or exposed wiring in both the shop and the fueling shack. [Electrical Code 03.002(g)(2)(A)]

Employee sleeping quarters which were unclean,
 rough, and uninhabitable condition. [Occupational and Industrial
 Structures Code 02.110(c)(18)]

c. An exit door which was nailed shut and not usable as a means of exit. [Occupational and Industrial Structures Code 02.310(b)(4)]

d. Failure of the contestant to provide employees with sheets, blankets, pillows and mattress covers. (Employees were apparently using their own sleeping bags instead. [Occupational and Industrial Structures Code 02.110(c)(7)(E)]

e. No occupational illness and injury logs as required by 8 AAC 61.230(a).

The department submitted photographic exhibits in support of Russell's testimony.

Lind testified for the contestant. He stated that the contestant did not provide housing for its employees in the indicated areas and that the individuals living in the areas observed by Russell were itinerants or transient employees. Contestant contends that the individuals were "casual laborers" employed on an intermittent basis by contestant and that housing provided by contestant is not a requisite condition of employment. (Lind agreed, however, that the housing facilities

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observed by Russell were substandard and not suitable for living "by any kind of human being.")

FINDINGS OF FACT AND CONCLUSIONS OF LAW

We find that there is no essential dispute with respect to the inspector's account that employees were exposed to live electrical wires and an open breaker panel which was under contestant's control. Accordingly, we conclude that, with respect to that item, the citation should be affirmed.

Concerning the "living quarters" allegations, we are not impressed with contestant's plea that the individuals were merely "casual labor." It is clear to us that those individuals were on site for the primary purpose of aiding the employer in the accomplishment of its business. Such being the case, we conclude that the contestant violated applicable regulatory provisions. See <u>Department of Labor v. Rogers & Babler</u>, OSHA Docket No. 86-664 (1986).

ORDER

1. Citations _____ are AFFIRMED.

2. The proposed penalty of \$360.00 are AFFIRMED. DATED at Juneau, Alaska this $3^{\frac{1}{2}}$ day of $4^{\frac{1}{2}}$. 1988.

By: Juy Minghen Guy Stringham

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ALASKA OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD P.O. BOX 1148 JUNEAU, ALASKA 99802

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his Citation describes violations of the AS 18-60. The penalty(ies) listed below are based on these violations. You must correct the violaerd to in this Citation by the date listed below and pay the penalties proposed, unless within 15 working days (excluding ons re' 3 State holidays) from your receipt of this Citation you mail a notice of contest to the Alaska Department of Labor Office at /eeker shown above. (See the enclosed booklet which outlines your responsibilities and courses of action and should be read in conne ado. inction with this form.)

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