

STATE OF ALASKA

DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY & HEALTH REVIEW BOARD

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STATE OF ALASKA,)
DEPARTMENT OF LABOR,)
)
Complainant,)
)
v.)
)
DAWSON CONSTRUCTION CO.,)
)
Contestant.)

Docket No. 91-883
Inspection No. Gr-6835-031-91

RECEIVED
JUL 20 1992
Law Offices of Robert W. Landau

DECISION AND ORDER

This case arises from an occupational safety and health inspection of a worksite under the control of Dawson Construction Company (Dawson) in Hoonah, Alaska, on June 20, 1991.

As a result of the inspection, the State of Alaska, Department of Labor (Department) issued a citation to Dawson for a violation of the Alaska Construction Code. The citation alleges that Dawson violated Construction Code 05.110(d)(9)(B)(i) by failing to protect employees at a school construction site from two uncovered electrical panel boxes containing live parts. The violation was classified as "serious" and a monetary penalty of \$500 was assessed.

Upon notice of contest by Dawson, the matter proceeded to a hearing before the full Board in Juneau on March 12, 1992. The Department was represented by Assistant Attorney General Lisa M. Fitzpatrick. Dawson was represented by engineer Jerry Quigg. The parties submitted witness testimony, documentary evidence and arguments to the Board. Upon review and consideration of the evidence and arguments of the parties, the Board issues the following findings of fact, conclusions of law and order in this matter.

FINDINGS OF FACT

1. On June 20, 1991, Department compliance officer David Green conducted an occupational safety and health inspection of a construction site at the Hoonah Public School in Hoonah, Alaska.

2. Dawson Construction was the general contractor at the worksite, which extended to all parts of the school. There were also a number of subcontractors working at the site. Dawson had approximately four employees at the worksite, including a project manager.

3. As the general contractor, Dawson had supervisory authority over the entire worksite.

4. During the inspection, compliance officer Green observed two uncovered electrical panel boxes. One was in the cafeteria (Ex. A) and the other was in the gym (Ex. B).

5. Dawson's project manager at the site indicated that the panel covers had been removed by Power Insulation, an asbestos abatement subcontractor, in order to plug into the electrical panel to operate a power compressor. After completing its work, Power Insulation evidently failed to replace the covers on the electrical panel boxes. Dawson's representative at the hearing further stated that the electrical subcontractor was responsible for the panel boxes but was not at the site during the inspection.

6. Both of the uncovered panel boxes were located in areas that were accessible to a number of employees working at the site. Dawson's own employees performed clean-up work within two feet of one of the open panel boxes. In addition, school children used parts of the school facility at night during the construction period and also may have been exposed to the hazard.

7. The panel box violation was classified as "serious" because of the probability of serious bodily injury or death in the event of accidental contact with the exposed live parts.

8. The Department calculated the monetary penalty in accordance with its compliance manual guidelines. The unadjusted penalty for a serious violation is \$1,000. Dawson was given a 30% reduction for good faith in promptly abating the hazard; a 10% reduction for no history of prior violations; and a 10% reduction based on its company size. After applying the penalty reductions, the Department's final assessed penalty was \$500.

CONCLUSIONS OF LAW

Construction Code 05.110(d)(9)(B)(i) provides:

Except as required or permitted elsewhere in this section, live parts of electrical equipment operating at 50 volts or more must be guarded against accidental contact by cabinets or other forms of enclosures.

Dawson concedes that this provision was violated at the Hoonah School construction site but contends that it should not be held responsible since the violation was caused by the asbestos abatement subcontractor. Dawson also notes that the electrical subcontractor was contractually responsible for making sure there were no electrical hazards. Finally, Dawson argues that the monetary penalty assessed is excessive.

In determining liability for hazards at multi-employer worksites, the Board has adopted the analytical framework established by the federal OSHA Review Commission and the federal courts. See, e.g., H & H Contractors, Inc., Docket No. 90-831, at 11 (March 11, 1991). Safety hazards at multi-employer worksites are evaluated in terms of two concepts, control and exposure. "Control" means control of the hazard, either by creating the hazard or having the authority and ability to abate it. "Exposure" refers to whether employees of the cited employer have access to the zone of danger created by the hazard. See Rothstein, Occupational Safety and Health Law §§ 165, at 200-01 (3d ed. 1990).

In this case, it is undisputed that Dawson as the general contractor had supervisory authority over the entire worksite. Moreover, Dawson's own employees were working near the panel boxes

and had access to the hazard. The uncovered panel boxes were open and obvious. With the exercise of reasonable diligence, Dawson should have been aware of the hazard even if it was created by a subcontractor.

In light of the foregoing, we conclude that Dawson had control over the hazard and that its employees were exposed to the hazard. Under recognized principles of OSHA law, therefore, Dawson is liable for this violation. See Rothstein, supra, §§ 166-68, at 202-10. A general contractor is liable for safety hazards created by a subcontractor where the general contractor has responsibility over the entire worksite, the hazards are reasonably apparent, and the general contractor's employees have access to the hazard. Further, a general contractor cannot escape liability under these circumstances by placing responsibility on another contractor, either by contract or otherwise. See Rothstein, supra, § 115, at 159. While Dawson may have contractual recourse against the subcontractor who created the hazard, this does not excuse Dawson from its own liability under OSHA law.

We further conclude that the citation was properly classified as a "serious" violation. In the event of accidental contact with an uncovered electrical panel box containing live parts, there is a substantial probability of serious physical harm or death. See AS 18.60.095(b).

With respect to the monetary penalty, we have reviewed the Department's penalty calculations and find that Dawson was

given the maximum penalty reductions under the Department's guidelines. We find no reason to adjust the penalty further.

ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that Citation 1 is AFFIRMED as issued.

DATED this 17th day of July, 1992.

ALASKA OCCUPATIONAL SAFETY
AND HEALTH REVIEW BOARD

By: Wayne A. Gregory
Wayne A. Gregory, Chairman

By: Donald F. Hoff Jr.
Donald F. Hoff Jr., Member

By: Lawrence D. Weiss
Lawrence D. Weiss, Member