

*Decision file*

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,	)
	)
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. BOX 1149  
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)]

b. 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

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 Department of Labor v. Rogers & Babler, 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 13<sup>th</sup> day of June, 1988.

By: Guy Stringham  
Guy Stringham

By: Don Hoff  
Don Hoff

Alaska Department of Labor  
 Division of Labor Standards and Safety  
 Occupational Safety and Health Section

Box 7022  
 Anchorage AK 99503

Issuance and Notification of Penalty

Type of Violation(s)	Citation Number
Serious	01

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. Issuance Date 08/11/87	4. Inspection Number 103668216
5. Receipts ID 1050210	6. CO ID R2218
7. Optional Report No 462-87	8. Page No 1 of 1

10. Inspection Date(s)  
7/10/87 - 7/10/87

11. Inspection Site  
General Delivery  
King Salmon, AK 99613

To:  
 Hann Cabot Trading Co. Inc.  
 and its successors  
 P.O. Box 10-4139  
 King Salmon, AK 99518

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested  
 (See enclosed Booklet)  
 This Section May Be Detached Before Posting

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.)

Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
3.002(g)(2)(A)	Except as required or permitted elsewhere in the article, live parts of electric equipment operating at 240 volts or more shall be guarded against accidental contact.  For example: Live electrical components were exposed to contact by employees: a) at the 220/240 volt breaker panel in the shop and b) at the open wiring in the fueling shack.	Immediately Upon Receipt	240.00

Chief *[Signature]*

18. \$ 240.00

NOTICE TO EMPLOYEES — The law gives an employee or representative the opportunity to object to any abatement set for a violation if he believes the date to be reasonable. 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 days) of the receipt by the employer of this citation and reply.

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.

Total Penalty for This Citation  
 Make Check Money Order Payable to DOL-LSAS  
 Indicate Inspector Number on Remittance

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.

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

3. Issue Date 08/12/87	4. Inspection Number 103668216
5. Reporting ID 1050210	6. CO ID R2218
7. Optional Report No 462-87	8. Page No 1 of 2

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.

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7/10/87 - 7/10/87

11. Inspection Site

General Delivery  
 King Salmon, AK 99613

17. Type of Violation(s)	18. Citation Number
Serious	02

9. To:  
 John Cabot Trading Co., Inc.  
 and its successors  
 P.O. Box 10-4139  
 Anch., AK 99518

EXHIBIT A

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet)  
 This Section May Be Detached Before Posting

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 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.)

2. Item Number	3. Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
		alleged violations below have been grouped because they involve similar or related hazards that may increase the potential for injury resulting from an accident.		
	AS 02.110(c)(18):	In all camps where the labor force is housed, living quarters, toilets, showers and laundry rooms shall be kept clean.  For example: The two quonset type bunk houses were very dirty, and cluttered with piles of combustible materials inside and outside.	08/20/87	120.00

Chief *[Signature]*

18. Last Pg

NOTICE TO EMPLOYEES — The law gives an employee or representative the opportunity to object to any abatement set for a violation if he believes the date to be reasonable. 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.

Total Penalty for This Citation  
 Make Check Money Order Payable to DOL-LSA  
 Indicate Inspection Number on Remittance

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.

Alaska Department of Labor  
 Division of Labor Standards and Safety  
 Occupational Safety and Health Section  
 P.O. Box 7022  
 Juneau, AK 99503

**Citation and Notification of Penalty**

**EXHIBIT A**

3. Issue Date 05/12/87	4. Inspection Number 103668216
5. Reporting ID 1050218	6. ACC ID R2218
7. Optional Report No 462-87	8. Page No 2 of 2

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)  
7/10/87 - 7/10/87

11. Inspection Site  
General Delivery  
King Salmon, AK 99613

Type of Violation(s)	Citation Number
Serious	02

To:  
 Cabot Trading Co. Inc.  
 its successors  
 P.O. Box 10-4139  
 King Salmon, AK 99518

Penalties Are Due Within 15 Working Days of Receipt of This Notification Unless Contested (See enclosed Booklet)  
 This Section May Be Detached Before Posting

LAW REQUIRES that a copy of this Citation be posted immediately in a prominent place at or near the location of the violation(s) 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.  
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Item Number	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
02.310(b)(4)	In every building or structure exits shall be so designed and maintained as to provide free and unobstructed egress from all parts of the building or structure at all times when it is occupied. No lock or fastening to prevent free escape from the inside of any building shall be installed except in mental, penal, or correctional institutions where supervisory personnel is continually on duty and effective provisions are made to remove occupants in case of fire or other emergency.  For example: An exit door in the south bunkhouse was wired shut and could not be used as a means of egress.	08/20/87	

*W. Michael S. Smith*

18. \$ 120.00

**RIGHT TO EMPLOYEES —** The law gives an employee or representative the opportunity to object to any abatement 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 abatement.  
**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.

Total Penalty for This Citation  
 Money Check  
 Money Order  
 Payable to:  
 DOLLARS  
 Indicate Inspection Number on Remittance

**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.

Alaska Department of Labor

Division of Labor Standards and Safety  
Occupational Safety and Health Section  
Box 7022  
Anchorage, AK 99503

Notification and Notification of Penalty

3. Issuance Date 08/12/87	4. Inspection Number 103666216
5. Reporting ID 1050210	6. CO ID R2218
7. Optional Report No. 462-87	8. Page No. 1 of 1

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10. Inspection Date(s):

7/10/87 - 7/10/87

11. Inspection Site:

General Delivery  
King Salmon, AK 99613

Type of Violation(s)	Citation Number
Other	03

1. To:  
John Cabot Trading Co. Inc.  
and its successors  
P.O. Box 10-4139  
King Salmon, AK 99518

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Item Number	Standard, Regulation or Section of the Act Violated	14. Description	15. Date by Which Violation Must Be Abated	16. Penalty
1	AS 02.110(c)(7)(E)	Sleeping bags shall not be permitted in lieu of cots, blankets, pillows with cases and mattress covers. For example: The employer was not providing bed linen and employees were using their personal sleeping bags.	08/27/87	0.00
2	AS 06.230(a)	Each employer shall maintain in each establishment a log of occupational injuries and illnesses on a calendar year basis. For example: There were no Occupational Illnesses and Injury logs being maintained.	09/18/87	0.00

Chief: *Denise Smith*

18. \$ 0.00

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Total Penalty for This Citation  
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Indicate Inspector Number on Remittance

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