

CCASE:
SOL (MSHA) V. CENTRAL PRE-MIX CONCRETE
DDATE:
19790607
TTEXT:

Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceedings

Docket No. DENV 79-62-PM
A.C. No. 10-00310-05001

v.

Coeur D'Alene Pitt & Plant

CENTRAL PRE-MIX CONCRETE COMPANY,
RESPONDENT

Docket No. DENV 79-126-PM
A.C. No. 45-00995-05002

Yakima Pit & Plant

DECISION

Appearances: Marshall Salzman, Esq., Office of the Solicitor,
U.S. Department of Labor, for Petitioner
R. M. Rawlines, Central Pre-Mix Concrete Co.,
Spokane, Washington, for Respondent

Before: Judge Chares C. Moore, Jr.

At the beginning of the hearing in Spokane, Washington, Respondent announced that he was withdrawing his notice of contest in DENV 79-126-PM and that he had already sent his check in the amount of the proposed assessment to the assessment officer. It was explained to him that the course of action which he followed was inappropriate in a case where a complaint had been filed. In view of his obvious misunderstanding and the fact that the attorney for the Government had no objection, it was agreed that this be considered a settlement and that judgment would be entered for the amount of the original proposed assessment.

Docket No. DENV 79-62-PM involves two citations, 347017, alleging that an unguarded conveyor with a walkway was not equipped with an emergency stop cord and Citation 347018, alleging that the electric motor on the head pulley of a conveyor did not contain a cover plate over the electrical connections.

As to the first alleged violation, the standard 30 CFR 56.9-7, requires that unguarded conveyors with walkways contain an emergency stop cord. There is no dispute about the facts. There was a conveyor that was unguarded and there was no stop cord. There was what could be considered a walkway but it contained a chain across the entrance

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and a sign saying "Do not enter while operating." It was the contention of Respondent that the chain and sign constituted a guard because no one was allowed in the area while the conveyor was operating. I think it more reasonable, however, to consider the chain and sign not as a guard for the conveyor, but as factors which prevent the chained-off area from being a walkway. And if there is no walkway, there is no requirement of a stop cord and therefore, no violation. The citation is accordingly VACATED.

As to Citation No. 347018, alleging a violation of 30 CFR 56.12-32, there is no question that the violation occurred. Respondent's only defense was that it contracted out its electrical work and that the independent contractor must have left the electrical cover plate off. While that may be a mitigating circumstance, it is certainly no defense to the charge. In view of the stipulations regarding four of the six statutory criteria, and the fact that there was good faith abatement and little negligence on Respondent's part, I assess a penalty of \$30 for the violation found.

ORDER

It is therefore ORDERED that Respondent pay to MSHA a civil penalty in the total sum of \$56 within 30 days of the entry of this order.

Charles C. Moore, Jr.
Administrative Law Judge