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SOL (MSHA) V. GENERAL MATERIALS INC.
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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 Proceeding
Docket No. DENV 79-315-PM
A/O No. 34-00919-05001

v.

GENERAL MATERIALS, INC.,
RESPONDENT

Portland Pit

DECISION

Appearances: Barbara G. Heptig, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas, 75202
for the Petitioner
Leroy Powers, Esq., Oklahoma City, Oklahoma, 73102
for the Respondent

Before: Judge Stewart

Procedural Background

The above-captioned proceeding is brought pursuant to section 110 of the Federal Mine Safety and Health Act of 1977 (hereinafter, the Act) 30 U.S.C. 820(a) (1978). The hearing in this matter was held on September 17, 1979, in Oklahoma City, Oklahoma. Petitioner called one witness and introduced five exhibits. Respondent called a single witness. Both parties waived the rights to submit posthearing briefs.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The two violations of mandatory safety standards at issue herein were alleged to have occurred at Respondent's Portland Pit on July 26, 1978. Inspector Russell Smith observed the alleged violations during the course of a regular inspection and in both instances he issued a section 104(a) citation.

The parties offered the following stipulations at the hearing:

(a) The number of annual man hours worked at the Portland Pit in 1977 was 18,110, and

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(b) General Materials, Inc., has received no previous citations under the Mine Safety and Health Act of 1977.

There is no indication on the record that any penalty assessed in this proceeding would adversely affect Respondent's ability to remain in business.

Citation No. 00166186

Inspector Smith issued citation No. 00166186 alleging a violation of 30 CFR 56.14-1. (Footnote 1) He described the pertinent condition as follows: "V-Belt drive on #3 stacker conveyor was not guarded to protect workers." The operator placed a guard over the V-belt drive within the time set for abatement by the inspector, thereby demonstrating a normal degree of good faith.

The V-Belt drive observed by the inspector was located at the top of a conveyor. To reach this drive, a person would climb a 4-or-5 foot ladder and proceed approximately 120 feet up a walkway adjacent to the conveyor belt. A double railing extended along the walkway. The bottom railing was 18 inches and the top railing was 42 inches above the walkway.

Section 56.14-1 requires that drive pulleys and similar exposed moving machine parts which may be contacted by persons and which may cause injury to persons shall be guarded. The condition at issue was in violation of the mandatory standard as alleged. Inspector Smith and Naaman Gentry, Respondent's plant manager, agreed that the pulley in question was unguarded. Moreover, the pinch point was located where the V-belt rotated over the pulley, 10 inches above and out from the top railing. A person could contact this pinch point and suffer injury.

The respondent was negligent in that the condition was readily observable, but corrective action was not taken until after the issuance of the citation.

It was improbable that this condition would result in an accident or injury. Respondent's employees had occasion to work in the vicinity of the V-Belt drive only when repair or maintenance was necessary. The company rule on these occasions forbade work on conveyors or equipment when such machinery was in operation. Before such work was undertaken, a disconnect switch in the control tower

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was locked out. A second disconnect switch located rear the drive was also pulled. Since Respondent's employees were in the area only when the machinery was inoperative it was unlikely that the lack of a guard would result in an accident. If an accident were to occur, however, it could result in the severing of a hand or fingers.

Citation No. 00166187

The inspector issued Citation No. 00166187 alleging a violation of 30 CFR 56.11-12. (Footnote 2) He described the pertinent condition as follows: "One stand for guardrail on dredge was broken leaving an area without protection." The operator replaced the broken stanchion within the time set by the inspector for abatement, thereby demonstrating a normal degree of good faith.

The guardrail or barrier at issue was comprised of a chain supported by stanchions which had been placed at intervals of 8 feet. Because the stand was broken, the chain was hanging at a height of 18 to 24 inches, 16 to 18 inches lower than it would have otherwise, for a distance of 16 feet.

The guardrail and broken stand at issue were located along a walkway on the outer perimeter of a dredge. This walkway was used by the dredge operator when boarding and leaving the dredge. It was also used once every 2 weeks when the dredge was refueled.

Section 56.11-12 requires that openings near travelways through which men may fall shall be protected by railings or barriers. The condition was in violation of this mandatory safety standard as alleged. Because the stanchion had been broken, the chain would not protect those who used the walkway from falling into the water.

The operator was negligent in that the condition was known, yet corrective action had not been taken. The dredge operator told the inspector that repair efforts had already been contemplated. Even if mine management did not have actual knowledge, they should have known of the condition because it was visually obvious. The chain was hanging at a noticeably lower height.

It is probable that this condition would result in accident. The operator of the dredge walked through the area on a daily basis to get on and off the dredge and he had occasion to work in the area at least one every two weeks while refueling the dredge. It is

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unlikely that injury would result, however, if an accident were to occur. The inspector testified that an uninjured man would have no problem climbing back onto the barge. The dredge was stationery when in operation and there was no appreciable current in the pond. In addition, a company rule in effect at the time required that life jackets be worn to and from the dredge. Mr. Gantry testified that this rule was generally observed.

ASSESSMENTS

In consideration of the findings of fact and conclusions of law in this decision, based on evidence of record, the following assessments are appropriate under the criteria of section 110(i) of the Act:

Citation No.	Assessment
00166186	\$35
00166187	30

ORDER

The Respondent is ORDERED to pay the amount of \$65 within days of the date of the decision.

Forrest E. Stewart
Administrative Law Judge

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1 30 CFR 56.14-1 reads as follows:

Gears; spockets; chains; drive, head, tailm and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

~Footnote_two

2 30 CFR 56.11-;2 reads as follows:

Openings above, below, or near travelways through which men or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed.