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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. WILK 79-89-PM  
A.C. No. 17-00310-05001

v.

North Waterfield Pit & Mill

CIANBRO CORPORATION,  
RESPONDENT

DECISION

Appearances: Ronald Glover Esq., Office of the Solicitor, U.S. Department  
of Labor, for Petitioner  
William Lee, Safety Director, Cianbro Corporation, Pittsfield,  
Maine, for Respondent

Before: Administrative Law Judge Michels

This proceeding was brought pursuant to section 110(a) of  
the Federal Mine Safety & Health Act of 1977, 30 U.S.C. 820(a).  
The petition for assessment of civil penalty was filed by MSHA on  
January 30, 1979. A timely answer was filed by the Respondent.  
A hearing was held in Bangor, Maine, on October 16, 1979, at  
which both parties were represented.

This proceeding concerns one citation. Evidence was  
received and a decision thereon was rendered from the bench. The  
decision as it appears in the record, is set forth below.

Citation No. 201013, issued July 6, 1978

The following is the bench decision on this citation found  
at pages 38-42 of the transcript.

My decision in this matter is basically in two parts.  
First, whether or not there is a violation; and second,  
if there is a violation then I would make findings on  
the applicable criteria to determine the size of the  
penalty. Oftentimes, and perhaps here, some of the  
elements that are mentioned are taken into account in  
connection with the gravity or negligence findings, if  
in fact it is found there is a violation.

This matter concerns citation number 201013, which was issued on July the 6th, 1978. The inspector charged a violation of 30 C.F.R. 56.11-1. He alleged that the condition of practice was as follows, "The ladder to the rock return conveyor had been removed; a safe access was not provided." The applicable regulation charged reads as follows, "Safe means of access shall be provided and maintained to all working places."

In this instance, it was stipulated that the Mine Health and Safety Act and the applicable regulations do apply to this plant. So, I'll not further consider that particular element.

I do state, however, on this record, that it is not a precedent for any future act that this particular presiding Judge might take, but it's based solely upon the agreement of the parties. So accordingly, I do find then based on the agreement, that the Act and the regulations are applicable to this plant.

There is no dispute on certain basic facts. There is a walkway along the conveyor belt which is approximately four feet above the ground, at least at the lower end. This walkway, it is clear from the testimony, was a working place, since miners did have occasion to use it for maintenance. There is also no dispute that normally access to that walkway would be by means of ladder which was propped up at the end of the walkway. This ladder was not located at the end of the walkway on the day the inspector made his inspection. There is \* \* \* a little dispute as to where it may have been, but it is clear that it was not located against the walkway on that occasion.

It is further clear and admitted that this ladder might be used on some occasions in other parts of the plant and could be a considerable distance from the walkway. It is further clear and admitted that access is required to this walkway at about several times a week for the purposes of maintenance.

The only real question perhaps is whether this regulation requires, in this particular instance at least, a permanent means of access or a continuous means of access or whether access need only be provided at such times as the walkway is used.

It would be my view and decision is based on it, that a continuous means of access is necessary for access by miners to a working place, including this walkway. It would

be my further view that this is somewhat more than technical. I'll take into account that no miners were seen using this walkway by the inspector; and furthermore, the testimony shows that no one has ever observed a miner using that walkway unless the ladder was there; that element would come into the gravity of the violation. The fact remains, however, that somehow, sometime, there will be an emergency occasion and that ladder might not be there and a miner would find the occasion to use that walkway and attempt to gain access without the ladder and thus subject himself to possible injury. Accordingly, I do find that there is a violation of 30 C.F.R. 56.11-1 as charged. My findings on the criteria are as follows:

A history of prior violations: there is little or no indication of prior violations in the record and I find that there is no such history. The operator's size: it was stipulated that this company is small to medium in size. There is no evidence that the penalty to be assessed here today would have any effect on the operator's ability to continue business. Abatement: the inspector testified, and I would accept his testimony as a finding that the violation was abated in very good faith immediately. Furthermore, the operator has demonstrated even further good faith by bolting a permanent ladder to this location.

That leaves two remaining points. Now because of the circumstances that were demonstrated here, I'll find slight negligence. In my view, it is the type of situation in which the operator should have known they needed a continuous means of access. Nevertheless, the testimony does indicate that the operator in honesty and in good faith believed that that would not be used except if the ladder was in place. The operator had no reason to believe otherwise and had never been warned of an unsafe situation. And so, I would take all that into account and under the circumstances [find that the operator] demonstrated slight negligence.

Gravity: The lack of a means of access, it seems to me, shows a serious violation. This is mitigated to some extent in this case by the fact that there is no evidence at all that anybody used that means of access unless that ladder was in place. Nevertheless, it could have been so used. And if a miner had attempted to gain access without a ladder the miner might have seriously injured himself in a fall or in getting caught in the moving machinery. Taking into account all these circumstances, the very good faith of the operator and its slight negligence because of the circumstances, I would reduce the penalty originally assessed by the assessment officer from \$34.00 to \$10.00, which I believe would be a nominal penalty under the circumstances.

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The above bench decision is AFFIRMED.

It is ORDERED that Respondent pay the penalty of \$10 within thirty (30) days of the date of this decision.

Franklin P. Michels  
Administrative Law Judge