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SOL (MSHA) V. HECLA MINING
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	Civil Penalty Proceeding DOCKET NO. WEST 79-251-M A/O NO. 10-00088-05003
v.	Mine: Lucky Friday
HECLA MINING COMPANY, RESPONDENT	

APPEARANCES:
Marshall P. Salzman, Esq.,
of San Francisco, California, for petitioner

Fred M. Gibler, Esq.,
of Kellogg, Idaho, for respondent

DECISION

Carlson, Judge:

This cause was heard under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter the "Act"), upon the Mine Safety and Health Administration's petition for assessment of a civil penalty for a violation of the mandatory safety standard published at 30 C.F.R. 57.19-70. The standard requires that cage doors in shaft hoists be closed while men are being hoisted.

The facts are undisputed. A skiptender employed by respondent opened the cage door some 40 feet before the cage stopped, thus risking serious injury. He did so in knowing disregard of respondent's strictly enforced safety policy forbidding that practice. The inspecting officer acknowledged that respondent could not have anticipated the employee's action (Tr 5-8).

The case presents one significant issue: Whether the mine operator, despite his lack of negligence, may be found in violation and assessed a civil penalty under section 110(a) of the Act.

The Commission's jurisdiction is stipulated. Both parties presented evidence and filed post-hearing briefs.

Respondent contends that under MESA v. North American Coal Company 3 IBMA 93 (1974), a mine operator cannot be found in violation of the Act based solely upon an employee's failure to comply with a strictly enforced safety policy. Petitioner, on the other hand, contends that the North American Coal Company case does not support this proposition, and that other decisions establish that an operator can be found in violation of the Act even where the operator acted without fault.

Respondent's reliance on the North American Coal Company case is misplaced. Although North American Coal appears to allow a "due diligence" or "isolated act" defense, its applicability has since been restricted to the particular standard involved in that case. See Webster County Coal Corporation, 7 IBMA 264 (1977); United States Steel Corporation v. Secretary of Labor, Mine Safety and Health Administration (MSHA), 1 FMSHRC 1306 (1979). In United States Steel, the Commission makes clear that under the 1977 Act an operator is liable for violations of mandatory standards without regard to fault; thus, "an operator's safety program and its efforts to enforce it are irrelevant to a finding of violation." The present record supports a finding of violation.

An operator's fault, although not relevant to a determination of violation, is relevant to a determination of an appropriate penalty.(FOOTNOTE 1)

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Because the violation in this case is attributable to an employee's deliberate disregard of a strictly enforced safety policy,(FOOTNOTE 2) a low penalty is warranted--despite the possibility of serious injury. I conclude that $15 is reasonable.

ORDER

Accordingly, respondent is ordered to pay a civil penalty of $15 within 30 days of this decision.

John A. Carlson
Administrative Law Judge

~FOOTNOTE 1
See 110(i) of the Act.

~FOOTNOTE 2
Other undisputed facts bearing on penalty show that respondent is a large company; that the imposition of a penalty would not impair its ability to continue in business; that it had no unfavorable prior history of violations; and that it demonstrated good faith in achieving compliance.