

CCASE:  
SOL (MSHA) V. HASTIE MINING  
DDATE:  
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TTEXT:

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. LAKE 79-191-M  
A/O No. 11-01023-05001

v.

Hastie Quarry & Mill

HASTIE MINING COMPANY,  
RESPONDENT

DECISION

Appearances: Michele Fox, Esq., Office of the Solicitor,  
U.S. Department of Labor, Chicago, Illinois,  
for Petitioner Donald Hastie, Partner, Hastie  
Mining Company, Cave In Rock, Illinois, for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

Pursuant to notice, the above case was heard on the merits  
in Evansville, Indiana, on April 16, 1980. Following the  
conclusion of the hearing and arguments by the parties'  
representatives, a bench decision was issued which is set out in  
its entirety below:

BENCH DECISION

Judge Broderick:

Alright. The following is my decision in the case of  
Secretary of Labor versus Hastie Mining Company, Docket  
Number LAKE 79-191-M. Appearances were entered by  
Michelle Fox of the Office of the Solicitor of Labor,  
Chicago, Illinois, for the petitioner. And by Donald  
Hastie, a partner in the Hastie Mining Company,  
Cave-In-Rock, Illinois for Respondent. Pursuant to  
notice a hearing on the merits was held today April 16,  
1980 in Evansville, Indiana. George LaLumondiere and  
Jack Lester, both of whom

are Federal Mine inspectors, testified on behalf of Petitioner. Donald Hastie testified on behalf of Respondent. Exhibits were introduced by both parties. The parties have been given the opportunity to argue their respective positions and each has waived its right to file written proposed findings and briefs. The following are my findings of fact:

#### FINDINGS OF FACT

Number one, Hastie Mining Company is the operator of a mine, a surface mine in Hardon County, Illinois, known as the Hastie Quarry and Mill. Number two, the subject mine produces flurspar [fluorspar] from its quarry. Number three, the products of the mine enter interstate commerce. Number four, on March 22, 1979 there were five miners working at the subject mine. Three working partners and two paid employees. Number five, respondent is a small mine operator. Number six, respondent has no previous history of violations of the Federal Mine Safety and Health Act or the regulations promulgated there under. Number seven, on March 22, 1979, the subject mine was inspected by Mr. George LaLumondiere, a mine inspector and a duly authorized representative of the Secretary of Labor. Number eight, on March 22, 1979, respondent was using a Caterpillar 950 front-end loader which did not have roll over protection. Number nine, on March 22, 1979, a citation was issued by the inspector, being Citation number 366434 charging a violation of 30 CFR 56.9-88. The termination due date on the citation was April 24, 1979. Number ten, respondent continued using the front-end loader after the issuance of the citation. Number eleven, on April 27, 1979, an order of withdrawal was issued by Federal Mine Inspector, Jack Lester, being order number 365195 under section 104(b) of the Federal Mine Safety and Health Act for failure to abate the forementioned citation. Number twelve, respondent has continued to use the 950 Caterpillar front-end loader without having roll over protection after the issuance of the order of withdrawal. Number thirteen, respondent uses the front-end loader in its surface quarrying and mining operation. It also uses it to clear waterways from an old abandoned mine works of sediment and mud. If this work was not done the water would come into the quarry where respondent's operation was being conducted. Number fourteen, it would not be possible to use the equipment in question, namely, the Caterpillar 950 front-end loader with roll over protection

in the addits from which the mud and sediment is cleared since the addits are only eight feet high. Number fifteen, a new cab providing roll over protection for the Caterpillar 950 front-end loader would cost approximately \$5,431.62 for the part or parts and would require approximately thirty-two manhours to install it. The Fabick Machine Company of Marion, Illinois which does this kind of work would charge \$30.00 an hour for the labor required in this installing of the cab. After the initial installation, it would take approximately four manhours to remove the cab and five to six manhours to reinstall it. The price quoted above includes a heater and defroster. Number sixteen, respondent has two additional front-end loaders which he uses in his operation, both of which are equipped with cabs including roll over protection. The following are my conclusions of law:

#### Conclusions of Law

30 CFR 56.9-38 promulgated pursuant to the Federal Mine Safety and Health Act provides in part as follows:

"Excluding equipment that is operated by remote control, all self-propelled track type or wheeled--and I'm omitting some words--"front-end loaders"--and I'm omitting additional words--"as used in metal and nonmetal mining operations with or without attachments shall be used in such mining only when equipped with, 1) roll over protective structures (ROPS) in accordance with the requirements of paragraph (b) through (g) of this standard as applicable." Subsection C of this standard provides as follows: "All self-propelled equipment described in paragraph (a) of this standard manufactured prior to the effective date of this standard and after June 30, 1969, shall be equipped with ROPS meeting the requirements of paragraphs (d) through (g) of this standard as appropriate." Paragraph (d) of the standard provides a description of the equipment meeting the requirements of the standard, describing it in accordance with certain recommended practices of the Society of Automotive Engineers. Subsection (e) provides that all self-propelled equipment shall be deemed in compliance with the standard if the ROPS meet the standards of the State of California, the U.S. Army Corps of Engineers or the Bureau of Reclamation or the MSHA Coal Mine Regulations or the Occupational Safety and Health Administration Regulations.

Subsection (f) states that any alterations or repairs of the ROPS shall only be done under the instructions of the ROPS manufacturer or under the instructions of a registered professional engineer. Subsection (g) provides that the ROPS shall have certain information permanently affixed to the structure.

Conclusion of law number one, the respondent, Hastie Mining Company, is and at all times pertinent to this case was subject to the Federal Mine Safety Health Act of 1977; number two, as an Administrative Law Judge with the Federal Mine Safety and Health Review Commission, I have jurisdiction over the parties and subject matter of this proceeding; number three, on March 22, 1979, respondent was in violation of the mandatory safety standard contained in 30 CFR 56.9-88 because its 950 Caterpillar front-end loader, serial number 81J7909 was not equipped with roll protection; number four, the violation found to have occurred in Conclusion of Law number three was a serious violation because it could result in serious injury to a miner. This conclusion is reached despite the fact that respondent has so far in its operation had no lost time injuries. Number five, respondent was aware that its front-end loader was required to have roll over protection and was aware that it was in violation of the safety standard, but declined to provide it because of the difficulty that would be created in the operation described as clearing underground waterways; number six, respondent failed to comply with the terms of the citation and therefore an order of withdrawal was issued. This indicates a failure to recognize the serious nature of a Federal Mine Inspector's duties in enforcing the provisions of the Mine Safety Act and its regulations. I previously found that the violation here was serious. I found that the respondent was aware of the violation before it was cited. I must find and state for the record that, by far, the most serious part of this case, so far as I'm concerned, is the failure, one, to abate the violation after the citation was issued; more importantly, the failure to comply with the order of withdrawal. This is a very serious violation of the letter and spirit of the Federal Mine Safety and Health Act of 1977. I am sympathetic with the plight of the operator in this case. It obviously would be a costly thing for it to comply with the standard, but neither the Federal Mine Inspectors or the Secretary of Labor

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nor the Administrative Law Judge or the Review Commission has any right to determine that a legal regulation issued pursuant to the Federal Law can be ignored or excused or thwarted because of cost to a mine operation. I would, although it's not a matter within my jurisdiction, remind the respondent, operator in this case, that failure to comply with validly issued orders of a Federal Inspector under this Act can result in much more serious consequences than a civil penalty and would urge that the operator consider seriously its obligations under this law. Primarily, because of my finding concerning the seriousness of the respondent's failure to comply with the order, I am assessing a civil penalty in this case in excess of that recommended by the Assessment Office and recommended by the Solicitor's counsel. And I will order, as a result of the violation which I found and considering the criteria set out in section 110(i) of the Act by which I am bound, I am assessing a penalty of \$500.00 in this case. I explained earlier that following this hearing a written order will be issued. It will order the respondent, Hastie Mining Company, to pay within thirty days of the issuance of that decision \$500.00 as a civil penalty for the violation which I have found occurred in this case. I explained also the right of the party to petition the Federal Mine Safety and Health Review Commission in Washington for a review of my decision. And that will conclude the record in this case. Thank you very much.

ORDER

The foregoing bench decision is hereby AFFIRMED.

Respondent Hastie Mining Company, is ORDERED to pay \$500 as a civil penalty for the violation found herein within 30 days of the date of this written decision.

James A. Broderick  
Chief Administrative Law Judge