

CCASE:
SOL (MSHA) V. ANCONDA COMPANY
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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 79-316-M

MSHA NO. 24-00338-05005

v.

THE ANACONDA COMPANY,
RESPONDENT

Mine: Weed Concentrator

Appearances:

Phyllis K. Caldwell, Esq., Office of Henry Mahlman, Regional
Solicitor, United States Department of Labor, 1961 Stout
Street, Room 1585, Denver, Colorado 80294,
for the Petitioner

Edward F. Bartlett, Esq., and Karla M. Gray, Esq., Anaconda
Copper Company, P. O. Box 689, Butte, Montana 59701,
for the Respondent

Before: Judge John J. Morris

DECISION

In this civil penalty proceeding petitioner, the Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges that respondent, the Anaconda Company, violated safety regulations promulgated under authority of the Federal Mine Safety and Health Act of 1969, (amended 1977), 30 U.S.C. 801 et seq.

Pursuant to notice, a hearing on the merits was held in Butte, Montana on March 11, 1980.

The parties waived their right to file post trial briefs.

ISSUE

The issue is whether the violation occurred.

ALLEGED VIOLATION

Citation 342144 alleges a violation of 30 C.F.R. 55.15-4 which provides as follows:

55.15-4 Mandatory. All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine plant where a hazard exists which could cause injury to unprotected eyes.

The evidence is conflicting and I find the following facts to be credible.

1. After entering the Anaconda primary crusher room, and upon approaching the crusher, the inspector observed a worker without glasses (Tr.48-89).

2. The worker, who was using a cherry picker to remove large pieces of rock material, left the platform and returned wearing his glasses (Tr. 88).

3. The operator was 12 feet from where rock hit the conveyor belt (Tr. 88-89).

4. The worker was exposed to various sizes of flying rock (Tr. 89).

DISCUSSION

Anaconda's evidence would tend to indicate that the inspector's ability to perceive the worker was severely limited by the lighting conditions and the distance he was from the worker (Tr. 169-178).

I am not persuaded by Anaconda's evidence. The inspector indicated he was 50 feet from the worker. As such he was closer than any of the Anaconda management witnesses. He further readily identified an individual in the courtroom under similar lighting conditions.

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Based on the facts I find to be credible I conclude that Citation 324144 should be affirmed. Further, in considering the statutory criteria I conclude the proposed civil penalty therefor should be affirmed.

SETTLEMENT

An order approving a proposed settlement for Citations 342130 and 343814 lodged in this case was entered by the undersigned on April 8, 1980 in cases consolidated under Docket No. WEST 79-315-M.

Based on the above findings of fact and conclusions of law I enter the following:

ORDER

Citation 342144 and the proposed penalty therefor are AFFIRMED.

John J. Morris
Administrative Law Judge