

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE
DENVER, COLORADO 80204

25 JUL 1980

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SECRETARY OF LABOR, MINE SAFETY AND)	CIVIL PENALTY PROCEEDING	
HEALTH ADMINISTRATION (MSHA),)		
)	DOCKET NO. WEST 79-303-M	
Petitioner,)	MSHA CASE NO. 05-02337-05007	
)		
v.)	DOCKET ND. WEST 79-304-M	
)	MSHA CASE NO. 05-02337-05008	
CLIMAX MOLYBDENUM COMPANY,)		
)	MINE: CLIMAX MILL	
Respondent.)		
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DECISION

APPEARANCES:

Robert Bass, Esq., and Eliehue Brunson, Esq., Office of T. A. Housh, Regional Solicitor, United States Department of Labor, Kansas City, Missouri
for the Petitioner,

Richard W. Manning, Esq., Climax Molybdenum Company, Golden, Colorado
for the Respondent.

Before: Judge John J. Morris

WEST 79-303-M

Citation 329190

Petitioner, the Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges respondent, Climax Molybdenum Company, failed to guard electrical equipment. MSHA asserts that Climax thereby violated 30 C.F.R. 51.12-30, a regulation promulgated under the statutory authority of the Federal Mine Safety and Health Act of 1969 (amended 1977), 30 U.S.C. § 801 et seq.

1/ The cited standard provides as follows:

57.12-30 Mandatory. When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized.

ISSUE

The issue is whether Climax violated the regulations.

FACTS

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

1. During an inspection the **MSHA** inspector observed insulated electrical wires leading from a motor **(Tr 6, 10, 26)**.

2. The motor, which was cited for the violation of the standard, lacked a junction box with a bushing. It was one of 5 motors on the premises **(Tr 6)**.

3. The inspector was of the opinion that motor vibration could work the wires loose **(Tr 8)**.

4. The Climax electrical foreman indicated this 900 r.p.m. motor had been in use in the mid 1920s **(Tr 23)**.

5. The motor has a ground wire attached to the frame **(Tr 12)**.

6. The wires are insulated and there was neither a shock hazard nor a dangerous condition **(Tr 19, 24, 25)**.

7. Climax's remaining four motors at this location were designed to have junction boxes **(Tr 19, 23)**.

DISCUSSION

The federal inspector concedes he is not an electrical expert **(Tr 11)**. The uncontroverted evidence shows that this particular **motor** was not hazardous. It was designed without a junction box.

On these facts, I conclude that motor was not potentially dangerous as that term is defined in 30 **C.F.R. 57.12-30**.

MSHA charges Climax did not guard certain electrical connections thereby violating 30 C.F.R. 57.12-23. ²

The evidence is essentially uncontroverted. I find the following facts to be credible.

8. In a 2 to 3 foot wide walkway the **MSHA** inspector observed uninsulated bus bars (solid copper bars carrying 440 volts) (Tr 45 - 47).

9. The bars, more than 8 feet above the floor, were guarded by elevation (Tr 69, **71**).

10. There was a 6 foot ladder located within 5 feet (**Tr 45**).

11. Workers frequently carry conduit or wire (**Tr 45 - 47**).

12. The National Electrical Code applies to surface facilities. Under the Code live parts of 600 volts or less are guarded by location if they are elevated 8 feet or more above the floor (**Tr 67, R5, R6**).

13. The area was further protected by an insulated mat on the floor (**Tr 66 - 67, 72**).

DISCUSSION

This citation should be vacated. The National Electrical Code provides that bus bars are protected by location if 8 feet-above the floor. This

2/ The cited standard provides as follows:

57.12-23 Mandatory. Electrical connections and resistor grids that are difficult or impractical to insulate shall be guarded, unless protection is provided by location.

interpretation by a recognized electrical authority is confirmed by a document issued by the Department of Labor construing its own standard (R7). Petitioner's objection to the document is again overruled. The exhibit was an admission against petitioner's interest. It's authenticity is established by the Climax electrical superintendent who identified it as written by, and obtained from MSHA (Tr 72 - 76).

At trial MSHA seeks to establish that a location is guarded by height only if it is 10 feet above the adjoining surface (Tr 49). For the above stated reasons I reject MSHA's view. It appears that the ten foot requirement only applies on the outside of buildings (Tr 58).

The electrical connections here were at least 8 feet above the ground. They are accordingly "protected by location" as that term is used in 30 C.F.R. 57.12-23.

MOTION

During the hearing petitioner moved to vacate the citations 329188 and 329191.

Pursuant to Commission Rule 2700.11 the motions should be granted.

WEST 79-304-M

Citation 331868

Petitioner charges Climax failed to guard bus bars thereby violating 57.12-23. ³

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

3/ The cited standard provides as follows:

57.12-23 Mandatory. Electrical connections and resistor grids that are difficult or impractical to insulate shall be guarded, unless protection is provided by location.

14. There were uninsulated bus bars above the switch gears. **B**us bars, made of copper; measured 4 inches wide and 1/4 to 1/2 inch thick (Tr 07 - 89 - 97, 105 - 106):

15. The bars, carrying 440 volts, were located above a 3 foot wide walkway (Tr 87 - 92).

16. The bars were 8 feet 6 inches above the floor resting on 4 inch insulators, or a total of 106 inches above the floor (Tr 100 - 102).

17. The area under the bus bars can only **b**e entered by opening a metal gate. Only the Climax electricians have keys to the gate (Tr 103).

18. There is no reason for anyone to be under the bus bars with rods, pipes, or anything of that nature (Tr 104).

19. The National Electrical Code provides that an area is protected by location if, as here, it is more than 8 feet above the ground (Tr 104 - 105).

20. There were insulating mats on the floor (Tr 104).

DISCUSSION

The inspector indicated the bus bars were ninety inches (7 feet, 6 inches) above the floor but **Climax's** electrical superintendent indicated the bottom of the bus bar was 118 inches (9 feet, 10 inches) above the floor. I have accepted Climax's version since the person in charge of the area would ordinarily make a more accurate measurement than an inspector who was engaged in looking into various areas.

The discussion concerning the prior citation is equally applicable here. In short, 8 feet or more above the floor constitutes "protection by location" as that term is used in 30 **C.F.R.** 57.12-23.

CONCLUSIONS OF LAW

WEST 79-303-M

Citation **329190** and the proposed penalty **therefor** should be vacated.

(Facts 1 - 7)

Citation 331894 and the proposed penalty **therefor** should be vacated.

(Facts 8 - 13)

Citations 329188 and **329191**, on petitioner's motion, should be vacated.

WEST 79-304-M

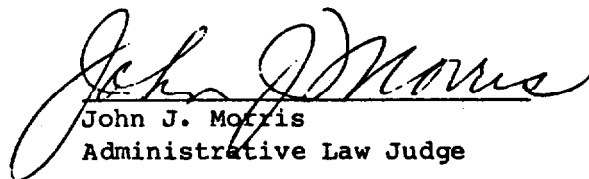
Citation 331868 should be vacated. (Facts 14 - 20).

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

ORDER

In Docket Number 79-303-M, Citations 329188, 329190, 329191, and 331894 are vacated.

In Docket Number 79-304-M, Citation 331868 is vacated.


John J. Morris
Administrative Law Judge

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