

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
SKYLINE TOWERS NO. 2, 10TH FLOOR  
520 1/2 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041  
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8 5 JUL 1980

SECRETARY OF LABOR, : Civil Penalty Proceeding  
MINE SAFETY AND HEALTH :  
ADMINISTRATION(MSHA), : Docket No. LAKE 79-280-M  
Petitioner : A.O. No. 11-02667-05002  
v. :  
OZARK-MAHONING COMPANY, : Denton Shaft Mine  
Respondent :

DECISION

Appearances: Michele M. Fox, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois, for Petitioner;  
Mr. M. L. Hahn, Safety and Industrial Relations Director, Ozark-Mahoning Company, Rosiclare, Illinois, for Respondent.

Before: Judge Edwin S. Bernstein

On June 10, 1980, I conducted a hearing pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977 (the Act), 30 U.S.C. § 801 et seq., and 29 C.F.R. § 2700.50 et seq., and issued the following decision from the bench:

This is my bench decision with regard to the proposed settlement in this case. The parties have proposed settlements of the four citations in this case as follows:

Citation No. 367103 for \$81.00, a reduction from the amount initially proposed, which was \$114.00;

Citation No. 367104 for \$78.00, a reduction in the amount initially proposed, which was \$98.00;

Citation No. 367106 for \$128.00, a reduction from the **amount** initially proposed, which was \$160.00;

Citation No. 367107 for \$157.00, a reduction from the **amount** initially proposed, which was \$210.00.

Upon consideration of the motion of the parties and the arguments presented at this hearing on that motion, I approve the settlements proposed for all four citations. My reasons are as follows:

With respect to Citation No. 367103, the citation stated the limit switches were not operating on the hoist. The Secretary of Labor alleged a violation of the mandatory safety standard at 30 C.F.R. § 57.9-2, which reads: "**Equipment** defects affecting safety shall be corrected before the **equipment** is used."

The parties have stipulated, and I find with respect to this citation and all other citations, that Respondent was a small operator; it had a small number of previous violations; The assessment of the penalty proposed either initially or in connection with this settlement would not adversely affect Respondent's ability to continue in business; and Respondent achieved rapid, good faith compliance in connection with all citations.

With respect to Citation No. 367103, I find ordinary negligence and moderate gravity. In approving the settlement, I am impressed by the fact that there was a **deadman** switch on the **hoist** which did provide protection against the accident envisioned by the **citation**. Therefore, I approve the settlement proposed and assess a penalty of \$81.00 for that citation.

Citation No. 367104 stated that a safe means of access was not provided to the sheave wheels and bucket dump on the head **frame**. The Secretary of Labor alleged a violation of the mandatory safety standard at 30 C.P.R. 557.11-1, which reads: "Safe means of access shall be provided and maintained to all working places ." In approving the settlement of this citation, I am impressed by the contentions of the parties that there was less exposure than the Secretary of Labor had anticipated, in that only one maintenance person was exposed and that man had a safety belt, and that there was rapid abatement of this violation. Therefore, I assess a penalty in the **amount** of \$78.00 in connection with Citation No. 367104.

Citation No. 367106 alleged that the barrier at the shaft opening was not adequate. The Secretary of Labor alleged a violation in connection with that citation of the mandatory safety standard at 30 **C.F.R. §** 57.19-100, which reads: "Shaft landings shall be equipped with substantial

safety gates so constructed that materials will not go through, or under them; gates shall be closed except when loading or unloading shaft conveyances." The parties have indicated that a chain eighteen inches from the ground was installed at the opening; that the opening did have a door; and that it was company policy to have that door closed, although that door was open for a thirty-minute period at the time that the citation was issued. There was a question as to whether the door and the chain constituted a substantial bulkhead. I find that because the door was provided, and because this matter does involve that question, a reduction in penalty to \$128.00 is appropriate in connection with Citation No. 367106, and I assess a penalty of \$128.00 for that citation.

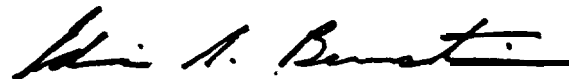
Citation No. 367107 alleged a man was observed riding the edge of the bucket while being hoisted out of a shaft. The Secretary of Labor alleges that this constituted a violation of a mandatory safety standard at 30 C.F.R. § 57.19-68, which reads: "Men shall enter, ride, and leave conveyances in an orderly manner." The parties indicate that at the time the citation was issued the inspector observed a man riding the edge of a bucket and the four men who were riding the bucket jumped out of the bucket before the door had closed. Respondent contended that it did not feel that sitting on the edge of the bucket and jumping out, in this case, was disorderly. Another standard at 30 C.F.R. § 57.19-74 reads:

"Men should not ride the bail, rim, or bonnet of any shaft conveyance, except where necessary for the inspection and maintenance of the shaft and lining." This standard is not mandatory. It is advisory. I think Respondent now realizes that this conduct was a violation and upon considering all the criteria in connection with this citation, including rapid, good faith compliance, I will accept the settlement and agree to the proposed penalty of \$157.00, and I assess a penalty in that amount for Citation No. 367107.

I hereby affirm this bench decision.

ORDER

Respondent is ORDERED to pay \$444 in penalties within 30 days of the date of this Order.



Edwin S. Bernstein  
Administrative Law Judge

Distribution:

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