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SOL (MSHA) V. HARBORLITE
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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. DENV 79-501-PM

v.

A/O NO. 02-01136-05003

HARBORLITE CORPORATION,
RESPONDENT

Mine: Harborlite Mill

DECISION

APPEARANCES:

Mildred L. Wheeler, Esq., of San Francisco, California,
for the Petitioner

Mr. Robert Blunt, of Escondido, California,
for the Respondent

Before: Judge Virgil E. Vail

Statement of the Case

This proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). The petition for assessment of civil penalty (now called a proposal for a penalty, 29 CFR 2700.27) was filed on July 31, 1979 alleging eleven violations of Mandatory Safety Standards contained in 30 CFR Part 56. The violations were charged in citations issued to Respondent following an inspection of the Harborlite Mill on September 12 and 13, 1978.

Pursuant to notice, a hearing on the merits was held in Phoenix, Arizona, on February 6, 1980. Federal Mine Inspector Benito Orozco testified on behalf of the Petitioner. William Blunt, Vice-President and Operative Manager of the Harborlite Mine, testified for the Respondent.

Findings of Fact and Conclusions

1. Citation 378164 alleges a violation of mandatory standard 30 CFR 55.12-28(FOOTNOTE 1). The citation charges that, "continuity and resistance of the plant grounding system had not been tested and a record of the resistance readings made available for inspection."

Based upon the uncontroverted testimony presented at the hearing, I find that a violation existed as charged. The mill had been closed in order that extensive reconstructive work could be performed. There is no evidence that when the mill was reopened in April of 1975 that the grounding system was checked or that it has been checked subsequent to that time. Mr. Orozco testified that when he requested the records of the tests he was told that the readings had never been performed (Tr. 10).

The violation was abated by having a state mine inspector perform the test and make a record thereof.

2. Citation 378166 alleges a violation of mandatory safety standard 30 CFR 55.9-7(FOOTNOTE 2). The citation charges that, "the oversize conveyor belt did not have a stop cord or guard rail on the walkway side of [the] conveyor to protect employees from the pinch points".

Inspector Orozco testified that a portion of the guard rail was missing and that a stop cord had not been installed (Tr. 20). Respondent did not deny that a portion of the walkway was unguarded; rather, the respondent

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contends that no citation should have been issued because the area was chained off and designated for maintenance only (Tr. 57).

Whether the area was used only when maintenance was being performed is not determinative as to whether a violation did in fact exist. The standard cited is mandatory and does not exempt areas used solely for maintenance. Therefore, I find that a violation existed as charged.

The violation was abated by installing a guardrail on the walkway side of the conveyor belt.

3. Citation 378396 alleges a violation of mandatory safety standard 30 CFR 55.11-27(FOOTNOTE 3). The citation charges that, "a handrail was not installed on the west side of the elevated platform at the second floor".

Both parties agreed that the platform in question was not a normal traffic area (Tr. 39 and 52). Despite this fact, I find that a violation did exist. Mr. Blunt testified that the platform was used occasionally in order to gain access to a screen loader (Tr. 52). Therefore, I find that the platform would be designated as a "working platform" within the definition of 30 CFR 55.11-27.

The violation was abated by having a handrail installed on the west side of the elevated working platform.

Citation Nos. 378392, 378393, 378168, 378167, 378391, 378388, 378387, and 378386 each charge one violation of standard 30 CFR 55.14-1(FOOTNOTE 4).

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Citation No. 378168 charges that, "the oversized conveyor belt skirt board near the bottom of the conveyor was not guarded to protect employees from the pinch point."

Citation No. 378393 charges that, "the skirt boards were not guarded on the main product conveyor belt that had pinch points."

The evidence presented relating to Citation Nos. 378168 and 378393 was identical.

Based upon the uncontroverted testimony of Mr. Orozco, I find that the violations existed as charged. The inspector testified that a possibility of injury existed if one were to come into contact with the pinch point.

The violations were abated by placing guards over the pinch points.

Citation No. 378392 alleges that the following condition existed: "The oversize conveyor belt tail pulley was not guarded to protect employees from the pinch points."

Citation No. 378381 alleges that the following condition existed: "The V-belts drive on the jaw crusher was not guarded to prevent persons contacting the pinch points that may cause injury."

Citation No. 378386 alleges that the following condition existed: "The pinch point on [the] No. 1 conveyor belt head pulley was not guarded."

Citation No. 378387 alleges that the following condition existed: "Tail pulley pinch point on No. 1 conveyor belt was not guarded and if contacted by persons may cause injury."

Citation No. 378388 alleges that the following condition existed:

"Chain drive sprockets on the No. 1 conveyor belt head pulley motion was not guarded."

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Mr. Orozco testified that the danger points relating to each of the above five citations were 2 to 4 feet from the ground and that injury could result if contact was made at any of the points cited.

Respondent offered the testimony of Mr. Blunt to refute the citations. I find Mr. Blunt's testimony to be unpersuasive.

It is the respondent's contention that the citations should not be upheld on the grounds that the mill had previously been inspected by other federal and state inspectors and respondent was not cited for the particular violations involved herein. Further, respondent contends that it requested a courtesy visit prior to the enactment of the 1977 Act and that the Mine Safety and Health Administration never sent a representative to perform such an inspection (Tr. 58). Neither of the respondent's arguments constitute a defense.

I find that the violations existed as charged. The conditions cited were abated by placing guards over the danger points.

Appropriate Penalties

In considering the amount of the penalties, I have determined that the operator is small in size (having only three employees at the site involved) and that it has a history of eleven previous violations.

Mr. Blunt testified that the mill in question had no monetary income of its own in the past year. The income from the company's other mines totalled one million eight hundred thousand dollars (Tr. 65). I conclude that the penalties would therefore have no affect on the respondent's ability to remain in business.

Although extensions had to be granted in ten of the citations in order that respondent could obtain the necessary materials to correct the

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violations, I conclude that respondent acted in good faith in abating the violations.

I find that the conditions and practices cited were serious due to the nature of the injuries which could have resulted therefrom.

Based on the foregoing conclusions, I find the appropriate penalties to be as follows:

Citation No.	Assessment
00378164	\$26.00
00378386	60.00
00378387	60.00
00378388	56.00
00378391	56.00
00378166	36.00
00378167	60.00
00378168	38.00
00378392	56.00
00378393	36.00
00378396	34.00

IT IS ORDERED that Respondent pay the penalties totaling \$518 within thirty (30) days from the date of this decision.

Virgil E. Vail
Administrative Law Judge

~FOOTNOTE ONE

1 Mandatory. Continuity and resistance of grounding systems shall be tested immediately after installation, repair, and modification; and annually thereafter. A record of the resistance measured during the most recent tests shall be made available on a request by the Secretary or his duly authorized representative.

~FOOTNOTE TWO

2 Mandatory. Unguarded conveyors with walkways shall be equipped with emergency stop devices or cords along their full length.

~FOOTNOTE THREE

3 Mandatory. Scaffolds and working platforms shall be of substantial construction and provided with handrails and maintained in good condition. Floor boards shall be laid properly and the scaffolds and working platform shall not be overloaded. Working platforms shall be provided with toeboards when necessary.

~FOOTNOTE FOUR

4 Mandatory. Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan

inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded.