CCASE:
SOL (MSHA) V. HOMESTAKE MINING
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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),		Civil Penalty Proceedings	
		Docket Nos.	A.O. Control Nos.
	PETITIONER	CENT 79-27-M	39-00055-05006
		CENT 79-28-M	39-00055-05008
v.		CENT 79-206-M	39-00055-05012
		CENT 79-207-M	39-00055-05013
HOMESTAKE MINING COMPANY,		CENT 79-208-M	39-00055-05015
	RESPONDENT	CENT 79-332-M	39-00055-05018
		CENT 80-167-M	39-00055-05023
		Homestake Mine	

DECISION

Appearances: Phyllis K. Caldwell, Esq., Office of the Solicitor, U.S. Department of Labor, Denver, Colorado, for Petitioner Timothy M. Biddle, Esq., and John T. Scott, Esq., Crowell & Moring, Washington, D.C., for Respondent

Before: Judge Edwin S. Bernstein

STATEMENT OF THE CASE

Pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), the Secretary of Labor petitioned for the assessment of civil penalties in connection with 20 citations. Thirteen citations involved alleged violations of the mandatory safety standard at 30 C.F.R. 57.12-82. The seven other citations involved alleged violations of miscellaneous standards. A hearing was held on May 5, 6, and 7, 1980, in Rapid City, South Dakota.

The parties stipulated, and I find:

1. Respondent, Homestake Mining Company, is the operator of the Homestake Mine.

2. Homestake is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977 and I have jurisdiction over these proceedings.

3. Homestake is a large gold mine operator.

4. Homestake's ability to continue in business after imposition of a reasonable civil penalty is not in issue.

5. The citations in question were properly served on Homestake.

6. Homestake exhibited good faith in abating each contested citation or order.

7. Homestake had a low history of previous violations for a mine of its size.

The Electrical Citations

Thirteen citations(FOOTNOTE 1) related to alleged violations of the mandatory safety standard at 30 C.F.R. 57.12-82, which reads: "Powerlines shall be well separated or insulated from waterlines, telephone lines, and air lines."

With respect to these alleged violations, the parties stipulated that all lines were insulated with manufacturer's insulation but not with additional insulation; all lines were directly in contact with either metal air

lines, metal waterlines, or telephone lines as alleged; and if Homestake violated the regulation, Homestake's negligence was slight.

Guy Carsten, Jake De Herrera, Wayne Lundstrom, Leo Millage, and Iver Iverson, the Government inspectors who issued the citations, testified for Petitioner. Their testimony was essentially undisputed and consistent with the above stipulations.

Mr. Carsten testified that he issued Citation No. 328589 in Docket No. CENT 80-167-M when, on September 12, 1979, he noticed that in Homestake's mine a 110-volt electrical power cable was in contact with metal waterlines in several places. He also testified to the adverse atmospheric conditions in the mine.

Jake De Herrera testified that in connection with Citation No. 328601 in Docket No. CENT 79-206-M, he found cables touching metal air lines. He stated that the area of the mine was warm and very humid. The temperature was close to 80 degrees Fahrenheit and the humidity was approximately 80 percent. He stated that the air line was made of metal and was approximately two inches in diameter.

Mr. De Herrera also testified that in connection with Citation No. 328608 in Docket No. CENT 79-207-M, he found the 110-volt cable to be in contact with a metal water pipe. He noted that the cable was wrapped around the pipe for a distance of approximately 36 inches. He stated that there was considerable moisture in the mine atmosphere, and that moisture conducts electricity. Mr. DeHerrera stated that moisture causes a cable's

jacket to deteriorate and rusts pipes. He added that although pure water is not a conductor of electricity, when it carries minerals or dirt, it is a conductor. The water in Homestake's mine contained minerals and dirt.

The inspector discovered this condition at a "skip pocket." This is an area where ore is transferred to cars known as "skips." Sometimes, it is necessary to use explosives in the area, and electric detonators are employed. In Mr. De Herrera's opinion, the cables and pipes could be damaged by flying rock. Although he saw no blasting when he was in the area, blasting normally occurs there between one and five times a day.

Mr. De Herrera also issued Citation No. 328609 in Docket No. CENT 79-207-M. Again, he noticed the 110-volt cable in contact with waterlines, telephone lines, and a 440-volt cable. He stated that the area was very wet and hot, and there was occasional blasting in the area. He testified that a short circuit could cause premature detonation of blasting materials if exposed powerlines came into contact with exposed blasting lines. He stated that if the powerlines were exposed, someone talking on the phone could receive a shock. He also testified that the jacket of a powerline could be broken by flying rock.

Mr. De Herrera also issued Citation No. 328605 in Docket No. CENT 79-206-M. Here, he stated that the power cable came into contact with a metal air line. The cable was wrapped around the air line for a distance of approximately 300 feet.

Mr. Lundstrom testified that in connection with Citation No. 329610 in Docket No. CENT 80-167-M, which he issued, he found a 110-volt powerline

in contact with telephone lines and metal waterlines and air lines at seven or eight different locations. He stated that this was in the area of a wooden staircase which had broken handrails and broken steps. The inspector felt that people could trip and fall against the powerlines. He acknowledged that the power cables in question were not broken, worn, or bare. He also indicated that he had issued other citations for the broken stairs and broken rails.

Mr. Lundstrom also issued Citation No. 329613 in Docket No. CENT 79-208-M. He stated that a 110-volt power cable was in contact with waterlines and telephone lines. He stated that he found this in an area where a cage (or elevator) stops and men get off. Therefore, six to 12 people pass this area daily. He found that the cable was in contact with metal air lines for a distance of six to eight feet. He stated that this was in an area where there was a good deal of traffic, that the humidity was between 50 and 60 percent, and that the ground was wet and muddy.

Mr. Lundstrom also issued Citation No. 329611 in Docket No. CENT 79-207-M. He found 110-volt power cables in contact with metal waterlines and air lines. He stated that this was near an underground office known as a "doghouse," and that about six people go in and out of the doghouse daily. There was also a valve on the waterline which was used as a drinking fountain, and Mr. Lundstrom concluded that people who used the fountain could be exposed to danger if the wires were exposed and conducted current through the waterline.

Mr. Lundstrom also issued Citation No. 329612 in Docket No. CENT 79-207-M. He found a 110-volt cable in contact with a metal air line.

Mr. Millage issued Citation No. 329277 in Docket No. CENT 79-206-M. He stated that he found the power cable to be in contact with pipelines and telephone lines in the area.

Mr. Millage also issued Citation No. 329280 in Docket No. CENT 79-206-M. He found telephone lines in contact with power cables in several places. He stated that up to 15 men pass through this area during each shift, and that there were two shifts each day.

Mr. Millage also issued Citation No. 329281 in Docket No. CENT 79-206-M. Although the power cable was not in contact with any waterlines, air lines, or telephone lines, it was in contact with a four-inch metal sand line. Respondent moved to dismiss this citation on the ground that a sand line is not a waterline, air line, or telephone line. Petitioner's counsel argued that the sand line carries a mixture of sand and water and therefore is, in one sense of the word, a water line. I reserved decision on the motion to dismiss.

Mr. Iverson issued Citation No. 328968 in Docket No. CENT 79-332-M. He found the 110-volt cable in contact with air lines and waterlines at the No. 4 Winds loading station in the No. 8 shaft. This is one of the mine's main hoisting shafts. He stated that the cable, which ran parallel to the track of loading cars, seemed damaged. There was blasting being done in the area.

After the inspectors completed their testimony, Larry Filek testified as an electrical expert for Petitioner, and Elmer Shields and Robert Graham testified as electrical experts for Respondent.

Mr. Filek testified that he last visited the Homestake Mine in connection with Homestake's petition for a variance from 30 C.F.R. 56.12-82 in or about April 1976. He stated that the cable in question, which carries 110-220 volts, is a low-voltage cable. The higher voltage cables had either additional shields or armor protection in addition to the insulation provided by the manufacturer. There were three types of cables involved here. One was white and two were black. They were introduced as Exhibits R-16, R-19 and R-21. In each case, the wires inside the cable were separately insulated and then enclosed by a jacket.

According to Mr. Filek, MSHA's position is that electrical cables should be separated or insulated from underground metal, such as pipes. The insulation should be in addition to the insulation provided by the manufacturer. According to Mr. Filek, although the jacket, when new, has certain insulating qualities, it is not intended to insulate. Mr. Filek stated that the jacket's primary function is to protect against the hostile mine environment, including such sources of deterioration as water, acid, and humidity, and that jackets are quite resistant to abrasions and cuts.

Jackets are not rated by the manufacturers. The cable itself is rated at 600 volts, meaning it can be energized up to 600 volts. Six hundred volts in this case is the dielectric strength of the insulating material. Thus, this cable is made to withstand 600 volts without rupture, although only

110 volts normally pass through it. Mr. Filek also testified that the MSHA policy was similar to the electrical industry's policy, but on cross-examination, he was unable to substantiate this statement. In fact, he seemed somewhat confused on cross-examination in connection with this point.

He stated that if a jacket became cut, torn, or punctured, water could penetrate it. If water seeped into a pin hole, a worker who touched the pin hole could be electrocuted. If an exposed portion of a cable touched a metal pipe, the current could be passed along the pipe.

Mr. Filek testified that the cables in Homestake's mine closely resembled "open wiring." However, on cross-examination, he was unable to substantiate this statement. In Mr. Filek's opinion, power cables such as those used at Homestake's mine are "powerlines" within the meaning of the term at 30 C.F.R. 57.12-82. He said MSHA's position is that there are two ways of complying with the standard. Either the operator provides insulation in addition to the manufacturer's insulation, or he isolates the wiring.

Following Mr. Filek's testimony, Respondent moved to dismiss the 13 electrical citations based upon its arguments that (1) the term "powerlines" in the regulations does not cover the cables cited, and (2) Respondent provided insulation. I reserved decision on the motion.

Mr. Elmer Shields has been employed by Respondent as an electrical engineer since 1957, and is now Homestake's plant engineer at Lead, South Dakota, as well as its chief electrical engineer. He testified that he believed the term "powerlines" in the regulation refers to single

conductor cables. He stated that none of the cables on which the citations were issued is a "powerline," and that a powerline essentially would be a bare overhead wire, usually a single conductor cable. He added that when blasting was being carried out, nearby cables would usually be protected.

Mr. Shields stated that he had never known of anyone receiving a shock by touching an air line, waterline or telephone line in the Homestake Mine. He testified that the 110-volt cable is usually grounded with long steel bolts ("rock bolts") which are driven at intervals along the cable. The air lines and waterlines are attached to rock bolts with hangers at least every 21 feet. Devices such as circuit breakers and fuses are used to break a circuit when there is a short. He stated that if a cable was destroyed he would expect it to blow a fuse or to trip a circuit breaker.

Mr. Shields acknowledged that the temperature often got up to 95 degrees in the mine, that the humidity was 60 to 90 percent, and that water temperatures could reach 135 degrees. He also acknowledged that jackets are not considered to have insulating strength, and said that if exposed powerlines came into contact with blasting lines, this could cause a premature detonation of explosives.

On redirect examination, he stated that he knew of bare overhead conductors in the Carlsbad Potash Mines and in certain salt mines, and that this is what is meant by "powerlines" in the regulations.

Robert Graham, a semi-retired consulting engineer who is now self-employed, testified that he has been connected with the wire and cable

industry for about 50 years. His specialty has been product application and design. He stated that the term "powerlines" is an "oldie" which is rarely used today and is not found in modern codes or definitions. In the past, it was used as a synonym for open lines and open conductors which are usually used overhead. Powerlines can be found in mines where they are used to power underground trolleys. They are usually supported by rigid insulation at prescribed intervals.

As background, Mr. Graham explained that as early as 1872, the Pearl Street Station in Manhattan employed copper wires which were strung on wooden poles at 150-foot intervals. Later in Manhattan, they were put underground in wooden troughs. Mr. Graham believed that this open type of wiring and other open conductors are what is meant by "powerlines." He added that wiring was revolutionized around 1930 when the first nonmetallic cable, with the trade name of Romex, was devised. This was a forerunner of the cables at issue here. He concluded that the drafters of this regulation contemplated open conductors and wires, usually single conductors, and that this regulation does not apply to multiple conductor cables. He also pointed out that in the very next regulation, 30 C.F.R. 57.12-83, the term "power cables" was used, and that in 30 C.F.R. 57.12-65, "powerlines" was used along with the phrase "including trolley wires."

Mr. Graham testified that the cable used here would be unaffected by exposure to 100-degree heat for several years. The cable is covered and insulated with polyvinyl chloride compounds which will not start to show deterioration until the temperature reaches 100 degrees Centigrade

(212 degrees Fahrenheit). This insulation and jacketing also are not affected by high humidity or dripping water. In fact, the cable identified as Exhibit R-16 was intended to be buried in the ground near water. The expected useful life of the cable in question would be at least 20 years, and possibly 40 years. Mr. Graham stated that many of these cables are put into metal trays in power-generating stations of heavy industry.

Mr. Filek was recalled as a rebuttal witness. He stated that roof bolting would not be effective grounding since electrical current from exposed wires that were touching metal pipes would continue to pass beyond the roof bolts.

Decision in Connection with Electrical Citations

I find that Respondent did not violate the mandatory standard at 30 C.F.R. 57.12-82.

First, I find that the cables in question are not "powerlines" as that term is used in the standard. Upon analysis of the regulation in the context of the testimony given, I find that the term "powerlines" was intended to designate single conductor wires which are usually exposed, rather than insulated single conductor wires. An examination of this regulation and similar ones substantiates this view. The terms "trolley wires" and "bare power conductors" are used in the standard at 30 C.F.R. 57.12-80; "trolley tracks" is used at 30 C.F.R. 57.12-81; and "power lines, including trolley wires," is used at 30 C.F.R. 57.12-65. In 30 C.F.R. 57.12-83, a different term, "power cables", is used. I am persuaded by the testimony of

Mr. Graham that the terms "powerlines" and "power cables" are not synonymous, and that what was meant by "powerlines" was not the well-insulated cables that are involved in this case.

Second, I find that even if these were powerlines, the standard was complied with in that these lines were insulated from waterlines, telephone lines and air lines. The standard requires insulation or separation. The term "insulated" is defined at 30 C.F.R. 57.2 as follows:

> "Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in a manner suitable for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated. Insulating covering is one means for making the conductor insulated.

I find that the cables in question were insulated in a manner suitable for the conditions to which they were subjected. The insulation and the jacket are sufficient to protect the cables against normal hazards in the Homestake Mine. These cables are insulated to withstand up to 600 volts, more than three times the amount of voltage that actually passes through them. They are protected against physical abuse not only by the polyvinyl chloride insulation, but also by polyvinyl chloride jacketing. The jacketing appears to be quite tough. The manufacturers' specification sheets for the cables, which were introduced into evidence, contain impressive claims of resistance to abuse. These claims were not challenged by Petitioner, and even if I discount part of these representations as "sellers' puff," I am still led to the conclusion that the cables are extremely tough.

More impressive is Mr. Graham's testimony that the jacketing can withstand considerable abuse.(FOOTNOTE 2) His testimony that the cables could be used in temperatures up to 220 degrees Fahrenheit is most convincing when compared with Mr. Shields' testimony that temperatures in the Homestake Mine could run up to only about 95 degrees.

In conclusion, I find that the "insulation" installed by the manufacturer "insulated" the cables within the meaning of the standard. Each witness acknowledged that the covering was insulation, and if the Secretary of Labor required some special kind of insulation or some additional insulation, he should have specified that in the standard. As the Court stated in United States v. 62 Cases, More or Less, Containing Six Jars of Jam, 87 F. Supp. 735, 736 (D.N.M. 1949), rev'd, 183 F.2d 1014 (10th Cir. 1950), rev'd, 340 U.S. 593 (1951):

> * * * [c]itizens have the right to rely upon the laws of the land as they are written and as reasonably interpreted. They should not be subjected to the hazards of administrative or judicial interpretation, extending restrictions of the law far beyond the plain meaning of the language used.

While electrical hazards are highly dangerous and can cause serious injuries as well as death, I believe the plain language of the standard does not require Respondent to provide additional insulation.

The Miscellaneous Citations

As indicated, seven miscellaneous citations were involved. In each case, one MSHA inspector and one or more of Respondent's witnesses testified.

With respect to all of these citations, the stipulations listed above still apply, including the fact that Respondent is a large operator, that reasonable penalties would not affect its ability to remain in business, that there was good faith abatement in connection with all citations, and that Respondent has a low history of previous violations.

Citation No. 328789 in Docket No. CENT 79-27-M

The mining of ore in the Homestake Mine is conducted in a large number of underground rooms, or "stopes." Large quantities of rock are blasted away from the "back" (ceiling) and "ribs" (sides) of a stope, and the broken rock, or "muck," is then collected and dumped down a chute at the front of the stope into an ore bin. From here, it is transferred into ore cars and then hauled out of the mine. A machine called a "slusher" is used to collect the muck. Cables run from the slusher, through pulleys ("blocks") attached to the ribs, to a large bucket. Operation of the machine moves the cables, dragging the bucket across the muck. In this manner, the muck is pulled toward and into the chute. The slusher is operated by one miner who sits or stands behind it.

In connection with this citation, Inspector De Herrera testified that on November 15, 1978, when he visited the 24-D stope, 4400 level, 11 ledge, he noticed a loose portion of rock on the back. This rock was approximately three feet by two feet by eight inches in size and weighed approximately 200 pounds. It was about ten feet above the floor, and contained a crack, or fracture, between one-eighth and one inch wide. This condition existed about 300 feet north of a slushing machine which was being operated by

two workers. The inspector asked the mine supervisor to have his men pry the rock loose and take it down. This was done immediately. Respondent was cited for violating 30 C.F.R. 57.3-22, which provides in part that "[m]iners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter," and that "[l]oose ground shall be taken down or adequately supported before any other work is done." The inspector felt that the gravity of the violation was serious since a fatality or serious bodily injury could have resulted. He also stated that two or more people were in the area, and that the condition should have been known to the operator.

Raymond Radenslaben and Jim Kluthe testified for Respondent. Mr. Radenslaben was a contract miner who was operating the slushing machine in that area on November 15, 1978. He stated that while he was operating the slushing machine, he was not required to pass near the loose rock. Based upon Mr. Radenslaben's testimony, Respondent argued that nobody was working in the area at the time, and that this was not a working place.

Mr. Kluthe testified that he was a shift boss for Homestake, and that he accompanied Inspector De Herrera on the inspection of the stope. He testified that the loose rock in the back was not discovered immediately when the inspection team entered the stope. It was not noticed until the men reached the back of the stope, and it was taken down immediately thereafter.

I find that Respondent violated the mandatory safety standard at 30 C.F.R. 57.3-22 as alleged. There was loose ground here which was not

taken down, thus creating a dangerous condition. I do not accept Respondent's argument that this was not a "working place." Since slushing was going on, this stope was a working place. The fact that the men were not observed inside of the stope does not mean that they could not have entered it during the course of their work. In its brief, Respondent admitted that miners would have to enter the blasted area of the stope under certain conditions. I believe the standard requires an examination for loose ground as long as this possibility exists with respect to any area of the mine near which men are working.

Respondent also argued that the miners could not enter the stope at the beginning of their shift because of a large pile of muck at the entrance to the stope which presented an obstacle and possible danger to the men. Respondent asserted that Mr. Radenslaben decided to slush the area before entering to check the back, and that this was a reasonable decision on the miner's part. In MSHA v. Asarco, Inc., Docket No. DENV 79-473-PM, 2 FMSHRC Decs. No. 4 at 920 (1980), Judge Morris held that "miners are not required to bar down while standing on a muck pile." This is a sensible, reasonable interpretation which I would have no problem following. However, the facts of this case are distinguishable from those in Asarco. In Asarco, the primary issue was "the location of the muck pile in relation to the unstable back and whether the miners would have to stand on the muck pile to abate the condition." The record before me does not indicate the size or location of the muck pile which allegedly prevented the miners from complying with the regulation. Mr. Radenslaben stated that "the rock was piled up along the wall" of the stope. There is no evidence that this rock along the wall

prevented the miner from entering the stope or presented a danger to him. The portion of the transcript cited by Respondent in its brief does not bring the facts of this case within the Asarco decision. Therefore, I find that the standard was violated.

The degree of negligence was low. Although Respondent should have detected the condition, detection was difficult since few people were required to go near that area. The gravity was moderate. Not too many people were exposed to the danger, but the loose rock could have caused death or serious bodily injury. Therefore, I assess a penalty of $150 for this violation.

Citation No. 330419 in Docket No. CENT 79-206-M

Inspector Niles Harris testified in connection with this citation. He stated that on February 15, 1979, he noted an area of loose rock on a rib three feet from a manway hole which men used to go from one level to another by way of a ladder. He stated that the area was eight to ten feet long and five to six feet high on the rib, and that it was fractured. The crack was approximately one-quarter of an inch to an inch in size. He stated that the rock was close enough to the manway so that a piece of it could have fallen and injured people in the manway. The piece of rock would be six to eight inches long and two or three inches thick. The length of the ladder up the manway was 40 to 50 feet, and the rock could have fallen that distance. Inspector Harris cited Respondent for a violation of 30 C.F.R. 57.3-22.

On cross-examination, Inspector Harris stated that there were men in the stope where the loose rock was found, but that he could not recall what they were doing.

Bud Wieser testified for Respondent. He was a shift boss for Homestake who had visited the area with Inspector Harris on February 15, 1979. He indicated that he found loose rock during the inspection. The rock was small in size, five inches by seven inches by two inches, and he stated that, in his opinion, it was unlikely that the rock would have fallen down the manway. He also stated that he had noticed a portion of the loose rock before the inspector did.

Mr. Wieser stated that the men in the stope were checking for loose rock at the time the inspector arrived in the area. This testimony was uncontroverted by the inspector.

The citation alleged:

> In 13C stope, 11 ledge, 4100 level, there was loose rock in the back and on the rib to the right as you come up thru the manway. Rib is approximately 3 ft. from the top of the ladder.

The standard at 30 C.F.R. 57.3-22 reads:

> Miners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

Inspector Harris stated that he felt the first, third, and fourth sentences of the standard were applicable to the cited condition. Regardless of which sentence is relied upon, I believe the citation must be vacated.

The first and fourth sentences require examinations of one form or another. Petitioner's inspector was unable to controvert the testimony of Respondent's supervisor that the miners were in the process of examining the area for loose rock at the time the citation was issued. Therefore, Petitioner has not proven a violation of either the first or the fourth sentences of the standard.

The third sentence requires that loose ground be "taken down or adequately supported before any other work is done." [Emphasis added.] This sentence requires Petitioner to prove not only that loose ground existed and was not "taken down or adequately supported," but also that some other work was under way in the relevant area when the condition was discovered. Petitioner has failed to meet this burden. There is no evidence that the miners in the area were doing anything other than checking for loose ground when the inspector arrived on the scene. MSHA has thus failed to prove a violation of the third sentence of Section 57.3-22. Therefore, Citation No. 330419 must be vacated.

Citation No. 330418 in Docket No. CENT 79-206-M

The citation alleged a violation of the standard at 30 C.F.R. 57.6-103, which reads: "Areas in which charged holes are awaiting firing shall be guarded, or barricaded and posted, or flagged against unauthorized entry."

Inspector Harris testified that when he visited the area on February 15, 1979, he found charged holes which were loaded with nitrate and awaiting firing. The wires leading to the charges had been shunted off. This means they were tied off so as to avoid a premature blast. Mr. Harris stated that since the wires were shunted off, it was highly unlikely that blasting could have occurred.

Mr. Wieser testified as to Homestake's blasting procedure. This procedure involves deenergizing electricity and clearing equipment away before loading rounds, and then shunting the wires off if other work needs to be done in the area. He stated that there were men approximately 40 feet above the floor level on the day in question, and that they were in a position to observe the situation and, presumably, to prevent unauthorized entry.

I find that the standard was violated in that the charged holes were awaiting firing. I do not accept Respondent's argument that since the wires were shunted off, they were not "awaiting firing" within the meaning of the standard. Considering the obvious danger presented by unguarded explosives, the phrase "awaiting firing" must be interpreted broadly.

There is no dispute that the area was not guarded, barricaded and posted, or flagged against unauthorized entry. The men 40 feet away were not in a position to guard the area. Therefore, 30 C.F.R. 57.6-103 was violated. Respondent clearly was negligent, but I find that the shunting off of the wires would protect against an accidental explosion. Therefore, although there was a technical violation of the standard, there was very

little chance of an accident occurring. Nevertheless, the danger was quite serious. I assess a penalty of $75.

Citation No. 328543 in Docket No. CENT 79-207-M

Petitioner alleged that Respondent violated the mandatory standard at 30 C.F.R. 57.11-12, which reads: "Openings above, below, or near travelways through which men or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed."

Inspector Carsten testified that an opening at the Ross shaft station, 4700 level, was not guarded to prevent persons from falling into the shaft to a landing approximately 25 feet below. The opening was 13 inches wide and five feet high. He stated that there was one railing which was 44 inches high. However, he felt that a toeboard and another railing were necessary in order to protect this area.

Larry Troutman, a supervisory plant metallurgist, confirmed the above facts. He added that the passageway was used to check the ore feeders several times each shift, and that it was near a travelway.

Respondent argued that the opening in question was not near a travelway and that it was adequately protected. I disagree. As testified by Mr. Carsten, someone could have tripped and fallen while walking on the travelway, and possibly slid underneath the barrier. I also agree that the single barrier at a height of 44 inches was not sufficient to protect someone

who might have slipped and fallen. Considering the danger, the protection was not adequate.

I find that Respondent was negligent in that it should have anticipated this lack of protection. The occurrence of an accident was quite likely and the risk of injury was great. Therefore, I assess a penalty of $200 for this violation.

Citation No. 328928 in Docket No. CENT 79-28-M

The standard allegedly violated was 30 C.F.R. 57.11-1, which reads: "Safe means of access shall be provided and maintained to all working places." Inspector Iverson testified that in a passageway where a ladder was installed for a distance of about six feet, there was a clearance of only 13 inches between the ladder and the back of the passageway. Therefore, a person climbing up and down the ladder would have to remove some of his equipment (such as a battery pack or a self-rescuer) because with such equipment around his belt he might be unable to fit through the passageway. Although it might be possible to climb up and down the ladder sideways, this was also dangerous.

The evidence indicates that one or more miners were working in the stope to which this bin line provided access. Although Respondent's witness, August Bieber, equivocated when asked whether or not the bin line was the only access to and from the stope, I conclude that this was the case. I further conclude that the stope was a "working place." As defined in 30 C.F.R. 57.2, "working place" means "any place in or about a mine where work is being performed."

Thus, Respondent failed to provide a safe means of access to a working place. Respondent argued that because it was in the process of repairing the bin line, the citation should be vacated. While Respondent is to be commended for its efforts to correct the condition, it violated the standard in permitting men to work in a stope to which no safe means of access was available.

Respondent was negligent in that it admittedly was aware of the damaged bin line for at least several days before the citation was issued. Although the condition could have resulted in injury due to a fall, only one or two men were exposed to this risk and they were required to use the manway infrequently. Therefore, I assess a penalty of $100 for this violation.

Citation No. 328954 in Docket No. CENT 79-208-M

Petitioner alleged a violation of the standard at 30 C.F.R. 57.14-1, which reads: "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."

Inspector Iverson testified that a guard was not installed on a sheave wheel of the Otis elevator. Such a guard would prevent persons from making contact with the moving parts and pinch points between the cables and the wheel. These pinch points are located about 30 inches from a ladder and the ladder is in an area in which men must travel. Mr. Iverson testified that a pants' leg or some other piece of clothing could get caught in the

pinch points and that the individual could then be dragged into the machine and be killed or seriously injured.

Donald Williams, a lead man in the warehouse, was present when Inspector Iverson made the inspection. He stated that there are gates at each level of the elevator which disconnect the power. Thus, he did not think that the danger of an accident was too great.

I find that in failing to provide a guard at this sheave wheel, Respondent violated the above-quoted mandatory safety standard. Respondent was negligent in that it should have detected this dangerous condition. There was substantial gravity in that this was the only access to the floor and people were required to walk very close to these moving parts. The probability of an accident was thus great. If an accident occurred, an individual could have been seriously injured or killed. I assess a penalty of $200 for this violation.

Citation No. 328953 in Docket No. CENT 79-207-M

Petitioner alleged that Respondent violated the mandatory standard at 30 C.F.R. 57.17-1, which reads: "Illumination sufficient to provide safe working conditions shall be provided in and on all surface structures, paths, walkways, stairways, switch panels, loading and dumping sites, and working areas."

Inspector Iverson testified that the illumination in the area of the sheave wheel discussed above was insufficient, and that light was needed to safely repair the sheave wheel and other motor components of the elevator.

He stated that the area in question was completely dark, and that light emitting from warehouse windows located below the platform created a blinding effect. According to the inspector's testimony, there was bright light coming on either side of the platform straight or diagonally up, but no light was being reflected onto the platform itself.

Mr. Williams testified in connection with this citation for Respondent. He indicated that in order to make the repairs, a flashlight or an extension light would generally be used. Therefore, additional lighting was not needed to make a proper inspection and repair of the sheave wheel.

I find that Respondent violated the standard at 30 C.F.R. 57.17-1 in that illumination sufficient to provide safe working conditions was not provided in this working area. The area where repair work was performed was a working area. Respondent was negligent since it should have detected this condition and should have provided light. Light was needed to do necessary repairs on the sheave wheel and improper lighting could have caused injury. Although a flashlight or an auxiliary light would have been necessary to repair the wheel in question, I find that the additional light was required. I therefore assess a penalty of $75 for this violation.

ORDER

The following citations are AFFIRMED and Respondent is ORDERED to pay the amounts indicated within 30 days of the date of this Order:

Docket No.	Citation No.	Penalty
CENT 79-27-M	328789	$150
CENT 79-206-M	330418	75

~2320

CENT 79-207-M	328543	200
CENT 79-28-M	328928	100
CENT 79-208-M	328954	200
CENT 79-207-M	328953	75
		$800

All remaining citations are VACATED.(FOOTNOTE 3)

Edwin S. Bernstein
Administrative Law Judge

~FOOTNOTE_ONE

1 These are Citation Nos. 328601, 329277, 329280, 329281, and 328605 (Docket No. CENT 79-206-M); 328608, 328609, 329611, and 329612 (Docket No. CENT 79-207-M); 329613 (Docket No. CENT 79-208-M); 328968 (Docket No. CENT 79-332-M); 328589 and 329610 (Docket No. CENT 80-167-M).

~FOOTNOTE_TWO

2 Petitioner argued that this jacket could be torn, cut, or mutilated by explosions or by being crushed against the top of an overloaded ore car. However, it would appear that the additional insulation which MSHA considered necessary would be similarly vulnerable to such hazards.

~FOOTNOTE_THREE

3 The vacated citations are Nos. 328601, 329277, 329280, 329281, 328605, and 330419 (Docket No. CENT 79-206-M); 328608, 328609, 329611, and 329612 (Docket No. CENT 79-207-M); 329613 (Docket No. CENT 79-208-M); 328968 (Docket No. CENT 79-332-M); 328589 and 329610 (Docket No. CENT 80-167-M).