

CCASE:

SOL (MSHA) V. H.S. JACKSON SAND & GRAVEL

DDATE:

1980930

TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),

PETITIONER

Civil Penalty Proceedings

Docket No. CENT 80-259-M  
A/O No. 41-01094-05003

v.

Docket No. CENT 80-261-M  
A/O No. 41-01094-05004-I

H. S. JACKSON SAND & GRAVEL, INC.,  
RESPONDENT

DECISION

Appearances: Allen Reid Tilson, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas, for Petitioner  
Henry Jackson, H. S. Jackson Sand & Gravel, Inc.,  
Irving, Texas, for Respondent

Before: Judge Stewart

The above-captioned cases are civil penalty proceedings brought pursuant to section 110(FOOTNOTE 1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter, the Act). The hearing in these matters was held in Dallas, Texas, on August 25, 1980. The Petitioner called one witness and

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introduced three exhibits. The Respondent called one witness and introduced one exhibit. At the outset of the hearing the parties entered into stipulations that Respondent is a small operator having only three employees, Respondent's history of previous violations is good with very few previous violations, that Respondent has in good faith abated the hazard by purchasing safety belts in this case and that the penalty will not affect his ability to continue to do business.

After the evidence had been presented by the parties, they entered into further stipulations that it was probable that the failure to use a safety belt would result in a serious injury, that the failure of the operator to insure the safety belts were used was a violation of a mandatory safety standard, and that there was ordinary negligence as a failure to provide the use of a safety belt.

After the presentation of evidence and oral argument by the parties on each issue, a decision was announced orally from the bench. The decision is reduced to writing in substance as follows pursuant to the Federal Mine Safety and Health Review Commission's Rules of Procedure, 29 C.F.R. 2700.65.

CITATION NO. 153659

Citation No. 153659 was issued on 8-8-79 by Inspector Allen L. Head. The condition or practice listed by the inspector was as follows: "H. S. Jackson fell approximately 39 feet from the shaker because he was not wearing a safety belt or line. Kip Jackson, foreman, stated that there is not a safety belt on the property."

30 CFR 56.15-5 states as follows: "Mandatory: Safety belts and lines shall be worn when men work where there is danger of falling. A second person shall tend the lifeline where bins, tanks, or other dangerous areas are entered."

Pursuant to the stipulations by the parties, I find that there was a violation; that as to the gravity of the violation it was probable that a serious injury would occur, affecting one person; that the operator was negligent; and, that the operator demonstrated good faith in attempting to achieve rapid compliance after notification of the violation.

Upon consideration of the statutory criteria, an assessment in the amount of \$90.00, is entered for this citation.

CITATION NO. 153660

In regard to Citation No. 153660, the parties have entered into additional stipulations. One of these stipulations is that the telephone number of the local

MSHA Office had been changed, but there was a toll free number that could have been called to report the accident.

The parties have also stipulated that Kip Jackson was engaged in taking care of his father relative to the injury he had received, rather than attempting to immediately report the accident that had occurred.

The parties have further stipulated that there was a violation; that it was not probable that the violation would result in injury; and, that there was slight negligence on the part of the operator.

The parties have previously stipulated as to the operator's history of previous violations, the appropriateness of the penalty to the size of the business charged, it being a small business, and the effect on the operator's ability to continue in business.

Citation No. 153660, was issued by MSHA Inspector Allen L. Head on 8-8-79, citing a violation of 30 CFR 50.10. The condition or practice listed on the citation was as follows: "MSHA was not notified of the accident concerning H. S. Jackson falling from the shaker screens to the ground, 8-7-79."

30 CFR 50.10 provides as follows: "If an accident occurs, an operator shall immediately contact the MSHA district or subdistrict office having jurisdiction over its mine. If an operator cannot contact the appropriate MSHA district or subdistrict office, it shall immediately contact MSHA headquarters office in Washington, D.C. by telephone, toll free, at (202) 783-5582."

Pursuant to the stipulations of the parties, I find that there was a violation of 30 CFR 50.10; that as to gravity, it was improbable that the violation would cause injury; that the negligence of the operator was slight; and that the operator demonstrated good faith in attempting to achieve rapid compliance after notification of the violation.

I have already found that the operator's history of previous violations was good, and that the operator was small in size. I have also found that the penalty will not affect the operator's ability to continue in business.

In view of the consideration of these statutory criteria, the sum of \$10.00 is assessed for this violation.

#### ORDER

The bench decision announced at the hearing is AFFIRMED.

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Respondent is ORDERED to pay Petitioner the amount of \$100 within 30 days of the date of this order if it has not already done so.(FOOTNOTE 2)

Forrest E. Stewart  
Administrative Law Judge

~FOOTNOTE\_ONE

1 Sections 110(i) and (k) of the Act provide:

"(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

"(k) No proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission. No penalty assessment which has become a final order of the Commission shall be compromised, mitigated, or settled except with the approval of the court."

~FOOTNOTE\_TWO

2 Section 110(j) of the Act provides:

"(j) Civil penalties owed under this Act shall be paid to the Secretary for deposit into the Treasury of the United States and shall accrue to the United States and may be recovered in a civil action in the name of the United States brought in the United States district court for the district where the violation occurred or where the operator has its principal office. Interest at the rate of 8 percent per annum shall be charged against a person on any final order of the Commission, or the court. Interest shall begin to accrue 30 days after the issuance of such order."