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SOL (MSHA) V. JOHN R. SAND & GRAVEL
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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. LAKE 80-158-M A.C. No. 20-1570-5002
v.		John R. Sand and Gravel Pit
JOHN R. SAND AND GRAVEL,	RESPONDENT	

DECISION

Appearances: Gerald A. Hudson, Esq., Office of the Solicitor, U.S. Department of Labor, Detroit, Michigan, for PetitionerEdward Evatz, General Manager, John R. Sand and Gravel, for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

Pursuant to notice, the above proceeding was called for hearing on the merits on August 6, 1980, in Detroit, Michigan. Victor Chicky, a Federal mine inspector, testified on behalf of Petitioner; Edward Evatz testified on behalf of Respondent.

At the conclusion of the testimony, I issued a decision from the bench as follows:

> THE COURT: The following will be my decision in the case of Secretary of Labor, Mine Safety and Health Administration versus John R. Sand and Gravel, Docket number LAKE 80-158-M.
>
> I find from the record made before me this morning that the Respondent is a small operator and that he has no history of previous violations under the Federal Mine Safety and Health Act of 1977.
>
> Although the matter is not entirely free from doubt, I find that on September 20, 1979, a violation of 30 CFR 56.14-1 occurred, with respect to the John R. Sand and Gravel Pit, in that a moving machine part which might be contacted by employees might cause injury, was not guarded.

I further find that the violation was not serious because considering all the testimony, the possibility of injury to an employee was relatively remote.

I find that the Petitioner has not established that the violation resulted from the Respondent's negligence.

The original citation required that it be abated, that the condition be abated by October 4, 1979. It was not abated by that date and the citation was extended by the inspector to October 18, and then to October 24, after request of Respondent.

It had not been abated as of October 25, and a withdrawal order was issued on that date. This indicates a lack of good faith on the part of the Respondent in attempting to abate the violation.

However, in the mitigation of this, the record shows a lack of communication between the MSHA officials and the Respondent and a failure to adequately point out the hazard and advise the Respondent as to how it might be abated.

The record further shows that Respondent, which is as I said, a small operation, has had or did have at this time employee health problems and genuine difficulties in achieving the abatement.

Normally, I would consider the failure to abate the citation describing a violation as a very serious matter, however minor the violation might have been. I would ordinarily under these conditions assess a very heavy penalty because of the failure to abate.

However, considering all the circumstances here and especially, when I consider the failure of the MSHA officials to adequately discuss this matter with Respondent, I will assess a penalty of only seventy-five dollars for the violation found.

A written decision confirming this decision will be issued. The right of either to seek review by the Commission will begin to run from the date of the written decision.

Either party has the right to petition the Commission for review of my decision. The Commission may grant a petition or deny it.

That will conclude the record in this case. I wish to express my appreciation to Counsel and to the parties for their cooperation in this hearing.

(Whereupon the Proceedings were concluded at about 12:00 P.M.)

The bench decision is hereby affirmed.

ORDER

Respondent is ORDERED to pay, within 30 days of the date of this decision, the sum of $75 for the violation which I found occurred.

James A. Broderick
Chief Administrative Law Judge