

CCASE:
FEDERAL AMERICAN PARTNERS V. SOL (MSHA)
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TTEXT:

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

FEDERAL AMERICAN PARTNERS,
CONTESTANT

v.

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

NOTICE OF CONTEST

DOCKET NO. WEST 80-219-RM
Order No. 339455 1/21/80

DOCKET NO. WEST 80-220-RM
itation No. 339456 1/22/80

MINE: Open Pit Mine

DECISION

APPEARANCES:

Steven M. Avery, Esq., 420 E. Washington, Riverton, Wyoming
82501,
for the Contestant

James H. Barkley, Esq., Office of the Solicitor, U.S. Department
of Labor, 1585 Federal Building 1961 Stout Street, Denver,
Colorado 80294,
for the Respondent

BEFORE: Judge Jon D. Boltz

STATEMENT OF THE CASE

Pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1978), the Contestant filed its notice of contest to the issuance of a citation on January 22, 1980, which alleged a violation of 30 C.F.R. 55.7-5. The pertinent part of that regulation states as follows: "Mandatory. Drill crews and others shall stay clear of augers or drill stems that are in motion. . . .

The Respondent alleges that the citation was properly issued pursuant to Section 104(a) of the Act. Counsel for both parties agreed that all issues raised would be tried under Docket No. WEST 80-220-RM and that Docket No. WEST 80-219-RM should be dismissed. Two cases had been docketed in this instance, one for the citation in issue and one for the withdrawal order issued under section 103(k) of the Act. Accordingly, Case No. WEST 80-219-RM was dismissed of record prior to the commencement of the hearing.

FINDINGS OF FACT

1. On January 21, 1980, Contestant was operating a truck mounted drill rig at a location approximately 50 miles east of Riverton, Wyoming.
2. The drill rig was being used to drill holes in order to explore for uranium.
3. In connection with the rig, the driller's platform and the platform of the driller's helper measure approximately 18" x 24" and are located at the back of the flatbed truck. The two platforms are about 14" apart and are approximately one foot above ground level.
4. The boom of the truck mounted rig is approximately 38 feet high. The drill stem, and kelly which encircles it, is located along the facing edge, in between the two work platforms.
5. While the driller and driller's helper are standing on their work platforms during the normal operation of the rig, they are approximately one foot from the locating drill stem.
6. The controls for operating the rig are located in front of the driller's work platform.
7. When the driller steps from his platform to the helper's platform he passes within approximately 6" of the rotating drill stem and kelly.
8. On January 21, 1980, while standing on the driller's platform and operating rig, an employee of Contestant reached behind the kelly in order to determine the source of a leak. The protruding bolt heads on the kelly caught his sleeve and pulled him into the rotating drill stem. The employee sustained serious injuries.

DISCUSSION AND CONCLUSIONS

Counsel for the Respondent argued that the violation of the regulation occurred by the admission of employees of Contestant that drillers and drillers' helpers crossed from one work platform to the other during the course of their work, and thus exposed themselves to moving parts and to the drill stem (Tr. 51). In addition, the MSHA inspector stated in the modified citation that "[t]he practice of employees passing directly in front of a rotating stem and kelly must immediately cease. Employees may be allowed in the proximity of the rotating drill stem and kelly only during periods when drill stems are being added or taken out." (Exhibit C-1).

Neither the argument of Respondent's counsel nor the statement of the MSHA inspector are persuasive in support of a finding that the cited regulation was violated. The accident did not occur because the driller crossed over from one work platform to the other. Even when the driller is standing on his platform

in front of the controls he is always within a few inches of the drill stem and kelly which are in motion. It cannot be assumed that since the driller and driller's helper crossed from one work platform to the other that they failed to stay clear of drill stems that are in motion.

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The driller was standing on his platform and the accident occurred because he reached behind the drill stem and came into contact with the kelly, which pulled him into the rotating drill stem. The driller obviously failed to "stay clear" of the drill stem that was in motion since his injuries were caused by direct contact with it. On this basis there was a violation of 30 C.F.R. 55.7-5, as alleged.

ORDER

Citation No. 339456 is hereby AFFIRMED.

Jon D. Boltz
Administrative Law Judge