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SOL (MSHA) V. GROVE CRUSHING
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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. WEST 79-319-M
MSHA CASE NO. 35-02844-05001

v.

MINE: SAGER CREEK PIT

GROVE CRUSHING COMPANY,
RESPONDENT

APPEARANCES:

William W. Kates, Esq., Office of Robert A. Friel, Associate Regional
Solicitor, United States Department of Labor, Seattle, Washington
for Petitioner

Michael R. Hughes, President of Grove Crushing Company,
appearing pro se, Eugene, Oregon
for Respondent

DECISION

Before: Judge John J. Morris

In this civil penalty proceedings, Petitioner, the Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), alleges that respondent, Grove Crushing Company (GROVE), violated five safety regulations promulgated under the authority of the Federal Mine Safety and Health Act of 1969 (amended 1977), 30 U.S.C. 801 et seq.

Pursuant to notice, a hearing on the merits was held in Eugene, Oregon, on July 9, 1980. Patrick Bodah testified for MSHA and Michael R. Hughes testified for GROVE. The parties did not file post trial briefs.

ISSUES

The issues are whether the violations occurred and what penalty, if any, is appropriate.

CITATION 349420

This citation alleges a violation of 30 C.F.R. 56.9-87. The cited standard provides:

56.9-87 Mandatory. Heavy duty mobile equipment shall be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

The evidence is uncontroverted.

1. GROVE's front end loader did not have a functioning automatic backing warning device (Tr. 11, 12).
2. The loader operator sits in the middle of the seven foot long machine. The loader itself obstructs the operator's view for a distance of 10 to 12 feet to the rear (Tr. 28).

DISCUSSION

The uncontroverted facts establish a violation of the standard. I accordingly conclude that this citation should be affirmed.

In view of the statutory criteria (FOOTNOTE 1) and in view of the nature of the defective equipment and its potential hazard to workers, I deem a penalty of \$25.00 to be appropriate. The penalty was reduced from \$52.00 because MSHA failed to credit GROVE for its good faith abatement (Tr. 12).

CITATION 349421

This citation alleges a violation of 30 C.F.R. 56.9-22. The cited standard provides:

56.9-22 Mandatory. Berms or guards shall be provided on the outer bank of elevated roadways.

The evidence is uncontroverted.

3. A twenty foot ramp leading to a feed hopper lacked a berm (Tr. 12 - 13).
4. A berm, high must be hub high, prevents a vehicle such as a front end loader from going over the edge (Tr. 12 - 13).

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5. GROVE's front end loader was continually going up and down the ramp (Tr. 14).

Since the evidence concerning the lack of berms is uncontroverted, the citation should be affirmed.

Considering the statutory criteria (FOOTNOTE 2) the proposed penalty of \$52.00 is excessive since the proposed assessment failed to credit Grove for its good faith abatement. A penalty of \$25 is appropriate (Tr. 14).

CITATION 349422

This citation alleges a violation of 56.11-27. The cited standard reads:

56.11-27 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 platforms shall not be overloaded. Working platforms shall be provided with toeboards when necessary.

The evidence is uncontroverted.

6. The 10 foot high deck of the crusher machine had unguarded openings on two sides (Tr. 15).

7. One side of the work platform faced the jaw crusher (Tr. 15).

8. The crusher operator works on this platform (Tr. 15).

9. There is a chain on the crusher side, but it was unhooked at the time of the inspection (Tr. 36).

DISCUSSION

The chain situated on the jaw crusher side of the work platform, even if it had been hooked, would not constitute compliance with the regulation. The standard, 30 C.F.R. 56.11-27, by its terms requires more substantial protection for the platform operator. This citation should be affirmed.

In considering the statutory criteria, (FOOTNOTE 3) the proposed penalty of \$72.00 is excessive since it fails to credit GROVE for its good faith abatement (Tr. 17). A penalty of \$25.00 is appropriate.

CITATIONS 349423 and 349424

These citations alleges a violation of 30 C.F.R. 56.14-1. The cited standard provides:

GUARDS

56.14-1 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.

DISCUSSION

MSHA's case fails for two reasons. First, MSHA did not sustain its burden of proof. The inspector testified there were two unguarded tail pulleys. One was identified as being under the cone conveyor and one leading to the shaker screen. (Tr. 17 - 20, 30).

On the other hand GROVE's president testified the tail pulleys had foot guard boxes bolted on to the conveyor which provide adequate protection (Tr. 37, 40). In addition, I do not perceive any evidence establishing in what manner the GROVE workers would be exposed to the hazard if in fact it existed. The burden of proving all elements of an alleged violation rests with MSHA, 5 U.S.C. 556(d). Brenner v. OSHRC, 511 F.2d 1139 (9th Cir., 1975); Olin Construction Company v. OSHRC 575 F.2d 464 (2d Cir., 1975).

For the foregoing reasons I conclude that Citations 349423 and 349424 and all proposed penalties therefor should be vacated.

ORDER

Based on the foregoing findings of fact and conclusions of law, I enter the following order:

1. Citation 349420 is affirmed and a penalty of \$25.00 is assessed.
2. Citation 349421 is affirmed and a penalty of \$25.00 is assessed.
3. Citation 349422 is affirmed and a penalty of \$25.00 is assessed.
4. Citation 349423 and all penalties therefor are vacated.
5. Citation 349424 and all penalties therefor are vacated.

John J. Morris
Administrative Law Judge

1 30 U.S.C. 820(i)

~FOOTNOTE_TWO

2 30 U.S.C. 820(i)

~FOOTNOTE_THREE

3 30 U.S.C. 820(i)