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SOL (MSHA) V. S.M. LORUSSO & SONS
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judge

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

v.

S. M. LORUSSO & SONS, INC.,
RESPONDENT

Civil Penalty Proceeding

Docket No. YORK 79-49-M
A/O No. 19-00019-05001

Wrentham Quarry & Mill

DECISION

Appearances: David Baskin, Esq., Office of the Solicitor, U.S. Department of Labor, Boston, Massachusetts, for Petitioner, MSHA
Kenneth Arthur, S. M. Lorusso & Sons, Inc., Walpole, Massachusetts, for Respondent, S. M. Lorusso & Sons, Inc.

Before: Judge Merlin

The above-captioned case is a petition for the assessment of civil penalties filed by MSHA against S. M. Lorusso & Sons, Inc.

The Solicitor had filed a motion for settlement which I disapproved on August 12, 1980. As I stated at the hearing, the Solicitor's motion set forth some reasons to support a settlement but, in my opinion, they were not adequate. However, at the hearing, the Solicitor furnished additional reasons and detailed explanations which did warrant approval of his recommendations. The approved settlements are as follows:

Citation No. 217543 was issued when the plant manager was observed not wearing protective footwear. The original assessment was \$44; the recommended settlement was \$10. In support of the reduction, the Solicitor advised that there was no negligence on respondent's part with respect to this violation. The operator purchases protective footwear for its employees and instructs them to wear it. This employee had simply disobeyed company rules. I accepted the Solicitor's representations and approved the settlement.

Citation No. 217545 was issued when the plant manager was observed not wearing protective headwear. The original assessment was \$44; the recommended settlement was \$10. The Solicitor gave the same reasons in support of the reduction as were given for Citation No. 217543. I accepted the Solicitor's representations and approved the settlement.

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Citation No. 217546 was issued when a guard on a conveyor belt drive that had been removed for servicing was not reinstalled prior to restarting the belt drive. The original assessment was \$60; the recommended settlement was \$50. In support of the reduction, the Solicitor advised that this is a small operator and that this was the first inspection after the plant had started up operations for the season. In light of the small amount of the proposed reduction, I approved the recommended settlement.

Citation No. 217547 was issued when a railing surrounding the primary crusher was found not to have been put in place prior to starting up the crusher. The original assessment was \$66; the recommended settlement was \$50. In support of the reduction, the Solicitor advised that it was company practice to instruct employees not to remove these railings, and that if they had to be removed, they must be replaced. An employee simply had not replaced the railing. I accepted the Solicitor's representations and approved the settlement.

Citation No. 217548 was issued when two electric drop cords were found being used without ground connectors. The original assessment was \$38; the recommended settlement was \$20. In support of the reduction, the Solicitor advised that there was a very low probability of occurrence. The small size of the company and the small history of prior violations was also noted. In light of these factors, I approved the recommended settlement.

Citation No. 217551 was issued when a shaker screen guard which had been removed for servicing was not replaced. The original assessment was \$60; the recommended settlement was \$40. In support of his motion, the Solicitor cited the same factors which supported the settlement for Citation No. 217546 and further advised that there was only an extremely remote likelihood that a person would come in contact with the dangerous parts of the machinery. I accepted the Solicitor's representations and approved the settlement.

Citation No. 217552 was issued when a guard on a conveyor belt head pulley which had been removed for servicing was not reinstalled prior to starting up the machine. The original assessment was \$60; the recommended settlement was \$50. In support of the reduction, the Solicitor cited the same factors which warranted the reduction for Citation No. 217546. The Solicitor further advised that there was a very low probability of any injury occurring and that the operator's negligence was very low, given the fact that the plant was beginning to start up for the new season. In light of the foregoing factors and the fact that this was not a particularly large reduction, I approved the settlement.

Citation No. 217555 was issued when it was observed that the traffic rules pertaining to speed limits on the haulage road were not posted. The original assessment was \$52; the recommended settlement was \$20. In support of the reduction, the Solicitor advised that both negligence and gravity were less than were

originally thought since the rules had been posted but they were either destroyed or taken down because of the winter weather. The Solicitor further advised that the drivers are aware of the speed limits,

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and the rules are posted in the company office. I accepted the Solicitor's representations and approved the settlement.

I recognized that the original assessments for these citations were not large. However, at the hearing the Solicitor did advise that this operator is small in size and had a very small history of prior violations. In light of these factors, the recommended reductions are appropriate.

ORDER

The rulings issued from the bench on November 24, 1980, are hereby AFFIRMED.

The operator is ORDERED to pay \$250 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge