

CCASE:
SOL (MSHA) v. RIVERSIDE CEMENT
DDATE:
19810114
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 Proceeding

Docket No. WEST 80-21-M
A/O No. 04-00010-05015 V

v.

Crestmore Mine and Mill

RIVERSIDE CEMENT COMPANY,
RESPONDENT

DECISION

Appearances: Theresa Kalinski, Esq., Office of the Solicitor, U.S.
Department of Labor, Los Angeles, California, for;
Petitioner, MSHA;
Jerry E. Hines, Esq., Gifford-Hill and Company, Dallas,
Texas, for Respondent, Riverside Cement Company

Before: Judge Merlin

This case is a petition for the assessment of a civil
penalty filed by the Government against Riverside Cement Company.
A hearing was held on Tuesday, December 16, 1980.

The alleged violation was of 30 C.F.R. 57.12-8. Section
57.12-8 of the mandatory standards provides that:

Power wires and cables shall be insulated adequately
where they pass into or out of electrical compartments.
Cables shall enter metal frames of motors, splice
boxes, and electrical compartments only through proper
fittings. When insulated wires, other than cables,
pass through metal frames, the holes shall be
substantially bushed with insulated bushings.

The citation, which was issued on May 14, 1979, set forth
the following condition:

The trailing cable of the clinker stacker was not
connected through proper fittings at the main junction
box. The trailing cable was entered through the door
of the junction box and the door fastened against the
cable. The cable

is energized and east belt was running. 440 v. Should a short circuit occur on the stacker electrical system which was energized it could be a fatal hazard to three employees who were cleaning the trailer walkway or other employees when attempting to mount the stacker.

At the hearing, the parties entered into the following stipulations (Tr. 2, 33):

(1) The operator is the owner and operator of the subject mine.

(2) The operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.

(3) The administrative law judge has jurisdiction of this case.

(4) The inspector who issued the citation was a duly authorized representative of the Secretary.

(5) A true and correct copy of the subject citation was properly served upon the operator.

(6) Copies of the subject citation and termination of the violation in issue are authentic and may be admitted into evidence for the purposes of establishing their issuance, but not for the purpose of establishing the truthfulness or relevancy of any statements therein.

(7) The imposition of a penalty will not affect the operator's ability to continue in business.

(8) The alleged violation was abated in good faith.

(9) In overall terms, the operator has a moderate history of violations. In addition, the operator has a small history regarding this particular standard.

(10) The operator's size is large.

Testimony was given by the inspector who issued the citation and by the operator's safety engineer. The inspector testified that on the day of the inspection he observed the clinker stacker power cable attached inside the clinker stacker junction box and that the cable exited the box through the box's door (Tr. 10). He stated that this was not the way in which cables typically enter junction boxes since such cables normally enter junction boxes through proper fittings (Tr. 10). The cable itself was not winding and unwinding from a reel, as is usually the case (Tr. 25). Rather, the cable was laying on the ground following the stacker, and was tied to the stacker by a rope (Tr. 7-9). The inspector's concern was that the movement of the stacker could cause the rope to break, creating a situation where the weight of the cable would cause the edge or the door of the junction box to cut into

~242

the cable, creating a shock hazard (Tr. 12). The inspector testified that if the cable were cut and the ground and the fuses were not working properly the junction box and the stacker itself could become energized (Tr. 12-13). The inspector felt that if the cable had entered the junction box through insulated bushings then the likelihood of any damage to the cable would have been significantly lessened (Tr. 28). The safety engineer testified that a new reel for the cable was scheduled to be installed the next day (Tr. 32). The rope used to fasten the cable to the stacker circled the cable several times, preventing persons from pulling on the cable, which could break the connections inside the junction box (Tr. 30). He further testified to the type and quality of the cable (Tr. 30), and stated that there was both a grounding wire for the cable and a circuit breaker for the stacker, so that if a short were to occur the power would be cut off, regardless of how the cable was cut (Tr. 30-31).

I find that a violation of the mandatory standard occurred.

The regulation at issue here, 30 C.F.R. 57.12-8, requires that cables enter the metal frames of electrical compartments "only through proper fittings." Based upon the evidence I find that the way this cable entered the junction box did not constitute "proper fittings" and that therefore a violation occurred.

I further find the operator exhibited ordinary negligence because it should have known that this cable was not entering the junction box in the proper manner. Further, although any potential accident would be serious, the likelihood of an accident occurring is somewhat remote because of the chain of events that would have to occur before a person could be injured.

In light of the foregoing and taking into account all the statutory criteria a penalty of \$150 is assessed.

ORDER

The operator is ORDERED to pay \$150 within 30 days from the date of this decision.

Paul Merlin
Assistant Chief Administrative Law Judge