

CCASE:
SOL (MSHA) v. PIONEER URAVAN,
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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
v.
PIONEER URAVAN, INCORPORATED,
RESPONDENT

CIVIL PENALTY PROCEEDING
DOCKET NO. WEST 80-63-M
MSHA CASE NO. 05-02588-05002
DOCKET NO. WEST 80-356-M
MSHA CASE NO. 05-03465-05001
Mine: C-BL-23B

DECISION

APPEARANCES: James H. Barkley, Esq., Office of Henry C. Mahlman,
Esq., Associate Regional Solicitor, United States
Department of Labor, 1585 Federal Building, 1961
Stout Street, Denver, Colorado 80294,
for the Petitioner

John F. Peeso, Manager, appearing pro se, Pioneer Uravan,
Incorporated, P.O. Box 2065, 2492 Industrial Boulevard,
Grand Junction, Colorado 81501,
for the Respondent

Before: Judge John J. Morris

The Secretary of Labor, on behalf of the Mine Safety and
Health Administration (MSHA), charges that respondent Pioneer
Uravan, Incorporated (Pioneer) violated two safety regulations
promulgated under the authority of the Federal Mine Safety and
Health Act, 30 U.S.C. 801 et seq. Pioneer denies that the
violations occurred.

Pursuant to notice, an expedited hearing was held on
December 23, 1980, in Grand Junction, Colorado.

The parties filed post trial briefs.

ISSUES

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

WEST 80-63

In this case citation 325276 alleges a violation of 30
C.F.R. 57.93-3. The standard provides:

57.9-3 Mandatory. Powered mobile equipment shall be
provided with adequate brakes.

In this case citation 326929 alleges a violation of 30 C.F.R. 57.14-26. The standard provides:

57.14-26 Mandatory. Unsafe equipment or machinery shall be removed from service immediately.

The parties agree that the single factual factor determinative of both cases is whether the Pioneer equipment had adequate brakes (Tr 4).

FINDINGS OF FACT

The facts are uncontroverted.

1. The 911 LH loader in issue has a Sundstrand hydrostatic drive transmission (Tr 11-42).
2. The ability of the hydrostatic transmission to brake the loader would be affected by any loss of oil. An efficient hydrostatic system leaks oil from the rotating surfaces. When the oil in the line is dissipated the hydrostatic drive fails (Tr 11-42).
3. The hydrostatic transmission fluid could be lost through a broken hose, a leak, clogging the inlet filter, or through a blow out (Tr 11-42).
4. Some mechanical failures can occur that would offset the hydrostatic power (Tr 11-42).
5. The MSHA inspector observed the Pioneer loader at the bottom of the haulage incline (Tr 43-44).
6. The service brakes were not operable (Tr 44).
7. The operator relied on the parking brake to stop the loader. The parking brake was in good condition (Tr 45,49).
8. There were no inclines of any consequences in the central loading area where the loader was being used (Tr 50,52,53).
9. The manufacturer of the 911 LH loader does not recommend the parking brakes or the hydrostatic transmission should be substituted for the service brakes (Tr 65,90).
10. In the Mum Mine the slopes do not exceed 3 to 4 degrees (Tr 96).
11. Pioneer lowers and removes this loader from the mine with a 50 horsepower electrical hoist (Tr 97).

DISCUSSION

Citation 325276 should be vacated.

The evidence shows that the parking brakes of the loader were adequate in view of the flat area in which the loader was operating. Although it is common for the equipment to follow ore bodies up and down, the inspector saw no such incline. The cited standard requires "adequate brakes". Further, the inspector testified there was no incline where any kind of a braking failure would have been hazardous (Tr 50). These circumstances establish that the parking brake was therefore adequate as required by 30 C.F.R. 57.9-3.

MSHA contends that mines of this type follow the ore and as such the degree of incline can rapidly change. In short, MSHA says adequate brakes must describe the braking ability of the loader under all possible applications of the machine and not just at the mine site. I disagree. In determining whether brakes are adequate the circumstances under which the equipment is being used must be considered. To hold otherwise would impugn to an operator an intent to violate the regulation in the future. The service brakes were not maintained due to the abrasive mud in the mine. If a condition existed where a hazard arose from a steeper incline then I would find a violation occurred. However, absent such factual conditions, I rule that the parking brakes were adequate.

WEST 80-356-M

The facts are uncontroverted.

12. An electrical hoist was assisting in lowering a Pioneer loader down a 21 percent incline (Tr 105-107).

13. The two miners were at the bottom of the 600 foot incline (Tr 107).

14. In a 2 foot drop test, the hydrostatic drive, the foot brakes, and hand brakes would not hold the unit (Tr 109-111).

DISCUSSION

This citation should be affirmed.

The test observed by the inspector clearly establishes the brakes were inadequate in view of the circumstances under which the equipment was being used.

Pioneer contends the hydrostatic drive transmission is adequate without any brakes. Further, Pioneer offers evidence that similar loaders sold commercially do not even furnish separate service brakes (Exhibits R2, R3, R4, R5).

I reject Pioneer's arguments. The expert testimony establishes that the hydrostatic transmission drive will

eventually leak out a sufficient

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amount of oil that its braking power will no longer hold the loader. In addition, the 911 LHD loader operator's manual is contrary to Pioneer's argument (Exhibit P-1, Page 9).

The second argument that other commercial loaders do not furnish service brakes is not supported by Pioneer's evidence. The Clark "Bobcat" shows brakes are "standard equipment" (R2). The J I Case Uniloader and the International Hustler do not indicate they have any service brakes (R3, R4). It may well be that service brakes are such standard equipment that those two manufacturers did not mention that feature in their brochures. The Massey Ferguson skid steer loader brochure under braking indicates "automatic 4-wheel drive with control levers in neutral position". Without additional expert testimony I cannot find that the Massey Ferguson equipment does not have service brakes (R5).

PENALTY

MSHA failed to credit Pioneer with any good faith abatement. In view of this factor and the other statutory criteria (FN.1) I deem a civil penalty of \$100.00 to be appropriate.

CONCLUSIONS OF LAW

1. Complainant failed to prove a violation of 30 C.F.R. 57.9-3 and citation 325276 should be vacated (Facts 1-11).
2. Respondent violated 30 C.F.R. 57.14-26 and citation 326929 should be affirmed and a penalty of \$100.00 assessed (Facts 12-14).

ORDER

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

WEST 80-63

1. Citation 325276 and all other penalties therefor are vacated.

WEST 80-356-M

2. Citation 326929 is affirmed and a penalty of \$100.00 is assessed.

John J. Morris
Administrative Law Judge

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(FOOTNOTES START HERE.)

~FOOTNOTE ONE

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