

CCASE:  
SOL (MSHA) V. SWEET QUARRIES  
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TTEXT:

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

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

v.

SWEET CITY QUARRIES,  
RESPONDENT

Civil Penalty Proceeding

Docket No. SE 80-49-M  
A.O. No. 09-00518-05001

Sweet City Quarry & Mill

DECISION

Appearances: Ken S. Welsch, Esq., U.S. Department of Labor, Atlanta,  
Georgia, for the petitioner; Willie Simmons, pro se,  
Elberton, Georgia, for the respondent

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), proposing a civil penalty of \$40 for one alleged violation of mandatory safety standard 30 CFR 56.19-128(a). Respondent contested the citation and a hearing was held on November 25, 1980, in Athens, Georgia.

The citation in this case was issued by MSHA Inspector Wayne Hubbard on October 23, 1979, and the condition or practice described on the face of the citation is as follows:

There were more than six broken crown wires per lay in several lay of the main fall rope on the shift leg hoist.

The cited mandatory safety standard, section 56.19-128(a), requires that "ropes shall not be used for hoisting when they have: (a) more than six broken wires in any lay;".

Discussion

In support of the alleged violation, petitioner presented the testimony of Mr. Hubbard, and the respondent presented the testimony of its quarry foreman James Bell. At the conclusion of all of the testimony, I advised

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the parties that based on all of the evidence and testimony, it was my initial preliminary finding that petitioner had failed to establish that there were in fact six broken wires in any one lay as charged in the citation. That finding was reduced in writing on January 29, 1981, as a Preliminary Finding and Order, and served on the parties. The parties were afforded an opportunity to file exceptions or further arguments concerning my finding on the fact of violation, but they declined to do so. The basis for my finding that the petitioner had failed to establish the fact of violation is detailed in my January 29, 1981, Order, copy of which attached hereto, and those findings and conclusions are herein incorporated by reference.

#### Conclusion and Order

In view of the foregoing, I find that petitioner has failed to prove a violation of section 56.19-128(a), as charged in Citation No. 099070, issued on October 23, 1979. Accordingly, the citation is VACATED and this proceeding is DISMISSED.

George A. Koutras  
Administrative Law Judge