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SOL (MSHA) v. MULZER STONE
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Federal Safety and Health Review Commission
Office of Administrative Law Judges

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

v.

MULZER CRUSHED STONE COMPANY,
A PARTNERSHIP,
RESPONDENT

Civil Penalty Proceeding

Docket No. LAKE 80-303-M
A.C. No. 12-00084-05002

Eckerty Quarry

DECISION

Appearances: Steven E. Walanka, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois, for
Petitioner, MSHA;
Philip E. Balcomb, Manager, Tell City, Indiana, for
Respondent, Mulzer Crushed Stone Company.

Before: Judge James A. Laurenson

JURISDICTION AND PROCEDURAL HISTORY

This is a proceeding filed by the Secretary of Labor, Mine Safety and Health Administration (hereinafter MSHA) under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) (hereinafter the Act), to assess a civil penalty against Mulzer Crushed Stone Company (hereinafter Mulzer) for a violation of mandatory safety standards. The proposal for assessment of a civil penalty alleges a violation of 30 C.F.R. 56.12-30. A hearing was held in Evansville, Indiana, on February 24, 1981. George LaLumondiere testified on behalf of MSHA. Nelson R. Paris testified on behalf of Mulzer. The parties waived their right to submit findings of fact and conclusions of law in briefs and the record was closed at the end of the hearing.

ISSUES

Whether Mulzer violated the Act of regulations as charged by MSHA and, if so, the amount of civil penalty which should be assessed.

APPLICABLE LAW

Section 110(a) of the Act, 30 U.S.C. 820(a), provides:

The operator of a coal or other mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, shall be assessed a civil penalty by the Secretary which penalty shall not be more than \$10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense.

Section 110(i) of the Act, 30 U.S.C. 820(i), provides in pertinent part as follows:

In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

30 C.F.R. 56.12-30 provides as follows: "When a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized."

STIPULATIONS

The parties stipulated the following:

1. That the Administrative Law Judge has jurisdiction in matters related to the Mine Safety and Health Act of 1977.
2. That the inspector who issued the citation was a duly authorized representative of the Secretary of Labor.
3. That the size of the mine as to production of tons or man-hours per year is 101,812.
4. That the size of the company as to production of tons or man hours per year is 469,971.
5. That the proposed assessment will not harm Mulzer's ability to continue its operations.
6. That Citation No. 366831 has been terminated.
7. That Mulzer owned and operated a secondary crusher motor, the subject of this citation, on February 12, 1980.

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8. That Respondent operates a limestone (crushed and broken) type facility.

SUMMARY OF EVIDENCE

On February 12, 1980, MSHA inspector George LaLumondiere made an inspection of Eckerty Quarry. In checking out the ground floor level of the crusher control booth building, he observed that the oil switch of the secondary crusher drive motor was set permanently in a "run" position by means of a wooden wedge holding the switch in place. By keeping the switch in this position, the magnetic overload protection was unable to be utilized. This protection is designed to automatically turn off the switch if the machine is not functioning properly. The inspector testified that if the motor should single phase or lose a phase conductor, it might overheat since the wedge prevented the switch from automatically turning off. He believed that this could cause an electrical fire or an oil fire which could ignite the wooden crusher control booth and cause injury to the control operator on the second floor of the building. In the inspector's opinion, this amounted to a potentially dangerous condition, and he issued a citation for a violation of 30 C.F.R. 56.12-30.

The inspector stated that the operator was aware that the wooden wedge was being used. The violation was abated on the same day by an electrician who cleaned the contacts or magnetic switches and removed the wedge.

Mulzer's chief electrician, Nelson Paris, testified that the only purpose of the starter switch is to reduce the amount of voltage and current that is used when starting the motor. After starting, the switch is then moved into the "run" position. Mr. Paris explained that they had been having problems keeping the switch in the "run" position since the level of oil pressure was being read inaccurately, causing the motor to shut down even though the oil supply was adequate. When the motor and crusher stopped, rocks would wedge into the machine resulting in a work stoppage of 4-6 hours while they dug out the crusher. In order to keep up production and prevent false tripping, a wooden wedge was inserted to hold the switch in the "run" position.

Mr. Paris stated that the magnetic overload protection functioned by shutting off the switch when the motor overloads and generates heat. He maintained, that in the absence of the protection provided by the automatic switch, the machine would eventually shut off when the electrical fuses shorted out. He also indicated that the crusher operator can manually stop the motor by using the handle located on the side of the starter's enclosure.

DISCUSSION

MSHA asserts that Mulzer violated 30 C.F.R. 56.12-30 by having an oil start-stop switch for a secondary crusher motor wedged into a run position. Its use of a wooden wedge which prevented the machine from automatically shutting off when the

oil pressure was too low, was a "potentially dangerous

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condition." I find that by using the wedge, Mulzer had to either rely on the control operator to detect an emergency situation, or had to wait for the fuses to burn out in order for the power to be cut off. The possibility that the motor might single phase, allowing the machine to run for a period of time and build up heat presents a potentially dangerous condition. Since the building was small and made of wood, a fire might cause immediate and serious harm.

MSHA has established the fact of violation by demonstrating a potentially dangerous condition. I find that the probability of a dangerous situation occurring is low since protection was provided by both the fuses and manpower. Since the operator was aware of the wedge and the purpose of the automatic overload protection switch, this violation amounts to ordinary negligence. It is also noted that the violation was abated immediately after the citation was issued, therefore showing good faith on the part of the operator.

Based upon all of the evidence of record and the criteria set forth in section 110(i) of the Act, I conclude that a civil penalty in the amount of \$40, the amount proposed by MSHA, is appropriate.

ORDER

WHEREFORE, IT IS ORDERED that Mulzer pay the sum of \$40 within 30 days of the date of this decision as a civil penalty for the violation of 30 C.F.R. 56.12-30.

James A. Laurenson Judge