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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.

Civil Penalty Proceeding

Docket No. SE 79-16-M
A.O. No. 31-00582-05003

Castle Hayne Quarry & Mill

IDEAL BASIC INDUSTRIES,
CEMENT DIVISION,
RESPONDENT

DECISION

Statement of the Case

On April 10, 1981, the Commission remanded this case to me for the purpose of assessing a civil penalty for a citation which I vacated from the bench on March 5, 1980, and my decision in this regard was reduced to writing in my original decision of June 9, 1980. The citation (No. 103843), was issued by an MSHA inspector on July 25, 1978, and charged the respondent with a violation of mandatory safety standard 30 CFR 56.9-2.

After due consideration of the previous record containing the testimony and evidence adduced by the parties with respect to the citation, I make the following findings and conclusions pursuant to the Commission's remand order:

Fact of violation

The Commission has reasoned that based on their consideration of the record a violation has occurred. Accordingly, the citation must be AFFIRMED.

History of Prior Violations

In my previous decision sustaining several other citations which are not in issue in this remand, I concluded that respondent's prior history of violations did not warrant any increased civil penalty assessment and I reaffirm that finding here.

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Size of Business and Effect of Civil Penalties on Respondent's Ability to Remain in Business

In the prior proceeding, the parties agreed that the mine in question employed 162 employees and that annual production is 600,000 tons of marl, the basic substance used to produce cement, and that annual production for the respondent as a whole was some four million tons. I concluded that respondent was a large operator and that its mining operation at the quarry and mill in question was medium in scope. I reaffirm those findings.

Respondent did not contend in the prior proceeding that the assessment of civil penalties will adversely affect its ability to remain in business and I conclude that the assessment levied in this instance will not adversely impact on respondent's mining business.

Good Faith Compliance

A copy of the citation termination notice reflects that the condition cited was corrected and abated through the replacement of the defective coupler in question. While the date of the termination is subsequent to the time initially fixed by the inspector, the testimony of record does not support a conclusion that good faith compliance was not exercised. To the contrary, all of the remaining citations which I affirmed in this case reflected that they were abated rapidly, and it is altogether possible that the actual termination date reflects the actual date of termination of the citation rather than the actual date that repairs were made. I conclude that the citation in question here was abated in good faith, but there is no evidence to suggest that abatement was achieved rapidly or that the respondent was dilatory.

Negligence

The record supports finding that the citation resulted from the respondent's failure to exercise reasonable care to insure that the defective coupling was repaired before it was discovered by the inspector.

Gravity

The Commission's own interpretation of section 56.9-2, supports a conclusion that the conditions cited in this case constituted a serious violation.

Penalty Assessment

The initial proposed civil penalty assessment made by MSHA in this case for the citation in question is \$38. Considering all of the statutory criteria found in section 110(i) of the Act, including the foregoing findings and conclusions, I cannot conclude that the initial assessment is unreasonable, and IT IS AFFIRMED.

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Order

Respondent IS ORDERED to pay a civil penalty in the amount of \$38 for the citation in question here, payment to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of payment this matter is DISMISSED.

George A. Koutras
Administrative Law Judge