

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

333 W. COLFAX AVENUE, SUITE 400  
DENVER, COLORADO 80204

JUL 21 1981

SECRETARY OF LABOR, MINE SAFETY AND	)	CIVIL PENALTY PROCEEDING
HEALTH ADMINISTRATION (MSHA),	)	)
Petitioner,	)	DOCKET.NOS. WEST 80-14-M
	)	WEST 80-468-M
v.	)	WEST 81-50-M
	)	)
MAGMA COPPER COMPANY,	)	A/C NOS. 02-00152-05004
Respondent.	)	02-00151-05021
	)	02-00151-05022
	)	)
	)	MINES: Superior
	)	San Manuel
	)	San Manuel

APPEARANCES

Marshall P. Salzman, Esq., Office of the Solicitor, United States Department of Labor, 450 Golden Gate Avenue, Box 36017, San Francisco, California 94102

For the Petitioner

N. Douglas Grimwood, Esq., Twitty, Sievwright & Mills, 1700 TowneHouse Tower, 100 West Clarendon, Phoenix, Arizona 85013

For the Respondent

Before: Judge Jon D. Boltz

DECISION AND ORDER

The above-captioned cases were ordered consolidated for hearing and the hearing was subsequently held in Phoenix, Arizona, on May 15, 1981. All of the cases involved petitions for assessment of civil penalties brought against the respondent by the petitioner who alleged violations of various regulations promulgated pursuant to the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (hereinafter "the Act").

At the hearing, the petitioner and respondent stipulated as follows:

1. The respondent is a large operator.
2. Respondent has a moderate history of previous violations.
3. Respondent demonstrated good faith in achieving rapid compliance after notification of violations.

4. The MSHA inspectors who issued the citations were authorized representatives of the Secretary of Labor.

5. The citations at issue were issued on the date and times indicated on the citations.

6. The imposition of the proposed penalties **will** not affect respondent's ability to continue in business.

The petitioner and respondent proposed the following as settlement to all of the citations at issue in the above cases, except Citation No. 599623 which will be taken up last in this Decision:

Docket No. WEST 80-14-M

Citation No. 382625

Citation No. 380367

Both citations alleged violations of 30 C.F.R. 57.12-8 in that two junction or signal boxes did not have a strain relief clamp where the conductor entered the box. Respondent agreed to withdraw its contest and pay the penalties proposed of \$60.00 and \$122.00 respectively.

Citation No. 380364

This citation alleged a violation of 30 C.F.R. 57.11-1 for failure of the respondent to provide a safe means of access to a working place. Petitioner stated that investigation had disclosed that the gravity of the violation was not as serious as initially assessed and that the penalty should be reduced from \$90.00 to \$50.00. Respondent agreed to withdraw its contest and pay the revised penalty of \$50.00.

Docket No. WEST 81-50-M

Citation No. 599628

Petitioner alleged a violation of 30 C.F.R. 57.13-21, however, counsel stated that additional investigation by MSHA indicated that there was insufficient evidence to sustain the **allegation**. Accordingly, the petitioner moved to withdraw the proposed penalty and vacate the citation. This motion was approved.

Docket No. WEST 80-468-M

Citation No. 599800

Citation- No. 599801

In both citations, the petitioner alleged a violation of 30 C.F.R. 57.12-25 for improper electrical grounding. The respondent agreed to withdraw its contest to the alleged violations and to pay the two \$255.00 penalties as proposed.

Citation No. 599623

Petitioner alleges that respondent violated 30 C.F.R. 57.11-1 in failing to provide a safe means of access to an employee's working place. Specifically, the electrician employed by the respondent was observed on top of a 20 foot light pole without a safe access to that area. This employee had one leg straddled on the light cross beam; He then proceeded to slide 10 feet down the pole to reach a 10 foot ladder. Petitioner and respondent agreed to these facts, but respondent argued that the behavior of the employee was at variance with what the employee had been instructed to do on the job. Thus, the respondent- argued that it should not be held strictly liable on the basis of the idiosyncratic behavior of an employee.

I find that respondent's argument goes only to the question of respondent's negligence as an employer and does not relieve the respondent of liability for the violation of the cited regulation. On the basis of the agreed facts, I find that there was a violation of the cited regulation, that respondent was liable, but that there was little, if any, negligence on the part of the employer. Accordingly, the proposed penalty should be reduced.

From the bench, I approved the proposed settlements after considering the statutory criteria as set forth in section 110(i) of the Act. In regard to Citation No. 599623, I find that a penalty should be assessed in the amount of \$50.00.

ORDER

The settlements approved from the bench are hereby affirmed. Citation No. 599623 is also affirmed.

The respondent is ordered to pay total penalties in the sum of \$792.00 within 30 days from the date of this Decision.

  
\_\_\_\_\_  
Jon D. Boltz  
Administrative Law Judge

Distribution:

Marshall P. Salzman, Esq., Office of the Solicitor, United States  
Department of Labor, 450 Golden Gate Avenue, Box 36017, San Francisco,  
California 94102

N. Douglas Grimwood, Esq., Twitty, Sievwright & Mills, 1700 TowneHouse  
Tower, 100 West Clarendon, Phoenix, Arizona 85013