

CCASE:  
SOL (MSHA) v. IDEAL BASIC  
DDATE:  
19810903  
TTEXT:

~2081

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

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

v.

IDEAL BASIC INDUSTRIES, INC.,  
CEMENT DIVISION,  
RESPONDENT

Civil Penalty Proceedings

Docket No. SE 79-126-M  
A.C. No. 31-00582-05004

Docket No. SE 80-38-M  
A.C. No. 31-00582-05006

Docket No. SE 80-57-M  
A.C. No. 31-00582-05007

Docket No. SE 80-64-M  
A.C. No. 31-00582-05008

Castle Hayne Plant and Quarry

DECISION

Appearances: Darryl A. Stewart, Esq., Assistant Solicitor, Office of the Solicitor, Mine Safety and Health Administration, U.S. Department of Labor, Nashville, Tennessee, for Petitioner.  
Karl McGhee, Esq., Robert A. O'Quinn, Esq., Ideal Basic Industries, Inc., Wilmington, North Carolina, for Respondent.

Before: Judge Lasher

This proceeding arose under section 110(a) of the Federal Mine Safety and Health Act of 1977. A hearing on the merits was held on July 1, 1981. After considering evidence submitted by both parties and proposed findings of fact and conclusions of law proffered by counsel during closing argument, I entered an opinion with respect to Citation No. 103822 on the record.(FOOTNOTE.1) My bench decision containing findings, conclusions and rationale appears below as it appears in the record, aside from minor corrections.

Citation No. 103822

This matter, which arises upon the filing of a petition for penalty assessment by the Secretary of Labor, which was filed on October 17, 1979, was heard in Wilmington, North Carolina, on July 1, 1981. Both parties were represented by counsel and evidence was received consisting of the testimony of one witness for each side and documentary evidence as well.

The Government seeks that a penalty be assessed for an alleged violation of 30 C.F.R. 56.16-4 as described in Citation No. 103822, which was issued by inspector Edwin Juso on July 25, 1978, which citation charges that bumper blocks for the overhead crane used at the marl storage area were not properly maintained. Portions of the bumper blocks were missing, causing a twisting effect when contacted by the crane. The inspector testified that part of the bumper was missing at a point designated as "Y" on Exhibit R-2. The bumper that was missing was a unit, consisting of a spring with a telescoping cylinder on the inside thereof which was, in effect, a shock absorber attached to the bumper block.

The inspector testified that had the crane contacted the bumper (sometimes referred to in the record as a crane stop and bumper block) that the natural tendency would have been for the crane to twist, which could have caused the operator of the crane to lose his balance. Other evidence in the record, primarily from the inspector's notes, which are reflected in Exhibit P-2, indicates that only minor injuries would have been sustained had such an occurrence happened.

The essential issues were posed as a result of the testimony of Robert W. Pyles, Respondent's plant administrator, whose testimony was considerably more detailed than that of the inspector, and who had the benefit of diagrams of the area and equipment in question as reflected in Exhibits R-1 and R-2. Mr. Pyles indicated that in normal conditions the crane would not impact with the bumpers which are set in concrete at either end of the track upon which the crane operates. Significantly, he pointed out that the purpose of the shock-absorbing device on the bumper was primarily to protect electronic devices on the crane. His evidence indicated that the retraction distance of the shock-absorbing device from the plate and to the front at which point impact would occur and the point of maximum contraction was 8 inches and that if such an impact was received, the deflection of the operator's seat

as a result of such impact would be only 1.65 inches as indicated by his computation. Mr. Pyles also indicated that the shock-absorbing device would have been fabricated by a private company upon the design and specifications of Respondent's, based upon the characteristics of the crane, and that Respondent has at its operation other bumpers which do not have such shock absorbers. This testimony was not rebutted in a substantial way and I fully credit Mr. Pyles' testimony in those respects.

Mr. Pyles described the bumper which was in place on July 25, 1978, at point "Y" on Exhibit R-2, i.e., the place where the inspector found a violation of the cited safety standard and I likewise find, based upon this unrebutted testimony, that there was a bumper in place at that point, albeit devoid of the shock-absorbing device.

There were no critical conflicts of testimony between Petitioner's and Respondent's witnesses which require resolution, although I do find that the disparity between the inspector's testimony that he did not observe any "twisting effect on the crane" and the language of the citation which indicates "portions of the bumper blocks were missing causing a twisting effect when contacted by the crane", would represent a significant question of credibility were such a resolution to be necessary. The testimony of Mr. Pyles in the respect noted is fully accepted and I must conclude therefrom that a bumper was in place at the end of the rail in question on July 25, 1978, within the meaning of 30 C.F.R. 56.16-14(FOOTNOTE.2) and that accordingly no violation occurred. It follows that Citation No. 103822 must be vacated and it is so ordered.

Following rendition of the above bench decision, the parties conferred and reached an amicable agreement settling the issues remaining in these proceedings.

Upon motion of counsel for the Secretary (MSHA), Citation No. 111606 (Docket No. SE 79-126-M) and Citation Nos. 110011 and 110014 (Docket No. SE 80-59-M) were withdrawn and ordered vacated at the hearing (Tr. 93, 94, 96). With respect to the four remaining citations, No. 105248 (Docket No. SE 79-126-M), No. 110015 (Docket No. SE 80-38-M), No. 110012 (Docket No. SE 80-57-M), and No. 110013 (Docket No. SE 80-64), as part of the settlement agreement, Respondent admitted the occurrence of the violations alleged and the parties deferred the assessment of appropriate penalties to the undersigned (Tr. 89, 90, 94).

After considering the parties' stipulations and argument (Tr. 90-102) with respect to the statutory penalty assessment factors, penalties were assessed as reflected in the summary below.

