

CCASE:  
SOL (MSHA) V. T & W SAND  
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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.

T & W SAND AND GRAVEL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-398-M

A/O NO. 05-02331-05004

MINE: T & W Sand & Gravel

Appearances:

Robert J. Lesnick Esq. Office of the Solicitor  
United States Department of Labor  
1961 Stout Street, 1585 Federal Building  
Denver, Colorado 80294,

for the Petitioner

Gerald M. Madsen Esq.  
Suite 200, United Bank of Littleton Building  
5601 South Broadway  
Littleton, Colorado 80121,

for the Respondent

DECISION

This case arose out of a severe arm injury suffered by an employee attempting to clean a moving conveyor at respondent's gravel pit. The Secretary charged in Citation No. 328732 that respondent violated a mandatory standard which forbids manual cleaning of pulleys on moving conveyors. In Citation No. 328733 he charged that respondent also violated a mandatory standard requiring indoctrination of new employees in safety rules and procedures. The Secretary proposed an \$800 penalty for the first citation and \$250 for the second. At trial, however, his counsel moved to increase these amounts to \$1,500 for each citation.

That motion was taken under advisement pending the hearing of the evidence.

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At the beginning of the third day of the hearing on the merits, the parties announced that a settlement had been reached. Specifically, petitioner would amend its penalty proposal for Citation No. 328732 to \$500 and would accept the original \$250 for Citation No. 328733. Respondent agrees to pay these amounts, and to withdraw its contest of the penalties.

Having heard most of the evidence, I am convinced that the settlement is well conceived and is consistent with the purposes of the Act. The Secretary's case for violation is strong, but is jeopardized by a pending motion for dismissal based upon his failure to file his penalty proposal until several months past the 45 day deadline prescribed in Commission Rule 17.

Under these circumstances it appears that each party had a sound reason for compromise.

Accordingly, the settlement agreement is approved. Respondent's contest of the penalties as amended by the settlement agreement is withdrawn, and an aggregate of \$750 in penalties shall be paid to the Secretary of Labor within 30 days of the date of this present order.

SO ORDERED.

John A. Carlson  
Administrative Law Judge