

CCASE:  
SOL (MSHA)M V. KENNEDY ACTON  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

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

v.

KENNEDY BROTHERS ACTON  
SAND & GRAVEL,  
RESPONDENT

Civil Penalty Proceeding

Docket No. YORK 81-46-M  
A/O No. 19-00724-05005

Acton Plant

DECISION

Appearances: David A. Snyder, Esq., Office of the Solicitor,  
U.S. Department of Labor, Boston, MA for Petitioner,  
MSHA;  
John O. Mirick, Esq., Mirick, O'Connell, DeMallie  
& Lougee, Worcester, MA for Respondent, Kennedy  
Brothers Acton Sand & Gravel

Before: Judge Merlin

This case is a petition for the assessment of civil penalties filed by the government against Kennedy Brothers Acton Sand & Gravel. A hearing was held on October 13, 1981.

At the hearing, the parties agreed to the following stipulations:

- (1) The operator is small in size (Tr. 6).
- (2) The operator's history of previous violations is small (Tr. 6).
- (3) The imposition of penalties will not affect the operator's ability to continue in business (Tr. 6-7).
- (4) The alleged violations were abated in good faith (Tr. 9-10).
- (5) The conditions or practices specified in the citations issued by the inspector existed as described by the inspector (Tr. 14-15).

Because the parties have entered into stipulations concerning the existence of the violations, the operator's size, the operator's history of previous violations, the operator's ability to continue in business

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despite the imposition of penalties, and the operator's good faith abatement of the violations, I only need to consider the degree of the operator's negligence and the level of gravity of the violation in order to determine an appropriate penalty for each citation.

Citation No. 216841

This citation was issued when the inspector observed an inadequate guard on a tail pulley, a violation of 30 C.F.R. 56.14-3. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$50, which I felt was consistent with other penalties I have assessed in this situation (Tr. 16).

Citation No. 216842

This citation was issued when the inspector observed an inadequate guard at the tail pulley for the number belt conveyor, a violation of 30 C.F.R. 56.14-3. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$50, which I felt was consistent with other penalties I have assessed in this situation (Tr. 18).

Citation No. 216843

This citation was issued when the inspector observed that there was no stop device or guard rail along the lower section of the No. 1 belt idlers, a violation of 30 C.F.R. 56.9-7. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$90 (Tr. 20).

Citation No. 216844

This citation was issued when the inspector observed an inadequate guard on a V-belt for the primary crusher. At the hearing both parties agreed to amend the citation from section 56.14-3 to section 56.14-1 (Tr. 20). I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$50, which I felt was consistent with other penalties I have assessed in this situation (Tr. 20).

Citation No. 216845

This citation was issued when the inspector observed that no guard was provided over the head pulley for the return conveyor, a violation of 30 C.F.R. 56.14-1. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$114, which was the amount recommended by the parties (Tr. 22).

Citation No. 216846

This citation was issued when the inspector observed that no guard was provided over the takeup rolls on the No. 3 sand conveyor, a violation of 30 C.F.R. 56.14-1. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$114, which was the amount recommended by the parties (Tr. 23).

Citation No. 216847

This citation was issued when the inspector observed an inadequate guard on the balance wheel on the left shaker screen. At the hearing, both parties agreed to amend the citation from section 56.14-3 to section 56.14-1 (Tr. 23). I found the level of gravity was low because in the opinion of the inspector an injury due to this violation would result in lost work days or restricted duty rather than the permanent disabling injury that would result from any of these other violations. I further found negligence was ordinary. Accordingly, I assessed a penalty of \$45 (Tr. 25).

Citation No. 216848

This citation was issued when the inspector observed that safe access was not provided to the head pulley bearings on the outer side of the No. 4 stacker conveyor belt, a violation of 30 C.F.R. 56.11-1. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$120 (Tr. 27-28).

Citation No. 216849

This citation was issued when the inspector observed that no guard was provided over the return idlers on the No. 3 conveyor belt, a violation of 30 C.F.R. 56.14-1. I found that gravity was moderate; and that negligence was ordinary. Accordingly, I assessed a penalty of \$114, which was the amount recommended by the parties (Tr. 28).

ORDER

The operator is ORDERED to pay \$747 within 30 days from the date of this decision.

Paul Merlin  
Assistant Chief Administrative Law Judge