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SOL (MSHA) V. C F & I STEEL
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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.

C F & I STEEL CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-387

A/C No. 05-00296-03040

MINE: Allen

DECISION AND ORDER

Appearances:

James H. Barkley Esq. Office of the Solicitor
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United States Department of Labor
1585 Federal Building
1961 Stout Street
Denver, Colorado 80294,
For the Petitioner

Phillip D. Barber Esq.
Welborn, Dufford, Cook & Brown
1100 United Bank Center
Denver, Colorado 80290,
For the Respondent

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Petitioner filed a petition for assessment of a civil penalty against the respondent for alleged violation of 30 C.F.R. 75.1003-2(e), promulgated by authority of the Federal Mine Safety and Health Act of 1977. The cited section states in pertinent part "Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track . . ."

Respondent denies that there was a violation of the cited regulation.

Findings of Fact

1. On March 26, 1980 at respondent's Allen Coal Mine an MSHA inspector observed a belt drive and motor weighing between 500 and 700 pounds which had been loaded onto a flatcar being pulled by an electric trolley locomotive.
2. The trolley was powered by a direct current of 250 volts of electricity which passed from the overhead trolley wire through the locomotive and then down through the rail as a return conductor.
3. The flatcar was constructed of steel and the belt drive and motor were mainly constructed of steel. The flatbed surface was 16 to 18 inches above the rails on which it rode. The top of the belt drive and motor was approximately 6 to 8 inches below the trolley wire.
4. The flatcar had an amount of sand and dirt on it, and some of it had been scrapped off in order to mount the belt drive and motor onto the flatcar.

ISSUE

Was electrical contact being maintained between the mine track, the flatcar, and the belt drive and motor while the locomotive was moving the equipment?

DISCUSSION

The MSHA inspector testified that in the event contact is made between the bare trolley wire and the metal casing of the belt drive assembly, the equipment would become energized. In order to prevent a miner from receiving an electrical shock from an energized piece of equipment on a flatcar there must be a solid connection of metal-on-metal so that a continuous ground to the rail is provided.

The flatcar surface had some sand and dirt on it, some of which had been scrapped off in order to mount the belt drive on the car. The inspector testified that although the load consisted of metal sitting on metal, a chain of that type is not acceptable as a continuous connection. The load might be "sporadically altered" and with the sand and dirt present on the flat bed rail car, there was no safe guard from electrical contact to any person who might touch the belt drive when it might be energized.

The cited regulation states, however, that "electrical contact shall be maintained", and the evidence does not show that this was not being done. The inspector testified that he was assuming that with "steel-on-steel between the belt drive and the flatcar, and steel-on-steel between the flatcar and the rails" there was electrical contact. The inspector did not use any means to determine whether there was electrical contact between the flatcar and the belt drive and motor when the citation was issued. The inspector stated that an ohmmeter could be used for

that purpose.

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The regulation states that electrical contact shall be maintained, but it does not state how this is to be accomplished. Although there was evidence that some sand on the flatcar surface might break the electrical contact, there was no evidence that contact was not being maintained at the time the inspection took place.

The evidence presented leaves me in a position of having to speculate as to whether the required electrical contact was or was not present at the time the citation was issued; or, to speculate further, whether or not electrical contact might be broken if the load became "sporadically altered". The petitioner must show that electrical contact was not, in fact, being maintained in order to present a prima facie case. Having failed to do so, the citation should be vacated.

CONCLUSION OF LAW

1. The undersigned administrative law judge has jurisdiction over the parties and subject matter of these proceedings.

2. The petitioner has failed to present a prima facie case showing a violation of 30 C.F.R. 75-1003-2(e) as alleged in Citation No. 388365.

ORDER

Citation No. 388365 and the civil penalty therefor is VACATED.

Jon D. Boltz
Administrative Law Judge