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SOL (MSHA) V. UNITED STATES STEEL  
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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.  
UNITED STATES STEEL CORPORATION,  
RESPONDENT

Civil Penalty Proceeding  
Docket No. LAKE 81-185-M  
A.C. No. 21-00820-05027  
Minntac Plant

LOCAL UNION 1938, DISTRICT 33,  
UNITED STEELWORKERS OF AMERICA,  
REPRESENTATIVE OF THE MINERS

DECISION

Appearances: Robert A. Cohen, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner  
Louise Q. Symons, Esq., United States Steel Corporation, Pittsburgh, Pennsylvania, for Respondent  
Clifford Kasenan, Safety Chairman, Local 1938, United Steelworkers of America, Virginia, Minnesota, for Representative of the Miners

Before: Administrative Law Judge Broderick

STATEMENT OF THE CASE

In this proceeding, the Secretary seeks a penalty for the violation of 30 C.F.R. 55.14-29 which proscribes repairs or maintenance on machinery until the power is off and the machinery is blocked against motion. Pursuant to notice the case was heard in Duluth, Minnesota on March 23, 1982. Federal mine inspector Thomas Wasley, and Michael Tintor testified on behalf of Petitioner. Richard Maki, Rod Robillard and Ronald Ranalta testified on behalf of Respondent. No witnesses were called by the Representative of the Miners. Petitioner and Respondent have filed posthearing briefs. Based on the entire record and considering the contentions of the parties, I make the following decision:

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was the operator of the Minntac Plant, a mine as defined in the Federal Mine Safety and Health Act of 1977. The subject plant produces goods which enter interstate commerce.
2. Respondent is a large operator and the assessment of a penalty will not affect its ability to continue in business.
3. A total of 180 violations were assessed against the subject mine within the 24 months prior to the violation charged herein, of which 170 have been paid.
4. Respondent demonstrated good faith abatement after the issuance of the citation involved in this proceeding.
5. On April 14, 1981, three laborers in the fines crusher building of the Minntac Plant were engaged in shovelling material that had dropped to the floor from a conveyor belt. The material was shovelled into a wheelbarrow and dumped away from the beltline.
6. The belt was moving while the laborers were shovelling. There was approximately 18 inches of material buildup under the belt, and the laborers were shovelling under the belt.
7. There were two bars in front of the belt designed to prevent workers from walking into or falling into the belt or rollers. The material buildup under the belt was approximately the height of the lower bar.
8. It was possible to put a shovel between the bars to break up the material under the belt. It would be difficult to remove the material in this way.
9. A pinch point existed between the belt and the pulley, and could have been reached if a long handled shovel was inserted between the two bars.
10. Inspector Wasley issued a citation alleging a violation of 30 C.F.R. 55.14-29. He contended that shovelling material from under the belt constituted maintenance of the beltline.
11. The citation was terminated when Respondent had the employees removed from the area and instructed in the hazard involved.
12. The shovels being used were long handled shovels without a hand grip and were approximately 4-1/2 to 5 feet long.

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13. Respondent has a safety rule requiring that a minimum of 18 inches body clearance must be maintained when working near a moving conveyor.

#### REGULATION

30 C.F.R. 55.14-29 provides: "Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments."

#### ISSUES

1. Whether shovelling material from under a belt line constitutes repairs or maintenance on machinery?
2. If a violation of the mandatory standard was established, what is the appropriate penalty?

#### CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the Minntac Plant.
2. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.
3. Shovelling spilled material from under a belt does not constitute repairs or maintenance on machinery.

#### DISCUSSION

The wording of the mandatory standard is clear - plainer than many such standards - it forbids performing repairs or maintenance on moving machinery except where motion is necessary to make adjustments. It cannot reasonably be stretched to forbid cleanup under a belt which may expose a worker to a pinch point. The fact that the inspector stated that he would accept a guard as an abatement of the violation makes it apparent that he was confusing the standard for which Respondent was cited with another standard requiring guarding of moving machinery parts which might be contacted by persons. There is no provision in the cited standard which would permit repairs or maintenance on moving machinery if a guard is provided. In any event, it appears clear to me that the activity described in the subject citation, whatever hazard might have been involved, did not constitute repairs or maintenance on moving machinery.

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ORDER

Based on the above findings of fact and conclusions of law,  
IT IS ORDERED that the citation is VACATED and this proceeding is  
DISMISSED.

James A. Broderick  
Administrative Law Judge