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SOL (MSHA) V. MOUNTAIN CONSTRUCTION  
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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.

MOUNTAIN WEST CONSTRUCTION, INC.,  
RESPONDENT

Civil Penalty Proceedings

Docket No: WEST 81-219-M  
A.O. No: 48-00154-05001 H

Docket No: WEST 81-232-M  
A.O. No: 48-00154-05002 S68

Big Island Mine

DECISION

Appearances: Stephen P. Kramer, Esq., Office of the Solicitor,  
U.S. Department of Labor, for Petitioner  
Dean W. Clark, Esq., for Respondent

Before: Judge Moore

The above docket numbers were consolidated for trial and involve two citations. Citation No. 337616 issued on October 15, 1980, alleges a violation of 30 C.F.R. 57.4-33 in that "there was a welding truck parked between the buildings at the No. 1 crusher with nobody in attendance and the oxygen and acetylene cylinders were not shut off." Citation No. 337799 was issued on July 10, 1980 (there was no explanation of the numbering sequence) and alleges a violation of 30 C.F.R. 57.15-5 in that "two employees working for Mountain West Construction were observed 75 to 100 feet in the air not using their safety belt and line. The men were putting bolts and nuts in the steel beams. The two beams had already been connected.

Very little may be said as to Citation No. 337616. The inspector saw the welding cart with the oxygen and acetylene lines running into the fourth or fifth floor of the building. An employee of the mine operator, (Mountain West was not the operator but an independent contractor) went in the building came out again and shut off the oxygen and acetylene cylinders and the inspector assumed that there was nobody in the building and that the torch was not in use. Later testimony developed the fact that the torch was in use on an intermittent basis and that it was attended at all times. The workmen were putting pipe through the building and using the torch to cut pipe and cut the metal supports. They would turn the torch off when they were not using it, but would not go four or five flights down the steps to shut off the gas at the cylinder. In my opinion the standard does not require that they go back to the cylinders every time they decide not to use the torch for a short period of time. This citation is vacated.

Citation No. 337799 presents a different problem. The standard, 30 C.F.R. 57.15-5 states:

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"safety belts and lines shall be worn when men work where there is danger of falling: a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered."

The standard clearly states that if there is a danger of falling, belts and lines shall be worn. MSHA does not so interpret it, however, so far as high steelwork is concerned.

While I am not sure it is a universal practice throughout MSHA, here in southern Wyoming, which is notorious for its high winds, it is considered hazardous to have a high ironworker tied with a safety line while the crane is hoisting beams to be attached to others, than to have him free to move in case the beams should be blown toward him. The MSHA position is that the workman does not have to use his safety line until the new beam is in place and one or two bolts have been fitted to hold the beam in place. When the bolts are being tightened, however, and perhaps torqued, the workman is supposed to have his line attached.

In the instant case the inspector saw two men, 75 to 100 feet in the air, sitting on an "I" beam without their lines attached. Someone in the area told the inspector that the men had finished connecting the iron together and were now tightening the bolts. He issued the citation and imminent danger order at the time. The inspector does not remember who he talked to, but it was a supervisor for Mountain West. The company witnesses said that they classified their high iron workers in two distinct groups. One group would go up and connect the steel beams with two bolts at each end. The bolts were not tightened so as to leave the structure with sufficient flexibility so that more beams could be attached. When the connectors are finished, they leave the structure and different workers climb up to tighten the bolts with impact wrenches. This second group of workers use safety belts, whereas the first group does not. The evidence indicates that at the time of the citation, the workers observed by the inspector were connectors rather than bolters. Under the MSHA policy, they were not required to have safety lines attached and if the unknown Mountain West employee had told the inspector that they were connecting rather than bolting the inspector would not have issued the citation.

While it bothers me that MSHA has in effect, modified a safety standard by interpretation, I do not view my role in these proceedings as one of a prosecutor charged with strict enforcement of the Act. The Congress gave that job to the Secretary of Labor, and if he chooses to apparently relax a standard in the interest of safety, I will not second guess him. Under the Secretary's policy, however, no violation occurred in the instant case and the citation and order are accordingly vacated.

The above proceedings are dismissed.

Charles C. Moore, Jr.

Administrative Law Judge