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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	Civil Penalty Proceeding Docket No. LAKE 80-11-M A.C. No. 11-02360-05002
v.	
MACON COUNTY MATERIAL, INC., RESPONDENT	Macon County Material, Inc. (Dredge and Mill)

DECISION

Appearances: Leonard A. Grossman, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
Charles C. Hughes, Esq., for Respondent

Before: Administrative Law Judge William Fauver

This proceeding was brought by the Secretary of Labor under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The case was heard at St. Louis, Missouri. Both parties were represented by counsel, who have submitted their proposed findings, conclusions, and briefs following receipt of the transcript.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, Respondent, Macon County Material, Inc., operated a sand and gravel pit and plant known as the Macon County, Inc., Dredge and Mill, in Macon County, Illinois, which produced sand and gravel for sales in or substantially affecting interstate commerce.

2. Respondent extracted material from its pit by a dragline and stockpiled the material at various places in its plant. Front-end loaders then carried the material to conveyor belts for processing through a series of screens, washers, and classifiers before the material was stockpiled for sale and shipment to customers.

3. The pit and plant were about three-quarters of a mile apart. Respondent employed about 15 people with experience ranging from 2 years to 30 years. The pit and plant operated three overlapping shifts per day. The first shift was 4:30 a.m. to 1:30 p.m., the second 1 p.m. to 10:30 p.m., and the third 7 a.m. to 5 p.m. The draglines, loaders, trucks, mechanics, and electricians operated only during the third shift.

4. On July 17, 1979, a foremen, Mike Hamrich, removed a guard from the 5/8 belt conveyor tail pulley and a guard from the Mason sand tail pulley in order to run the belts under load to see where the belts might need adjustment. In violation of company safety policy, Mr. Hamrich failed to replace the guards after this test.

5. Also on July 17, the front-end loader operator, Les Patrick, disconnected the backup alarm on his equipment. This action was in violation of company safety policy.

6. Also that morning, Respondent's electrician, Mark Sadorous, unlocked the gate to No. 3 7,200-volt transformer station to work on the transformer. When he left the station he failed to lock the gate to keep out unauthorized personnel. This action violated company safety policy.

7. Later in the day, on July 17, 1979, Federal Inspector Bill Henson inspected Respondent's pit and plant.

8. The inspector observed that the 5/8 belt conveyor tail pulley was operating without a guard. He observed one person cleaning in the area. The tail pulley was about 5 feet above the surface. Inspector Henson charged Respondent with a violation of 30 C.F.R. 56.14-6 (failure to install guards on moving machinery parts). Citation No. 362872 reads in part: "The tail pulley guard on the 5/8 belt conveyor was not in place." The cited condition was abated promptly by placing a guard on the tail pulley.

9. The inspector also observed that the guard was missing from the Mason sand belt conveyor tail pulley, which was in operation. He observed no one in the area during the inspection, but it was likely that miners would pass through it. The tail pulley was about 5 feet above the surface. Inspector Henson charged Respondent with a violation of 30 C.F.R. 56.14-6 (failure to install guards on moving machinery parts). Citation No. 362873 reads in part: "The tail pulley guard on the mason sand belt conveyor was not in place." The cited condition was abated promptly by installing a guard on the tail pulley.

10. The inspector next observed the 980 Caterpillar front-end loader being operated in reverse without an automatic reverse signal. He observed that the back-up alarm on the loader was disconnected. There was an obstructed view to the rear of the loader and an observer was not present to signal the operator when it was safe to travel in reverse. Inspector Henson charged Respondent with a violation of 30 C.F.R. 56.9-2 (failure

to correct equipment defects). Citation No. 362874 reads in part: "The automatic reverse signal alarm on the 980 Cat. End loader was not operable." The cited condition was abated immediately by reconnecting the alarm.

11. Finally, the inspector observed that the gate to the No. 3, 7,200-volt transformer station was unlocked. The transformer was energized. Inspector Henson charged Respondent with a violation of 30 C.F.R. 56.12-68 (failure to keep transformer enclosures locked). Citation No. 362875 reads in part: "The No. 3 transformer station was not locked to prevent unauthorized entry." The cited condition was abated promptly by locking the gate.

12. Respondent has received safety awards from MSHA and the National Sand and Gravel Association in 10 of the 11 years of operation. There has been only one injury resulting in lost work time. Respondent had received only one citation before the instant inspection and has never received an employee safety complaint.

DISCUSSION WITH FURTHER FINDINGS

Based on citations issued on July 17, 1979, the Secretary has charged Respondent with two violations of 30 C.F.R. 56.14-6, which provides: "Except when testing the machinery, guards shall be securely in place while machinery is being operated."

The Secretary argues that the guards for the tail pulleys on the 5/8 conveyor and the Mason sand belt were not in place while the equipment was in operation, and that there was no evidence that the equipment was being tested at the time of the inspection.

The Secretary proposes a penalty of $36 for each of these violations.

Based on a citation issued on July 17, 1979, the Secretary has charged Respondent with a violation of 30 C.F.R. 56.9-2, which provides: "Equipment defects affecting safety shall be corrected before the equipment is used."

The Secretary argues that the 980 CAT front-end loader was operating in reverse without an operable automatic warning device and the operator had an obstructed view to the rear with no observer to signal the operator when it was safe to back up.

The Secretary proposes a penalty of $28 for this violation.

Based on a citation issued on July 17, 1979, the Secretary has charged Respondent with a violation of 30 C.F.R. 56.12-68, which provides: "Transformer enclosures shall be kept locked against unauthorized entry."

The Secretary argues that, at the time of the inspection, the gate to the No. 3 7,200-volt transformer station was unlocked and seeks a penalty of $40 for this violation.

Respondent has admitted to the facts alleged in each citation, but argues that it should be relieved of liability because each of the violations was committed by an experienced employee who acted contrary to company safety policy and that the company had no knowledge of or reason to know of the violations.

The Federal Mine Safety and Health Act of 1977 has been construed to be a strict liability statute (Warner Company, 1 MSHC 2446 (June 9, 1980)), so that an operator's liability is not conditioned upon fault (Ace Drilling Coal Company, 1 MSHC 2357 (April 24, 1980); United States Steel Corp., 1 MSHC 2151 (September 17, 1979); and Peabody Coal Co., 1 MSHC 2215 (October 31, 1979)). As stated in Ace Drilling, supra, the actions of an employee are deemed to be the operator's actions for purposes of determining liability for conduct regulated by the Act (at 2358). While an employee's negligence may be considered in assessing penalties, it has no bearing on the fact of violation (El Paso Rock Quarries, 2 MSHC 1132, and 1135 (January 29, 1981)).

Each of the violations here constituted a serious hazard and could significantly contribute to a mine accident causing death or serious bodily injury.

Before the inspection, Respondent had an excellent safety record insofar as reported accidents and conditions disclosed by inspections. However, to the extent of the violations revealed by the inspection on July 17, 1979, the company's safety rules, policies, training, and supervision had not been effective and can be improved.

Considering the statutory criteria for assessing penalties, and giving weight to the company's excellent prior history and its good faith efforts to abate the conditions cited, it is determined that nominal penalties are justified in this case. These may serve as a record and formal reminder to the company that steps are needed to achieve more effctive compliance with the safety standards promulgated under the Act.

CONCLUSIONS OF LAW

1. The undersigned judge has jurisdiction of the parties and subject matter of this proceeding.

2. On July 17, 1979, Respondent violated 30 C.F.R. 56.14-6 as alleged in Citation No. 362872; violated 30 C.F.R. 56.14-6 as alleged in Citation No. 362873; violated 30 C.F.R. 56.9-2 as alleged in Citation No. 362874; and violated 30 C.F.R. 56.12-68 as alleged in Citation No. 362875

3. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of $25 for each of the above four violations.

ORDER

WHEREFORE IT IS ORDERED that Respondent, Macon County Material, Inc., shall pay the Secretary of Labor the above-assessed civil penalties, in the total amount of $100.00, within 30 days from the date of this decision.

WILLIAM FAUVER
JUDGE