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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. PENN 81-171 A/O No. 36-06658-03003
v.	
THOMPSON BROTHERS COAL COMPANY, RESPONDENT	Thompson Brothers Coal Company, Inc.

DECISION

Appearances: David T. Bush, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner
Allan MacLeod, Esq., Pittsburgh, Pennsylvania, for Respondent

Before: Administrative Law Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for 2 alleged violations of the mandatory standard requiring guards for mechanical equipment. Pursuant to notice the case was heard on the merits in Hollidaysburg, Pennsylvania, on August 31, 1982. Harry Reichenbach, a Federal coal mine inspector, testified on behalf of Petitioner. Leroy Thompson, Harold Snarrs, Patrick Dickson, and Terry Rothrock testified on behalf of Respondent. Both parties waived the filing of posthearing briefs but each made closing arguments on the record. Based on the entire record and considering the contentions of the parties, I make the following decision.

REGULATION

30 C.F.R. 77.400(a) provides as follows:

Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded.

FINDINGS OF FACT

1. At all times pertinent to this decision, Respondent was the operator of a surface mine in Clearfield County, Pennsylvania, the products of which mine entered interstate commerce.

2. On January 12, 1981, Harry Reichenbach, a duly authorized Representative of the Secretary of Labor, issued citations alleging violations of 30 C.F.R. 77.400(a), because of the absence of guards on the cooling fan blade and the air compressor belts and pulleys on 2 Euclid R-50 end dump trucks.

3. On January 12, 1981, there were no guards on the fan or on the belts and pulleys described in Finding of Fact No. 2.

4. The fan and belts and pulleys in the vehicle were moving machine parts and were similar to those listed in 30 C.F.R. 77.400(a).

5. The fan and belts and pulleys described above were accessible and might be contacted by persons examining or working on the vehicles.

DISCUSSION

Respondent attempted to show that it was virtually impossible for a person not suicidally inclined to contact the parts in question while moving. On this issue, I accept the testimony of the inspector, and conclude that a person working around the engine or inspecting it while the engine was running, could inadvertently come in contact with one of the moving parts.

6. Should a person come in contact with one of the moving parts described above, it might cause an injury to that person.

DISCUSSION

Much of Respondent's testimony is to the effect that an injury caused in this fashion would not be serious. I conclude that a serious injury occurring in the manner described is remote, but an injury, however slight, could occur.

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety Act in the operation of its mine.

2. The undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

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3. On January 12, 1981, Respondent was in violation of 30 C.F.R. 77.400(a) because it failed to provide guards for the cooling fans, and the air compressor belts and pulleys on 2 Euclid R-50 end dump trucks which it operated at the subject mine.

4. The violation was not serious, because the likelihood of injury was minimal. Nevertheless, the risk of injury existed. The violation was not of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

5. Respondent was aware of the conditions cited. However, it was not aware that this condition violated the standard in question. Therefore, I conclude that its negligence was slight.

6. Respondent is a medium sized operator and had no history of prior violations for the 24 months preceding the citations in question.

7. Respondent abated the conditions cited promptly and in good faith.

8. I conclude that an appropriate penalty for each of the violations cited is \$35.

ORDER

Based on the above findings of fact and conclusion of law, Respondent is ORDERED to pay the sum of \$70 within 30 days of the date of this order for the two violations of mandatory safety standards found herein to have occurred.

James A. Broderick
Administrative Law Judge