

CCASE:
SOL (MSHA) V. GARRETT CONSTRUCTION
DDATE:
19821213
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

GARRETT CONSTRUCTION COMPANY,
RESPONDENT

Civil Penalty Proceedings

Docket No: CENT 81-274-M
A/O No: 41-00906-05001 F KL 5

Docket No: CENT 81-275-M
A/O No: 41-00906-05002 KL 5

Sherwin Plant

DECISION

Appearances: Anna Wolgast, Esq., Office of the Solicitor, U.S.
Department of Labor, 4015 Wilson Boulevard, Arlington,
Virginia, for Petitioner
Norman Thomas, Esq., c/o Harris, Cook & Browning,
P.O. Drawer 1901, Corpus Christi, TX, for Respondent

Before: Judge Moore

The three citations involved in these cases all grew out of the same accident. For some reason the assessment office assigned one of the citations a separate assessment number and as a result two penalty cases were filed. The accident occurred when two scoop drivers operating at an estimated 30 miles per hour and approaching each other in an eastwest direction, both turned north to avoid a collision. They did collide and one of the drivers was killed and the other was seriously injured. The charges against the company are that the drivers were not in full control of their machines, that there were no traffic signs posted and that it did not report the accident as soon as it should have. It was stipulated that respondent was small, that there was good faith abatement and that the assessed penalties would not affect its ability to continue in business.

30 C.F.R. 55.9-24 states "Mobile equipment operators shall have full control of the equipment while it is in motion." The citation No: 171696 states that the accident was due to "failure of the equipment operators, to be in full control of the vehicles while in motion." One operator, the one who did not survive was going the wrong way in a well established traffic pattern. The surviving driver who was executing the traffic pattern correctly does not remember enough about the accident to be a valuable witness, but the accident report speculates that he may have turned north into the path of the other vehicle just before the collision. There is no evidence that either scraper was defective or that the operators did not have full control in the sense that the scrapers went anywhere other than where the operators wanted to go. The fact that a collision occurred does not establish that either of the drivers was not in control of his vehicle. See the Commission Decision in Secretary v. Old Ben Coal Company, Docket No: LAKE 80-399, FMSHRC 1800, 1804.

Footnote 4. The citation is Vacated.

~2203

30 C.F.R. 55.9-71 states:

Mandatory. Traffic rules including speed, signals, and warning signs shall be standardized at each mine and posted.

As to the word "standardized" I do not believe that the regulation requires that all parts of a mine have the same traffic rules. As to signals and warning signs, if they exist at the mine then they are posted by the very fact that they are there. There is no requirement that any particular signals and warning signs be erected. If there is a speed limit it would have to be posted but at this particular mine a speed limit would have been of no use since the scrapers did not have speedometers.

Mr. Carl White did all the hiring at this construction site and interviewed every employee. Mr. White does not speak Spanish and it was his view that if the person could speak English well enough to be interviewed in English he could speak it well enough to understand directions. Mr. Vincel Woods stated that at the beginning of every shift or when there was a change in the location where the scrapers were to dump the material, he would always take the first run and have the other drivers follow him. He always set the traffic pattern in a clock-wise direction. The only traffic rule was to follow Mr. Wood's example. Following his direction the scoops, with the aid of a push cat, would load dirt in a particular area, transport it to the levee being constructed and follow a clock-wise path back to the loading area. The road (actually a path in a large flat area created by the tracks of the vehicles) was roughly circular. A traffic sign advising drivers to follow Mr. Wood's directions would not have prevented Mr. Gonzales from going the wrong way. He obviously knew which way he was supposed to go and chose to not follow the directions. There was some evidence that he had done that in the past, but there was no suggestion that he was playing "chicken." A sign would not have prevented him from doing it again. The fact remains however, that regardless of what the regulation means concerning standardization of speed signs, signals and warnings signs, it does require that traffic rules be posted. This mine did have the traffic rule that the drivers would follow the clock-wise traffic pattern demonstrated by Mr. Woods at the beginning of each shift or when a new area was being worked. That traffic rule should have been posted somewhere at the site of the construction work and it was not. The argument that the traffic rules posted 10 miles away at the plant are sufficient, is rejected. There was therefore, a violation, but since I can not find that it led to the accident I can not find that the gravity or negligence was high. The citation is affirmed and a penalty of \$100 is assessed.

The accident happened at 4.30 p.m. and MSHA was not notified until 11.30 p.m., 30 C.F.R. 50.10 states in part "if an accident occurs, an operator shall immediately contact the MSHA district or sub-district office having jurisdiction over its mine." There were many reasons why it took so long to get around notifying MSHA. The accident occurred late in the shift, treatment had to

be given to the surviving miner, the ambulance got lost and had to be re-contacted and directed and the families of the two victims had to be notified. Mr. Garrett did report the accident to the mine owner, Reynolds Metals Company. From his

