

CCASE:  
SOL (MSHA) V. BURGESS MINING  
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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

Civil Penalty Proceedings

Docket No. SE 81-43  
AC No. 01-00550-03020

v.

Docket No. SE 81-44  
AC No. 01-00550-03022

BURGESS MINING & CONSTRUCTION  
CORPORATION,  
RESPONDENT

Boothton Mine

DECISION

APPEARANCES: George D. Palmer, Esq., Associate Regional Solicitor  
United States Department of Labor, for Petitioner  
W.E. Prescott, III, Esq., for Respondent

Before: Judge William Fauver

These proceedings were 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 or health standards. The cases were consolidated and heard in Birmingham, Alabama.

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 operated a surface coal mine known as Boothton Mine, in Alabama, which produced coal for sales in or substantially affecting interstate commerce.

2. Respondent closed down the mine operations in December, 1980. At the time of the inspection involved here, in November, 1980, the mine was active, its annual tonnage was about 23,738 tons of coal, and its employment was about 20 mining personnel.

Citation No. 749494

3. This citation charges a violation of 30 CFR 77.1605(b), alleging that, "The brake was not adequately working on the No. 12-22 Cat. Road Grader 14G was being operated on the roads in 1420 pit." The citation actually refers to the parking brakes on the equipment. However, the standard cited does not require parking brakes on this kind of equipment. Section 1605(b) requires that mobile equipment shall be equipped with adequate brakes and that trucks and front-end loaders shall also be equipped with parking brakes. At the commencement of the hearing, Petitioner moved to amend the citation to substitute a different standard, 77.404(a), which requires that equipment shall be maintained in safe operating condition. The motion to amend was denied. Petitioner stated that a violation could not be proved unless the motion to amend was granted. Accordingly, no evidence was offered on this citation and the citation was ordered to be dismissed.

Withdrawal Order and  
Citation No. 750400

4. The citation charges a violation of 30 CFR 77.1710(g), which requires:

(g) Safety belts and lines where there is a danger of falling ....

An employee was operating a large drill, weighing several tons, near the edge of the highwall. When observed by the inspector, the employee was holding on to the drill with one hand and operating it with the other hand. He was standing about one foot from the edge of the highwall, which was a steep drop of about 75 feet. He was not wearing a safety belt or other kind of protection to prevent a fall down the highwall. The inspector issued an imminent danger withdrawal order and citation. The alleged violation was abated by removing the drill from the edge of the highwall and issuing the employee a safety belt.

5. The condition observed by the inspector constituted an imminent danger. The condition was readily observable and could have been prevented by the exercise of reasonable care. The factual allegations in the citation and order were proved by a preponderance of the evidence.

Citation No. 751050

6. The citation alleges a violation of 30 CFR 77.400, which provides in subsections (a) and (b):

(a) Gears: sprockets; chains, drive, head, tail, and takeup pulleys; fly wheels; couplings; shafts; sawblades fan inlets; and similar exposed moving machine parts which may cause injury to persons shall be guarded....

\* \* \*

(b) Except when testing the machinery, guards shall be securely in place while machinery is being operated.

7. The citation charges that, "A guard was not provided between the master clutch and the drag drum on the 480 dragline. The oiler travels daily between the clutch and the drum to grease." The factual allegations of the charge were proved by a preponderance of the evidence. A large clutch device, about 3 to 4 feet in diameter, with a general appearance of a fly wheel, was unguarded on each side. The outside part of the wheel revolved at a swift speed, perhaps 200 rpm, and presented a serious danger to the oiler, who could have become entangled in the moving equipment without a guard.

Citation No. 751052

8. The citation charges a violation of 30 CFR 77.205(e), which provides:

(e) Crossovers, elevated walkways, elevated ramps, and stairways shall be of substantial construction, provided with handrails, and maintained in good condition. Where necessary toeboards shall be provided....

The factual allegations of the charge were proved by a preponderance of the evidence. An elevated walkway in the upper structure of the 480 drag-line was about 20 feet above the top of the house body of the dragline. The inside of the walkway was unguarded. There were metal structural support pieces along the inside of the walkway, but these left openings sufficient for a person to fall through. This condition constituted a serious hazard.

9. The citation charges a violation of CFR 77.1302(b), which provides:

(b) Vehicles containing explosives or detonators shall be maintained in good condition and shall be operated at a safe speed and in accordance with all safe operating practices...

The citation charges that a power truck used to transport explosives was not maintained in good condition in that the tie rod ends were worn out and the steering section was loose on the frame. The inspector testified that the steering box was so "loose ... you could shake it with your hand" and threatened to come off at any time. If it fell off, the operator would have lost control of the vehicle. The factual allegations of the

charge were proved by a preponderance of the evidence. This condition presented a serious safety hazard.

Citation No. 751057

10. The citation charges a violation of 30 CFR 71,402(a), which provides:

(a) All bathing facilities, change rooms, and sanitary flush toilet facilities shall be provided with adequate light, heat, and ventilation so as to maintain a comfortable air temperature and to minimize the accumulation of moisture and odors, and the facilities shall be maintained in a clean and sanitary condition....

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The factual allegations of the charge were proved by a preponderance of the evidence. The bathing and toilet facility was dirty, smelled very bad, and had inadequate lighting in that some of the light bulbs in the shower area were burned out. The condition was unsanitary and unsafe.

Citation No. 753705

11. The citation charges a violation of 30 CFR 77.1002, which provides:

When box cuts are made, necessary precautions shall be taken to minimize the possibility of spoil material rolling into the pit.

The box cut involved is shown in Exhibits G-4 and G-5. Exhibit G-5 is a photograph from the drag-line and loader area and pictures the box cut made by the drag-line with the spoil material on the right side of Exhibit G-5. Exhibit G-4 pictures the same spoil material from the opposite side of the box cut; that is, G-4, was taken from the left-side perspective of G-5. The road for the coal trucks was next to the spoil bank as shown in Exhibit G-5.

12. The MSHA inspectors observed rocks rolling off the spoil bank into the pit where the road was being used by the coal trucks and further noticed a "big crack" in the spoil bank which "could have caved off on the vehicles ... (and) just covered them up." The inspectors ordered the hauling stopped immediately. Since only five or six loads were left to haul out of this particular box cut, the inspectors permitted the operator to move the hauling road to the opposite side of the pit and complete the hauling while the inspectors carefully observed. The box cut was then closed. If the box cut had been originally cut smaller, the amount of the spoil would not have been so large as to create this problem in the first place. Another alternative would have been to put some of the spoil on the other side of the box cut. The factual allegations of the charge were proved by a preponderance of the evidence.

Citation No. 754282

13. The citation charges a violation of 30 CFR 77.1109(c)(1), which provides:

(c)(1) Mobile equipment, including trucks, front-end loaders, bulldozers, portable welding units, and augers, shall be equipped with at least one portable fire extinguisher.

The citation alleges that the Mark M 3200 coal hauler was not equipped with at least one portable fire extinguisher. The parties stipulated that this violation occurred.

14. The citation charges a violation of 30 CFR 77.1605(a), which provides:

- (a) Cab windows shall be of safety glass or equivalent, in good condition and shall be kept clean.

The front cab window on a Clark 275B Front End Loader had two shattered breaks, with "spider lines" radiating from them. The breaks obstructed part of the view through the window and presented a hazard of glass falling upon the operator. The factual allegations of the charge were proved by a preponderance of the evidence.

15. Concerning each of the charges in Fdgs. 4-14, the condition was readily observable and could have been prevented or corrected by the exercise of reasonable care before the time of the inspection.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of the above proceedings.

2. The Secretary failed to prove a violation as charged in Citation No. 749494. As to each of the other citations involved, Respondent violated the the safety or health standard as charged.

3. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety or health standard, Respondent is assessed the following civil penalties:

Citation	Civil Penalty
No. 750400 (including withdrawal order)	\$530.00
No. 751050	114.00
No. 751052	150.00
No. 751053	180.00
No. 751057	78.00
No. 753705	106.00
No. 754282	66.00
No. 754283	60.00

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Proposed findings of fact or conclusions of law inconsistent with the above are rejected.

ORDER

WHEREFORE IT IS ORDERED that:

1. The charge based on Citation No. 749494 is DISMISSED.
2. The Respondent, Burgess Mining & Construction Corporation, shall pay the Secretary of Labor the above-assessed civil penalties, in the amount of \$1,284.00, within 30 days from the date of this decision.

WILLIAM FAUVER JUDGE