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SOL (MSHA) V. AMAX
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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 Proceedings

Docket No: CENT 82-86-M
A/O No: 29-00174-05030 H

v.

Docket No: CENT 82-90-M
A/O No: 29-00174-05029

AMAX CHEMICAL CORPORATION,
RESPONDENT

Docket No: CENT 82-91-M
A/O No: 29-00174-05031

AMAX Mine and Mill

DECISION

Appearances: Eloise Vellucci, Esq., Office of the Solicitor, U.S. Department of Labor, 555 Griffin Square, Suite 501, Dallas, Texas 75202, for Petitioner
Charles A. Feezer, Esq., P.O. Box 128, Carlsbad, New Mexico 88220, for Respondent

Before: Judge Moore

The above docket numbers were consolidated for trial in Carlsbad, New Mexico on January 19, 1983 and involved 9 alleged violations of the safety standards. The second alleged violation that the solicitor chose to present involves citation No: 518039. After the inspector had testified as to why he issued the citation counsel for respondent announced that as far as he could tell from his files he had not contested that particular citation. Reference to the answer that he filed showed that no mention had been made of the citation and as far as he knew it had either been paid or the company had intended to pay it. After an off-the-record consultation it was agreed that there was no dispute concerning this citation. The violation occurred and the respondent has either paid the citation or will pay it. At the conclusion of this decision I will order payment, but of course, if respondent has already paid the citation that will end the matter.

The next citation presented by the solicitor was numbered 518040. After the inspector had testified with respect to this citation the exact same sequence of events occurred as those involved in the previous citation. I will order payment of the assessment but again, if respondent has already paid the assessment the order will be of no effect.

Citation No: 0517732 involved a defect in the manhoist in that one of the guard rails had split creating a hazardous situation. After the witness had been examined and cross-examined counsel for the government agreed with respondent's counsel that

the testimony did not establish a violation of the standard. I therefore vacated the citation and dismissed that portion of the case. This left 6 alleged violations to be considered.

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Citation No: 518053 and Citation No: 518049 both involved allegations that the back (roof) was bad. In connection with the first citation mentioned above an imminent danger order was also issued. This was a potash mine and in potash mining there is no requirement that roof bolts or other roof supports be used unless there is some danger of a roof fall. Citation No: 518053 which was also an imminent danger order involved a travelway and there was admittedly bad top. Respondent had installed 175 roof bolts in the area and had installed cribs. The inspector noted that the cribs were not flush and tight against the back and his speculation was that green wood had been used and had shrunk. Respondent's witnesses were of the same opinion. I agree with respondent's witnesses that the fact that there was a gap between the top of the cribs and the top indicated that the cribs had shrunk away from the roof bolts were doing the job. It is a matter of one expert's opinion against another's and after hearing the testimony I can not conclude that the roof was improperly supported. I vacate citation No: 518053. With respect to citation No: 518049 it is again a matter of opinion. Two of respondent's experts went to the area that the inspector had described and found the area adequately bolted. The inspector came back the next day and issued a closure order (not involved in these proceedings) and respondents eventually rebolted the whole area. Only the citation is before me for consideration and after hearing the testimony of the inspector and respondent's experts I can not conclude that the government has sustained its burden of proof with respect to this violation. The inspector and witnesses for respondent may have been observing different areas. (Tr. 191-192). The citation says that the slab "was over the roadway west of No. 30 belt drive in the Ten East Section." The citation does not say how far west. If the witnesses were describing different areas, the confusion was caused by the wording of the citation. Also, the essence of the alleged violation was a failure of a supervisor to inspect (Tr. 30-31), and the condition was one that could develop rapidly. The citation is Vacated.

Citation No: 518060 involved a work platform thirty feet high with railings on three sides but no railing on the fourth where the ladder was. The inspector observed a workman climb up on the thirty foot high scaffold and noted that he had no safety belt or safety line attached. The individual who was on the scaffold at the time testified that he was not working on the scaffold but had merely gone up there to get a piece of cable and had immediately brought it down. The standard in question, 30 C.F.R. 57.15-5 requires that a safety line be used where there is a danger of falling. It could be interpreted as requiring the climber of a ladder to climb two steps, re-attach a safety line, climb another two steps, re-attach a safety line and so-on till he got to the top of the ladder. It could also be interpreted to require him when he got to the top of the ladder to attach his line to something on the scaffold and reach over and grab whatever he is going to bring down, un-attach the line and re-attach below and work his way down the ladder attaching the safety line every three or four feet. I do not think that is a reasonable

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interpretation. I think the standard is designed to protect a man who is working on the platform paint spraying or sand blasting or doing something else, from forgetting where he is and falling off the platform. In this case that was not a reasonable thing to anticipate. The citation is vacated.

Citation No: 517738 alleges a violation of 30 C.F.R. 57.11-27 in that a "falling hazard" existed on the roof of an office which was enclosed within the maintenance building. The building within a building was 9 feet tall, had some boxes on top of it, plus a ladder that was either welded or bolted on and there was no evidence that any one had climbed the ladder and worked on top of the office building. It was not established that this was either an area requiring guards all around or safety belts and the citation is accordingly vacated.

Citation No: 517734 alleges that there was not a safe means of access to a working place because in order to get there a miner is required either to step up twenty inches or to walk up a ramp that is only fifteen inches wide and has no guardrail. The citation was abated by constructing a two-step ladder in the area of the twenty-inch step-up so that it was no longer necessary to either step up twenty inches, or walk on the fifteen-inch wide ramp to get to the working area. There was testimony about a rack holding pieces of steel in the vicinity of the fifteen-inch wide ramp. There was speculation and hearsay testimony as to how a miner would go about getting pieces of steel off the rack, but I have to assume that when a MSHA inspector abates a citation he is stating that the alleged violation no longer exists. The steps that were used to abate the violation were on the left side of the ramp and steel rack and the unguarded fifteen-inch wide ramp is still right next to the rack holding the steel. Since any miner getting steel from the rack after the abatement would have to do exactly the same as a miner would have to do before the abatement, I do not see how the manner in which a miner gets the steel is pertinent to this violation. I do not consider it a failure to provide safe access to require a miner to either step up twenty inches or walk an unguarded ramp up to a height of twenty inches. The citation is vacated.

Citation No: 517720 alleges that there was an exposed pinch point in a return idler pulley underneath a conveyor belt where mobile equipment passes. At this mine the mobile equipment was a golf cart and it was common to take short cuts under the conveyor. A bracket in the area of the return idler was what created the pinch point and the pinch point was twentyfour inches above anyone riding in a golf cart. While it might be unlikely that someone would have their hands up going under the belt it is nevertheless the very type of hazard which the standard was designed to prevent. While I think an accident was unlikely, it was nevertheless possible and a serious injury could have resulted. There was good faith abatement. I find the proposed assessment to be a reasonable penalty and therefore assess \$84 for this violation.

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It is therefore ORDERED that respondent pay to MSHA, within 30 days, a civil penalty in the amount of \$304.

Charles C. Moore, Jr.
Administrative Law Judge