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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 80-378-M A/O No: 11-00096-05001
v.	Lee Quarry
CHARLES F. LEE AND SONS, INC., RESPONDENT	

Appearances: Rafael Alvarez, Esq., Office of the Solicitor, U.S. Department of Labor, 230 So. Dearborn Street, Chicago, ILL 60604, for Petitioner
Clara Chilson, Representative, 1114 Irene Road, Cherry Valley, Illinois 61016, for Respondent

DECISION

Before: Judge Moore

At the beginning of the trial a number of stipulations were read into the record. The ones I consider important are that this mine is an open pit limestone mine with 8 employees at the time of the inspection working one shift a day 5 days a week. The inspector who issued the 5 citations involved in this case had been a victim of MSHA's reduction-in-force and at the time of his separation his notes had been taken from him and destroyed. This brilliant procedure resulted in the inspector having nothing more than the citations themselves and the inspector's statement to refresh his recollection of physical conditions which he had observed back in June of 1980.

Citation No: 357701 reads "berms were not provided for the dumping ramp that is used by the front-end loader to feed the crushing plant." The inspector's statement regarding that violation adds little, if anything, to refresh one's recollection. The standard allegedly violated 30 C.F.R. 56.9-54 states "berms, bumper blocks, safety hooks, or similar means shall be provided to prevent over-travel and overturning at the dumping location." I think the inspector cited the wrong standard. The standard cited refers to dumping locations and makes no reference to an elevated roadway or ramp. The berms, bumper blocks and safety hooks referred to therein would prevent over-travel but would not prevent any equipment from running off of the side of an elevated roadway. In my opinion 30 C.F.R. 56.9-22 which requires guards on the outer banks of elevated roadways should have been the basis of the citation. While I am sure no prejudice resulted to respondent as a result of the wrong section being cited, I nevertheless think it would be presumptious on my part to amend a citation and penalty proposal

without being requested to do so. I am therefore going to vacate citation No: 357701.

The other four citations in this case all involve guarding of pinch points. Government exhibit M-13 is a pamphlet entitled "MSHA's Guide to Equipment Guarding." Various pictures in exhibit M-13 were used during the trial to illustrate the type of guarding violation that the inspector was citing. Respondent's principal objection and reason for contesting these guarding citations was the inspector's alleged failure to point them out on a previous visit. Mrs. Clara Chilson, respondent's daughter, testified that 3 months prior to the issuance of the citations, a compliance assistance visit had been conducted. She thought the inspector was Mr. Joseph Knaff, the same inspector who issued the citations at issue in this case. But even if it was the same inspector and even if he failed to notice or to point out some hazardous condition, it would not insulate the operator from later being issued a citation with respect to that hazard. The purpose of a compliance assistance visit is to help the miner to comply with regulations but there is no guarantee that every violation in the mine will be discovered and discussed.

Citation No: 357702 alleges that adequate guarding was not provided for the pinchpoint created by the V-belt drive of the crusher. It was Inspector Knaff's opinion that the guard was inadequate. He stated.... "if the man was walking toward the screen guard, happened to trip and fall into it, he could get into the pinchpoint, the belts, so I cited them to have the screen raised so that he would have to go over the top rather than almost straight forward to get in to the pinchpoint." (Tr. 26). He did say (Tr. 34) that you would have to have arms three feet long to reach the pinchpoint and I don't know anyone with arms that long. I don't think he meant that however, because the rest of his testimony indicates that if a person slipped he could reach the pinchpoint. I am going to affirm the citation. I find a low degree of negligence inasmuch as the area was guarded, even though inadequately, and because the guard had not been mentioned during the compliance assistance visit. A serious injury could occur but there was good faith abatement and no history of prior violations. I assess a penalty of $30 for this violation.

Citation No: 357703 states that the tail pulley guard on the stacking conveyor needs to be extended to prevent accidental access to the pinchpoint. When Mr. Knaff wrote the citation the adjustment was such that the pinchpoint was not guarded. I find the violation existed and affirm the citation. The penalty criteria were the same for the previous violation and I assess the same penalty, $30.

Citation No: 357704 charges that there was no guard at the tail pulley of the feed conveyor. The standard, 30 C.F.R. 56.14-1 clearly requires guards on tail pulleys. There might be some question about whether the language "which may be contacted by persons, and which may cause injury....." applies to tail pulleys but in this case the pulley was in a position where it could be contacted and if so it would have caused injury. A higher degree of negligence is involved in having no guard at all than that involved in having an inadequate guard. Except for negligence I find the criteria the same as for the 2 previous

guarding violations and assess a penalty of $40.

Citation No: 357705 alleges that guarding was not provided for the self-cleaning tail pulley in the lime and chip plant. The inspector testified that a self-cleaning pulley is more hazardous than the regular kind because it has pinchpoints in numerous places. There is a picture of a self-cleaning tail pulley on page 5 of government exhibit M-13. I find a violation occurred and that the hazard is greater when a self-cleaning pulley is left unguarded. The other penalty criteria are the same as in the previous violation but with the hazard being higher. I assess a penalty of $50.

It is therefore ORDERED that respondent pay to MSHA, within 30 days, a civil penalty in the sum total of $150. All citations except 357701 are affirmed.

Charles C. Moore, Jr.
Administrative Law Judge