

CCASE:
SOL (MSHA) V. JAQUAYS MINING
DDATE:
19830425
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

v.

DOCKET NO. WEST 80-412-M
WEST 81-341-M
(Consolidated)

JAQUAYS MINING CORPORATION,
RESPONDENT

Appearances:

Linda Bytof Esq.
Office of Daniel W. Teehan, Regional Solicitor
United States Department of Labor
San Francisco, California,
for the Petitioner

D. W. Jaquays, Phoenix, Arizona
Appearing pro se,
for the Respondent

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, MSHA, charges respondent, Jaquays Mining Corporation, (Jaquays), with violating safety regulations adopted under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq.

After notice to the parties a hearing on the merits was held in Phoenix, Arizona.

The parties waived the filing of post trial briefs.

ISSUES

The issues are whether respondent violated the regulations and, if so, what penalty is appropriate.

In this case petitioner issued his Citation 318288 under the authority of Section 104(a) of the Act. The citation alleges respondent violated Title 30, Code of Federal Regulations, Section 57.3-22.(FOOTNOTE 1)

Petitioner's Evidence

The petitioner's uncontroverted evidence shows the following:

Jaquays, subject to MSHA jurisdiction, owns and operates an underground asbestos mine. Its production at the El Dorado Mine is sold to various purchasers who use the product in several states (Tr. 6, 7). At the time of the inspection Jaquays's mine operated 54,140 man hours annually (Tr. 7).

On May 21, 1980 Clarence Ellis, an MSHA representative experienced in mining, inspected the El Dorado Mine (Tr. 11-14). There were eight or nine employees operating a one day shift (Tr. 14).

Foreman Isidro Cavazos accompanied the inspector when he entered the big stope.(FOOTNOTE 2) The inspector observed a slab of loose and unconsolidated ground on the right hand rib (wall). This was twenty feet from the drill site (Tr. 16, P2, P3, 19). The slab was three feet long, one and a half feet high, and one foot thick. It had been undercut. The inspector observed a crack in the slab as wide as a finger (Tr. 19-20). On the side of the passageway there was loose muck two and one-half to three feet high (Tr. 18). One miner in the area, about five feet from the face, was setting up a pneumatic drill to start drilling (Tr. 21, 22). A drill, laying in the middle of the walkway, was connected to an air hose (Tr. 22).

The foreman and the inspector directed a miner to scale down the slab. As the miner punched it with a scaling bar it fell "easily" and "pretty much" filled the walkway (Tr. 23, 25).

~790

The proximity of the loose ground to the passageway accentuated the hazard (Tr. 26). The undercut also contributed to the instability of the slab. Vibration from the drill might have caused the slab to fall (Tr. 27).

Injuries such as broken bones could result if the slab fell and struck a miner. Also the rock fall could have severed the air hose (Tr. 27, 28).

Discussion

The evidence establishes a violation of 30 C.F.R. 57.3-22. Jaquays offered no contrary evidence (Tr. 34).

At the hearing the president of Jaquays contended that the citation should not have been issued because the defective condition was immediately corrected (Tr. 29).

Jaquays's argument is rejected. If a violation exists petitioner is obliged under the Act to issue his citation. Rapid abatement, as here, is an element to be considered in assessing any civil penalties. Such abatement does not constitute a defense to the violation.

The citation should be affirmed.

WEST 81-241-M

In this case petitioner issued two citations under the authority of Section 104(a) of the Act.

Citation 383191

This citation alleges a violation of Title 30, Code of Federal Regulations, Section 57.9-23

Petitioner's Evidence

The petitioner's uncontroverted evidence shows the following:

On November 4, 1980 MSHA representative Jack Sepulveda, a person experienced in mining, inspected the El Dorado Mine (Tr. 35-38). Isidro Cavazos, the foreman, accompanied him.

~791

The inspector observed a Gardner Denver Mucking machine(FOOTNOTE 4). It was powered by air and operating on rails. At the time of the inspection it was mucking a previous blast (Tr. 39, 40, 48, P4, P5, P6).

The mucker requires a miner to operate its levers (Tr. 41-42). The mucking machine did not have a step plate on the side where the miner stands to operate the machine (Tr. 49).

The mucker, about three feet high and three feet wide, weighs two to three tons. The rails on which it rests are 18 inches apart (Tr. 46, 47). When sitting on its rails the mucker is three feet above the ground (Tr. 45).

The step plate keeps the mucker from falling on the operator if it jumps the tracks (Tr. 49, P4, P5).

In the inspector's experience it is a common occurrence for the mucker to derail. It usually happens once or twice every blast. An operator's foot can be caught if the mucker does not have a step plate to place the operator in a position of safety. A fracture or a fatality could result if the operator's foot was caught (Tr. 56-59, 62-63).

Discussion

The foregoing evidence establishes a violation of the regulation. Jaquays offered no contrary evidence.

Jaquays contends no hazard exists. Further, according to Jaquays, miners do not like to use the step while mucking (Tr. 60, 61).

I am not persuaded. The hazard is apparent. Inspector Sepulveda, who has had considerable experience in operating a mucker, testified his machine would jump the rail "nearly everyday" (Tr. 62-63). Concerning the second contention: Mere dislike by a miner of a safety device does not constitute a defense for an operator.

Citation 383191 should be affirmed.

Citation 383192

This citation alleges a violation of 30 C.F.R. 57.13-21.(FOOTNOTE 5)

Petitioner's Evidence

Petitioner's uncontroverted evidence shows the following:

Jaquays's double hose connection on the main level drift did not have a safety chain (Tr. 63, 65, 66-67, P10, P11). The entire length of the pressurized hose is 100 feet. One length of the double connection goes to the mucker machine in the drift. The other length goes to the compressor (Tr. 65-67).

There was no suitable locking device nor automatic shut off valve at the connection (Tr. 66-67).

The one and a half inch rubber hoses were connected by wing nuts in two female type connectors at the double connection (Tr. 66, 67). A mucker operates on a minimum pressure of 70 pounds per square inch (Tr. 67).

The hazard here occurs if the hoses break loose on the compressor side of the connection. The air pressure then causes the hose to whip around and this could cause possible injuries (Tr. 68). The helper would be in a hazardous position since he would be sitting on the machine (Tr. 69). If a hose breaks an employee in the immediate vicinity wouldn't be able to shut off the air (Tr. 69-70). Inspector Sepulveda experienced this inability on one occasion when a hose broke and he was in a stope (Tr. 69, 70).

A tight hose connection does not prevent the hoses from parting (Tr. 74-75). A mechanical mucker, when operating, is louder than any leaking hose connection (Tr. 75).

Discussion

Jaquays's President indicated that the company accepted MSHA's evidence (Tr. 76).

The facts establish a violation of the regulation. Jaquays argues that no hazard exists and any mucker operator wouldn't permit leaking hoses.

Contrary to Jaquays's position I find a clear hazard exists if the hose connection fails and the hose begins to "whip" around due to the lack of a suitable locking device.

Jaquays's position that no hazard exists because a mucker operator would not permit a leaky hose lacks merit. The operator wouldn't be able to hear the leak above the noise of the mucker (Tr. 75). In addition, there would be no leak for the operator to hear if the mucker was not operating because the machine would not then be using air pressure.

Citation 383192 should be affirmed.

Civil Penalties

Petitioner proposes the following civil penalties for the citations:

Citation 381288	\$36
Citation 381191	26
Citation 381192	24

On the issue of civil penalties Jaquays's evidence establishes the following facts:

The company was not in production at the time of the hearing. In fact, the company was broke and lost \$100,000 in the last two years (Tr. 77-79).

The mandate to assess civil penalties is contained in Section 110(i) [now 30 U.S.C. 820(i)] of the Act. It provides:

(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In proposing civil penalties under this Act, the Secretary may rely upon a summary review of the information available to him and shall not be required to make findings of fact concerning the above factors.

An operator's financial condition is often given considerable weight in assessing civil penalties. However, in connection with Jaquays's prior history I note that six violations were assessed in the El Dorado Mine in the year prior to November 30, 1980.

~794

In addition, I further note that Citation 383192 (no safety chain on high pressure hose connection) is apparently a twin to the violation by Jaquays of the same standard in a case decided December 16, 1980, Jaquays Mining Corporation, 2 FMSHRC 3625 (1980).

The proposed penalties here are quite small. Considering the statutory criteria I am unwilling to disturb the proposed civil penalties.

Based on the foregoing findings of fact and conclusions of law I enter the following:

ORDER

In WEST 80-412-M and WEST 81-341-M:

1. Citations 381288, 381191, and 381192 and their proposed civil penalties are affirmed.

2. Respondent is ordered to pay the sum of \$86 to the Secretary of Labor within 40 days of the date of this order.

John J. Morris
Administrative Law Judge

FOOTNOTES START HERE-

1 The cited section provides as follows:

57.3-22 Mandatory. Miners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

2 A stope is an area from which ore is extracted (Tr. 16).

3 The cited section provides as follows:

57.9-2 Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used.

4 A mucking machine removes blasted material from the area so the drilling cycle can continue (Tr. 39, 40, P3).

5 The cited regulation provides as follows:

57.13-21 Mandatory. Except where automatic shutoff valves are used, safety chains or other suitable locking devices shall be used at connections to machines of high-pressure hose

lines of 3/4-inch inside diameter or larger, and between high-pressure hose lines of 3/4-inch inside diameter or larger, where a connection failure would create a hazard.