

CCASE:
SOL (MSHA) V. MEDUSA CEMENT
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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 83-80-M
A.C. No. 20-00038-05504

v.

Medusa Cement Company
Plant

MEDUSA CEMENT COMPANY,
RESPONDENT

DISAPPROVAL OF SETTLEMENT

ORDER OF ASSIGNMENT

On August 31, 1983, I disapproved the Solicitor's motion to approve a settlement for the one violation in this case for the original assessment of \$56. I described the circumstances as follows:

Citation No. 2089073 was issued for a violation of 30 C.F.R. 56.16-6 because the covers on oxygen and acetylene cylinders being transported were not in place to protect the stems of the cylinders. The Solicitor states that the operator demonstrated no negligence but he gives no basis for this assertion. The Solicitor further states that the violation was significant and substantial but again he gives no reasons. I note that the inspector stated on the citation that falling materials from the conveyors could easily strike one of the stems and create a serious hazard. The inspector checked boxes indicating occurrence was reasonably likely and could reasonably be expected to result in lost workdays or restricted duty.

The Solicitor now has filed an amended motion in which he advises that the operator demonstrated no negligence because it was not aware of the violation. I cannot accept this representation. Even if the operator was not actually aware of the violation the possibility that it should have been aware, must be explored.

~1787

With respect to gravity the Solicitor now states as follows:

(b) If an event occurred to which the cited standard is directed then it was reasonably likely that one employee would be injured. The reason is that a cylinder without proper protection could become a "torpedo", thereby injuring an employee.

(c) The type of injury that would result is that an employee could lose a day or more of work or be restricted in his job duties. The reason is that a cylinder acting with the force of a "torpedo" is a serious hazard which would cause serious injury to an employee.

When the Solicitor paints a picture of potential grievous bodily harm, as he has done here, I do not believe a penalty of \$56 is appropriate unless some other compelling circumstances are present.

Moreover, the Solicitor has advised that Crane Company which owns Medusa Cement Company had 1,768,760 hours worked in all of its mines prior to the issuance of this citation and the Medusa Cement Company had 239,900 hours worked in the same period. The proposed penalty therefore, is inconsistent with the operator's size in light of the other circumstances already set forth.

Accordingly, I have no alternative but to take appropriate action to have this matter set for hearing.

This case is hereby assigned to Administrative Law Judge James A. Broderick.

All future communications regarding this case should be addressed to Judge Broderick at the following address:

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Paul Merlin
Chief Administrative Law Judge