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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: CENT 83-12
A/O No: 34-01242-03501

v.

Porter No. 1 Mine

TURNER BROTHERS, INC.,
RESPONDENT

DECISION

Appearances: Reid Tilson, Esq., Office of the Solicitor, U.S.
Department of Labor, 555 Griffin Square, Dallas,
TX 75202, for Petitioner

Before: Judge Moore

This civil penalty case came on for hearing in Tulsa, Oklahoma, on November 1, 1983. Mr. Tilson, an attorney in the Dallas Regional Solicitor's office came to Tulsa from Dallas, and I came to Tulsa from Falls Church, Virginia, but respondent's counsel, Mr. Petrick, apparently did not think this case important enough to come the approximate 40-some miles from Muskogee, Oklahoma. Nor did he think it important enough to inform either Mr. Tilson or me that he intended not to appear. Before making my travel plans the week before the trial I called Mr. Petrick's office, and while he was out of town, his secretary did manage to reach him. She informed me that he said to go ahead with the hearing because he could not reach a settlement.

Mr. Tilson had informed me by telephone prior to the trial that he had made a settlement offer, but that he had not been able to get in touch with Mr. Petrick, himself, to learn what Mr. Petrick's views were. While I do not know what settlement was offered by Mr. Tilson, I suspect it was under the proposed assessment of \$168. It is a matter of public record that in the week before trial, Mr. Petrick had failed to appear at a Turner Brothers hearing before Judge Melick in Fort Smith, Arkansas. Because of this cavalier attitude toward the Federal Mine Safety and Health Act, which shows the contempt with which the respondent regards the Federal inspectors and the Federal Mine Safety and Health Review Commission, I am adding \$100 to each penalty that I hereinafter assess.

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The five citations involved in this case concern two pieces of equipment. As the testimony of Inspector Clyde Davis shows, citation number 2007441 was issued because a bulldozer did not have the seat belts required by 30 C.F.R. 77.1710(i). The bulldozer was working on a 10% grade (1p vertically for every 10p horizontally) which the inspector considered steep. The bulldozer is normally in operation for twelve hours a day, seven days a week. If the bulldozer had turned over the resulting injury could have been fatal.

Turner Brothers is the largest, or second largest coal mining operation in the state of Oklahoma. I find it was negligent and that there is a small history of prior violation. Abatement was accomplished the next day, but the bulldozer continued in operation after the citation was issued. The Secretary did not prove a high degree of gravity. The Assessment Office considered this an appropriate case for a \$20 single penalty. I assess \$100 plus the previously mentioned \$100 for attitude for a total of \$200.

The other five citations involved a truck about the size of the old Army 6x6 which contained one thousand gallons of diesel fuel plus lubricating oil. This truck had the function of refuelling and oiling all the other mobile equipment at the mine. At the time that the citations were issued the truck had not performed its usual function of going to the location of the equipment that needed servicing. Two pieces of equipment had come to the truck for fuel, but ordinarily it would go throughout the mine servicing the various pieces of mobile equipment. This truck had no parking brake (Citation 2007442), it had no regular road brake (Citation 2007443), it had no horn (Citation 2007444) and it had no back-up alarm (Citation 2007445). The truck was a menace and had an imminent danger order been issued I would have affirmed it. Instead of an order, four citations were issued with respect to this truck, and three of them were not marked significant and substantial and were assessed at \$20 each. Citation 2007443 was marked as significant and substantial and the assessment office did assess a \$68 penalty for that citation.

The inspector issued another citation, No: 2007446 which charged a violation of 30 C.F.R. 77.1606(a) in that because of all of the other violations it was obvious that the equipment was not being inspected and equipment defects were not being reported to the mine operator. I find that all these citations were valid and that the hazard and negligence were

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of a very high order. I assess \$1,000 * for each of the five citations concerning the refuelling truck and add \$100 to each for respondent's attitude.

The citations are AFFIRMED and respondent is ORDERED to pay to MSHA, within 30 days, a penalty in the total sum of \$5,700.

Charles C. Moore, Jr.
Administrative Law Judge

* There was a discrepancy in the Inspector's testimony about whether the truck was taken out of service, or whether respondent continued to use it. (Tr. 24). I accept his latter testimony (Tr. 37) that the truck was taken out of service. Otherwise, I would assess higher penalties concerning this truck.