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SOL (MSHA) V. BROWN BROS. SAND
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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. SE 83-42-M
A.C. No. 09-00265-05501

v.

Junction City Mine

BROWN BROTHERS SAND COMPANY,
RESPONDENT

DECISION

Appearances: Ken S. Welsch, Esq., Office of the Solicitor, U.S.
Department of Labor, Atlanta, Georgia, for Petitioner
Carl W. Brown and Steve Brown, for Respondent

Before: Judge Broderick

STATEMENT OF THE CASE

This case involves a single citation charging Respondent with a violation of 30 C.F.R. 50.30(a) for failing to file quarterly man-hour reports for the third and fourth quarters of 1982. Pursuant to notice, the case was heard in Talbotton, Georgia, on November 15, 1983. Ronald Grabner, a federal mine safety and health inspector testified for Petitioner. No witnesses were called by Respondent. The parties made oral arguments on the record but each waived its right to file written posthearing briefs. Based on the entire record, and considering the contentions of the parties, I make the following decision.

FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was the owner and operator of a sand dredging operation in Talbot County, Georgia, known as the Junction City Mine.

2. Respondent is a small family owned business. It employed approximately nine employees at the time of the violation alleged herein.

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3. The operation of Respondent's business affects interstate commerce.

4. During the 2 years immediately preceding the violation alleged herein, Respondent had no paid violations of the Act or regulations promulgated thereunder.

5. Respondent did not file the quarterly man-hour reports for the third and fourth quarters of 1982, prior to March 15, 1983, when the citation involved herein was issued.

6. The citation was terminated on the day it was issued when the reports in question were filled out and submitted.

7. Respondent has not filed the quarterly man-hour reports for any of the first three quarters of 1983.

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 and the regulations promulgated thereunder in the operation of the Junction City Mine.

2. Respondent's failure to submit quarterly employment reports for the third and fourth quarters of 1982 is a violation of 30 C.F.R. 50.30.

DISCUSSION

Respondent does not deny that he failed to submit the reports in question. He apparently challenges the necessity and value of the reports. Clearly, however, the reports are legitimate requirements of the Secretary who is charged with the responsibility of promoting health and safety in the nation's mines. Preparing statistical analyses of injury rates and injury causes is an integral part of that responsibility. The fact that Respondent thinks the reports are onerous or unnecessary is no defense to a petition for a penalty for a violation.

3. The violation was in itself not serious, since the failure or refusal to file the required reports is not likely to result in injury or occupational disease.

4. The violation was deliberate.

DISCUSSION

A citation was issued on June 26, 1980, to the Respondent charging it with failure to file the quarterly man-hour report

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for the first quarter of 1980. Respondent contested the violation and a hearing was held before Judge Koutras on April 13, 1981. Judge Koutras issued a decision affirming the citation and assessing a civil penalty on May 1, 1981. 3 FMSHRC 1203. In his decision he said:

Therefore, I believe that respondent had prior notice of the requirements of the regulation in question, and while his subsequent failure to file borders on gross negligence, I have considered the fact that respondent may have been confused as to what was required and find that the citation in question here resulted from respondent's failure to exercise a reasonable care amounting to ordinary negligence.

In the case before me, there is no question that Respondent was aware of the filing requirements and its failure to observe them. As I stated above, Respondent apparently believes the requirement to be onerous and unnecessary. In fact the reporting requirement is simple to observe, and it has a legitimate public purpose. Carl Brown's statements on the record exhibited a contemptuous attitude toward the requirement. No mine operator, whether Brown Brothers Sand Company or United States Steel Company, may decide for itself whether it will observe the duly promulgated standards. The penalty assessed in this case will reflect my conclusion that the violation was deliberate.

5. Respondent did not exhibit good faith in abating the violation after the citation was issued. Although the citation was abated, it was done so grudgingly, and the violation has apparently been repeated since then. The penalty assessed in this case will reflect my conclusion that Respondent did not exhibit good faith in complying with the regulation after the citation was issued.

6. Considering the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation found is \$100.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED that Respondent shall within 30 days of the date of this decision pay the sum of \$100 for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge