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SOL (MSHA) V. ROBERT RIEDMAN
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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 v. ROBERT A. RIEDMAN, RESPONDENT	CIVIL PENALTY PROCEEDING Docket No. WEST 82-13-M A.C. No. 04-00010-05028 A Crestmore Mine

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner;
Enos C. Reid, Esq., Reid, Babbage & Coil, Riverside, California, for Respondent.

Before: Judge Vail

STATEMENT OF THE CASE

In this proceeding, the Secretary seeks a civil penalty against respondent, Robert A. Riedman, (Riedman), for violation of section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.(FOOTNOTE 1)

Riedman, as mine production supervisor of the Crestmore Mine for the Riverside Cement Company, Riverside, California, is alleged to have "knowingly authorized, ordered, or carried out" the alleged violation of 30 C.F.R. 57.15-5 cited in MSHA withdrawal order No. 375785 issued November 1, 1979 pursuant to section 107(a) of the Act. The cited regulation requires that safety belts and lines shall be worn when men work where there is danger of falling; and a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered. The

withdrawal order alleged as follows:

> A serious accident occurred at the Crestmore Mine when an employee entered the feed hopper at the dynapactor (crusher) to free a bridged material hangup. The bridged material broke through dropping the employee onto the pan feeder and loose material from above came down covering the employee. Safety belts, lines and a person in attendance on the line were not being used in this dangerous location.

Riedman denied the allegation. After notice to the parties, a hearing on the merits was held in Riverside, California.

FINDINGS OF FACT

1. On November 1, 1979, Riverside Cement Company was the corporate operator of the Crestmore Mine near Riverside, California. Robert A. Riedman was the mine production foreman.

2. Both Riverside Cement Company and Riedman are subject to the Federal Mine Safety and Health Act of 1977 (Transcript at 5 and 6).

3. The Crestmore Mine is an underground mine whose principal product is limestone for cement.

4. Riverside Cement Company paid a penalty assessment of $5,000 for the violation of C.F.R. 57.15-5 alleged in withdrawal order No. 375785, issued November 1, 1979 (Exhs. P-3 and P-7).

5. The violation alleged in order No. 375785 was abated promptly and in good faith by the corporate operator (Exhs. P-6A and 6B).

6. On October 30, 1979, Richard Trombi, crusher operator, was injured while trying to free bridged material in the feed hopper at the dynapactor crusher. The crusher is a part of the underground mining process. Ore is hauled by trucks to where the crusher is located and dumped into a hopper. A pan feeder in the bottom of the hopper feeds the material into the dynapactor crusher (Tr. at 26-27 and Exh. P-5).

7. The hopper is a cone shaped bin, approximately 5 by 15 feet wide at the top, 20 feet deep, and narrowing to 5 by 11 feet at the bottom. Material unloaded in the hopper sometimes becomes lodged in the hopper and will not drop onto the pan feeder at the bottom (Exhs. P-5 and R-1).

8. On the day of the accident, Trombi and Cliff Palmer climbed into the hopper with two sticks of dynamite intending to set it off to dislodge some material that had become bridged in

the bin. The two miners were standing on the material to place the dynamite when the material broke away and caused Trombi to fall approximately three to five feet onto the pan feeder at the bottom. Also, material above Trombi fell on top of him.

9. Palmer had been holding onto a rope tied to the top of the hopper and used for entering and climbing out of the hopper. He was able to avoid dropping to the bottom of the hopper or being struck by the material (Tr. at 34 and Exhs. P-5 and R-1).

10. Trombi suffered back injuries, cuts to his nose and mouth, and abrasions over other parts of his body (Tr. at 35).

11. At the time the accident occurred, Riedman, the corporate operator's agent and mine production foreman, was standing on a catwalk along the side of the hopper. Riedman was supervising the work of Trombi and Palmer in the hopper (Tr. at 56-57 and Exh. R-1).

12. Riedman earns an annual salary of $34,000 (Tr. at 60).

ISSUES

1. On October 30, 1979, did the corporate operator fail to provide and require its employees to wear safety belts and lines when entering the hopper; or have a second person tend the safety line in violation of 57.15-5 as alleged in the withdrawal order?

2. If so, did Riedman knowingly authorize, order, or carry out such violation within the meaning of section 110(c) of the Act?

DISCUSSION

The facts in this case are not in dispute. Richard Trombi and Cliff Palmer, employees of the corporate operator, under the direct supervision of respondent Robert A. Riedman, climbed into a hopper bin to blast loose rock that had become bridged across the bottom of the bin and prevented the remaining rock from being fed into the crusher.

In this case, rock had become bridged across the bottom of the bin and piled up along the side. Trombi and Palmer climbed into the bin and stood upon some of the rock located approximately half way down the side of the bin. They intended to use dynamite to blast loose the bridged rock. Trombi had just bent over to place the dynamite in the rock when the rock broke loose causing Trombi to fall to the bottom of the bin and other rock above to fall down on top of him. Palmer was holding on-to a rope that was tied to the top of the bin which was used to climb in and out of

the bin and was able to pull himself free from the falling rock. Neither miner was wearing a safety belt or was attached to a life line tended by a second person (Exhs. P-1 and R-1). Respondent Riedman was standing on a catwalk along side the bin at the time the accident occurred, supervising the work being done there by Trombi and Palmer (Tr. at 57).

I find that the above facts show a violation of mandatory safety standard 30 C.F.R. 57.15-5 which provides as follows:

> Mandatory. Safety belts and lines shall be worn when men work where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.

There can be no dispute that the hopper bin in this case should be considered a dangerous area. The actual occurrence of Trombi's fall and the resulting injuries best depict what the standard is designed to prevent.

The only defense presented by respondent Riedman for allowing these miners to enter the bin without safety belts or lines is that he thought it was safer. Riedman testified that the rock was located on the side of the hopper where the catwalk is located and the only place where the safety belt could be tied or tended. If the miners were wearing safety belts, when the rock fell, the miners would have been pulled into it and buried alive (Tr. at 56).

I reject this argument as being unrealistic. First, Palmer was able to escape by holding onto the rope that was tied to the top and used for climbing in and out of the bin. If the location of the catwalk was a problem, then other means to handle the task were required. No explanation can justify the action of management in this case.

The Commission in Secretary of Labor v. Kenny Richardson, 3 FMSHRC (1981), Richardson v. Secretary of Labor, 609 F.2d 632 (1982), review denied, held section 110(c) of the Act to be constitutional and enunciated the critical elements which constitute a violation of this section. The corporate operator must first be found to have violated the Act. Further, if a person, such as supervisor, is in a position to protect an employee's safety and health and fails to act on the basis of information or knowledge or the reason to know of the existence of a violative act, he has acted knowingly and in a manner contrary to the remedial nature of the statute.

As to the first element in the Richardson case, supra, the facts show in this case that the Secretary proposed the assessment of a $5,000.00 penalty against the corporate operator Riverside

Cement Company, for violation of 57.15-5 as stated in order No. 375785. The corporate operator paid the penalty in full (Ex. P-7). Payment of a penalty, whether the full amount of the proposed assessment or a compromised amount, constitutes an admission by the corporate operator that the conditions alleged in the citations existed and were violations of the respective health and safety standards listed therein as a matter of law. Ranger Fuel Corporation, Docket Nos. WEVA 80-56-R, 80-57-R and 80-58-R, (February 10, 1981) (ALJ). Eastern Associated Coal Corp. v. Secretary, Docket No. WEVA 80-120-R, (May 20, 1980); The Valley Camp Coal Company, 1 IBMA 196, 204 (1972).

As to the second element described above, respondent Riedman's liability under section 110(c) of the Act for the action of Trombi and Palmer turns on whether he knowingly authorized, ordered, or carried out such violation. There can be no question that he did all three of the above for as the direct and immediate supervisor of these two employees, he was present on the catwalk along side the bin when Trombi and Palmer entered it without safety belts or lines. There can be no valid argument in defense of Riedman's actions in this case. It must be obvious from the precarious position of the two miners in the bin that an accident was possible endangering their health and safety.

PENALTY

The Secretary originally proposed a penalty of $500.00 in this case. At the hearing, he proposed that the penalty be raised to $700.00. I find that the facts in this case show beyond a doubt that Riedman was negligent in allowing Trombi and Palmer to enter the bin without safety belts or lines. The only evidence presented to explain the basis for such actions was Riedman's opinion that such equipment posed a greater danger than not using them. The argument is not accepted as reasonable. If the acts posed this kind of danger, other means were required to accomplish the task.

The gravity of the action on the part of Riedman is serious as the resultant injuries to Trombi were severe and the possibility of death was present.

Riedman was asked at the hearing by his counsel if the payment of a $700.00 penalty would cause a financial hardship? Riedman replied: "It won't help any". Riedman earned $34,000.00 annually at the time of his testimony in this case (Tr. at 58, 60).

I find that the original penalty of $500.00 is appropriate in this case.

CONCLUSIONS

1. The corporate operator, Riverside Cement Company, and Robert A. Riedman, mine production foreman, are subject to the Act and jurisdiction of the Administrative Law Judge in this case.

2. Riverside Cement Company is a corporation and on October 1, 1979, violated 30 C.F.R. 57.15-5 as alleged in withdrawal order No. 375785 in failing to require safety belts and lines tended by a second person for miners entering bins, tanks, or other dangerous areas.

3. Respondent Robert A. Riedman violated section 110(c) of the Act in knowingly authorizing, ordering and carrying out the violation alleged in withdrawal order No. 375785.

ORDER

The respondent Robert A. Riedman is found to have violated section 110(c) of the Act and is ORDERED to pay a penalty of $500.00 within 40 days of the date of this decision.

Virgil E. Vail
Administrative Law Judge

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~FOOTNOTE_ONE

1 Whenever a corporate operator violates a mandatory health or safety standard . . ., any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation . . . shall be subject to the same civil penalties, fines, . . . that may be imposed upon a person under subsections (a) and (d).