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SOL (MSHA) V. MAGMA COPPER
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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.

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 81-339-M
A.C. No. 02-00842-05014
Docket No. WEST 83-123-M
A.C. No. 02-00151-05504

MAGMA COPPER COMPANY-
SAN MANUEL DIVISION,
RESPONDENT

San Manuel Mine

DECISION

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco,
California,
for Petitioner;
N. Douglas Grimwood, Esq., Twitty, Sievwright &
Mills, Phoenix, Arizona,
for Respondent.

Before: Judge Vail

STATEMENT OF THE CASE

The above cases were consolidated for hearing and decision since they involve the same parties and mining division. One citation is included in Docket No. WEST 83-123-M, and one is involved in WEST 81-399-M. Pursuant to notice, the case was heard in Phoenix, Arizona, on March 7, 1984. Both parties waived filing posthearing briefs. Based on the entire record, and considering the contentions of the parties, I make the following decision.

FINDINGS AND CONCLUSIONS COMMON TO BOTH DOCKET NUMBERS

1. At all times pertinent to these proceedings, respondent was the owner and operator of an underground copper mine and mill in Pinal County, Arizona, known as the San Manuel Division, Magma Copper Company.

2. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the subject mine and mill, and I have jurisdiction over the parties

~871

3. Respondent is considered a large mining company with a moderate history of past violations. It was stipulated by the parties that any penalty imposed as a result of these two citations should neither be increased or decreased because of this history.

4. Payment of the proposed penalties in these two cases would not affect the respondent's ability to remain in business.

5. The two citations involved in this matter were issued on the dates indicated on said citations.

6. In the case of each citation involved herein, the violation was abated promptly and in good faith.

7. Whether a cited violation is properly designated as a significant and substantial violation is per se irrelevant to a determination of the appropriate penalty to be assessed. The penalties hereinafter assessed are based on the criteria in section 110(i) of the Act.

Docket No. WEST 83-123-M

Citation No. 2086656, issued May 17, 1983, charges a violation of 30 C.F.R. 57.11-1 (FOOTNOTE 1) because walkways between No. 1 and 5 manways in panel 2 had holes in their surfaces that created a hazard of falling to miners traveling to their work place.

MSHA inspector Arthur Swanson testified that undercut miners going to their working areas and supply trammers carrying material to the working areas would use these travelways (Transcript at 10). Some logging (planks) had been installed over several holes to provide places for miners to walk but where there was only one plank 12 inches wide, the inspector was of the opinion that a miner carrying material to the working areas could trip and fall possibly breaking a leg. The holes were described as being an average of two feet deep (Tr. at 14).

Respondent contends that undercuts, as involved in this case, create an extremely difficult place to work as this is a transitory condition. Usually there are rough rocks, timbers, hoses and other items running through the area. Respondent did not deny the conditions as described by the inspector, or the photographs submitted as exhibits, but argued that it does not constitute an access problem as contemplated by the statute.

~872

I find that there was a dangerous situation created by the placing of one 12 inch logging for walkway over the hole that is two feet deep. The miners carrying material would have a difficult time balancing their loads and walking across this board. Placing additional boards in these areas makes sense and is certain to provide much safer access. I conclude that a violation was shown which was not significant and substantial. The condition was corrected and additional planking placed over the holes shortly after they were brought to respondent's attention. I conclude that an appropriate penalty for this violation is \$50.00.

Docket No. WEST 81-399-M

Citation No. 599945, issued March 25, 1981, charges a violation of 30 C.F.R. 57.9-3 (FOOTNOTE 2), because the brakes were not working on an Atlas locomotive, Serial No. 3596, in the ball mill section of the respondent's rod mill.

The evidence shows that the cited piece of equipment is a battery powered locomotive traveling back and forth on level tracks for a distance of approximately 1600 feet. The locomotive pulls cars carrying balls used in the grinding process of the mill. One locomotive pulls four to five cars on approximately six to eight trips during a 16 hour period. The train would not travel in excess of 5 miles per hour.

Inspector Swanson testified that he observed a sign on the battery motor of the locomotive reading "caution, no brakes." When asked the question of how long the locomotive had been without brakes, a member of the mine's management stated, "approximately two weeks" (Tr. at 22).

Jerrold Semmons, respondent's assistant general mill foreman, testified that he was aware of the fact that the locomotive was being operated without brakes. However, he stated, "The individual that was operating the train-was told to operate at a slow speed, and if it was needed to stop the train immediately, to plug it; in other words, throw it in reverse." (Tr. at 37). A repair order had been written to repair the brakes but because of the parts being unavailable, it was necessary to fabricate the parts in the respondent's shop. Respondent argues that because of the restricted area in which this locomotive operated and its slow speed, there was not a hazard created and that it was not a significant and substantial violation.

