

CCASE:
SOL (MSHA) V. EDDIE HIGGS
DDATE:
19840508
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

EDDIE HIGGS, D/B/A HIGGS
TRUCKING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 83-196
A.C. No. 15-10364-03501-A5A

Preparation Plant

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
Byron W. Terry, Safety Director, Higgs Trucking
Company, for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

This case is submitted for decision on a stipulated set of facts and certain exhibits. There is no dispute as to the essential facts. Both parties have filed written arguments on the applicable law. Based on the record including the stipulations and exhibits, and considering the contentions of the parties, I make the following decision.

FINDINGS OF FACT

Teddy D. Higgs and James E. Higgs (apparently also known as Eddie Higgs), his brother, were partners in a company known as the Higgs Trucking Company. The Higgs Trucking Company was an independent contractor doing coal haulage for Golden R. Coal Company, Inc. On October 8, 1982, Teddy Higgs was told to drive the company truck to Golden R. Coal Company and haul coal from the mine to the preparation plant. Teddy Higgs did as he was instructed and dumped his load of coal at the preparation plant at about 8:55 a.m. He then moved the truck and raised the truck bed in order to grease the rear universal joint. While lying across the truck frame he apparently contacted the control cable which released the bed. The bed crushed Teddy Higgs against the frame injuring him fatally.

~1216

Following an investigation, MSHA issued a citation charging Higgs Trucking Company with a violation of 30 C.F.R. 77.404(c) (Repairs and maintenance were performed on machinery when the machinery was not blocked against motion). Respondent was assessed a penalty of \$500 for the violation.

Respondent is a small operator. James E. Higgs, presently a sole proprietor, had a gross income of \$36,657 in 1982, and of \$28,000 in 1983. His net profit in 1982 was said to be \$7,000. Respondent has no history of prior violations.

ISSUES

1. Is Respondent, an independent contractor, subject to the Act?
2. Was the deceased partner a miner under the Act?
3. Is the Partnership liable for a civil penalty for a violation of the Act committed by and affecting one of the partners?
4. If Respondent is subject to the Act and liable for the violation, what is the appropriate penalty?

CONCLUSIONS OF LAW

1. Section 3(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 802(b), defines "operator" to include "any independent contractor performing services or construction at such mine." Section 3(g) defines a "miner" as "any individual working in a coal or other mine." The Act thus clearly covers Respondent's activities in hauling coal for Golden R. Coal Company on October 8, 1982. See *Secretary v. Old Ben Coal Company*, 1 FMSHRC 1480 (1979); *Secretary v. Phillips Uranium Corporation*, 4 FMSHRC 549 (1982). Just as clearly, Teddy D. Higgs who was fatally injured on that date was a miner. Therefore, I conclude that Respondent was responsible to observe the mandatory safety standards and was properly cited for a violation of 30 C.F.R. 77.404(c).

2. A civil penalty proceeding under the Mine Act is not analogous to a civil action for wrongful death. The purpose of imposing civil penalties for violations of safety standards is to promote safety in the nation's mines, and penalties are mandated for violations whether or not the mine operator was at fault. *Secretary v. Ace Drilling Coal Company, Inc.*, 2 FMSHRC 790 (1980); *Secretary v. Nacco Mining Company*, 3 FMSHRC 848 (1981). The mine operator here was a partnership. The mine

~1217

operator is liable for violations of mandatory standards and for resultant civil penalties. Respondent's arguments, that truckers operating on mine sites are not required to have hazard training and are not acquainted with MSHA regulations are irrelevant.

3. Although Respondent argues that the imposition of a penalty "could possibly effect his staying in business," there is no evidence in the record to support this assertion. The violation here was extremely serious since it resulted in a fatal accident. The negligence was very great, but perhaps should not be charged to the operator. The operator is a small operator and has no history of prior violations.

The tragic circumstances of this case make a substantial civil penalty inappropriate, despite the seriousness of the violation. The purpose of assessing penalties is to deter future violations. The deterrent effect of a monetary penalty cannot possibly add to the deterrence which resulted from a brother's fatal accident. See *Secretary v. R.F.H. Coal Company*, 5 FMSHRC 1863 (Decision Approving Settlement by Judge Steffey 1983).

Therefore, applying the criteria in section 110(i) of the Act to these facts, I conclude that a civil penalty of \$21 is appropriate for the violation.

ORDER

Based upon the above findings of fact and conclusions of law, Citation No. 2074514 issued December 17, 1982, to Respondent Higgs Trucking Company is AFFIRMED. Respondent is ordered to pay within 30 days of the date of this decision the sum of \$21 as a civil penalty for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge