CCASE:
SOL (MSHA)  V.  GRANDVIEW DOCK
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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| SECRETARY OF LABOR,<br>MINE SAFETY AND HEALTH<br>ADMINISTRATION (MSHA),<br>PETITIONER | CIVIL PENALTY PROCEEDING<br><br>Docket No. LAKE 84-24<br>A.C. No. 12-01729-03502 |
| v. | |
| GRANDVIEW DOCK CORPORATION,<br>RESPONDENT | Grandview Dock |

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor, U.S. Department of Labor, Chicago, Illinois, for Petitioner;
Cedric Hustace, Esq., Bowers, Harrison, Kent & Miller, Evansville, Indiana, for Respondent.

Before: Judge Melick

Hearings were held in this case on April 24, 1984, in Evansville, Indiana. A bench decision was thereafter rendered and appears below with only non-substantive changes. That decision is now affirmed.

This case is, of course, before me upon the petition for assessment of civil penalty, filed by the Secretary of Labor, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, for five violations of mandatory standards. The issues before me are whether there were violations of the regulatory standards as cited, and, if so, whether the violations were "significant and substantial," as set forth in the Act and as defined by the Commission. If violations are found to exist, I must also determine the appropriate civil penalty to be assessed. The operator in this case, Grandview Dock Corporation (Grandview), challenges only the amount of penalty to be assessed and does not challenge the existence of the violations or that they were "significant and substantial."

Citation No. 2319454 charges a violation of the regulatory standard at 30 C.F.R. 77.1710(d) and reads as follows: "Kermit Harlen, miner, was not wearing a suitable

hard hat (no hat). He was in the working area of the coal crusher facilities." The cited standard provides in essence that a suitable hard hat or hard cap must be worn when in or around a mine or plant where falling objects may create a hazard.

Now, the evidence in this case indicates that during the course of a spot inspection of the Grandview facilities on October 5, 1983, Inspector Stanley Ozalas observed two miners, Kermit Harlen and Richard Briggeman, working in the mine premises without hard hats. There is no dispute that the violation was accordingly committed by the operator.

According to the undisputed testimony of Inspector Ozalas, the hazard here was created by the fact that there was only 20 to 30 feet from where these miners were working an elevated coal conveyor belt from which chunks of coal, varying in size from the size of a fist to the size of a man's head, were falling. The conveyor was on an incline, rising to a height of approximately 25 to 30 feet. Beneath the conveyor was a travelway on which miners were walking. Considering the weight of the chunks of coal, the inspector opined that serious injuries and, indeed, a fatality could occur from such a condition. That is, a miner walking beneath the conveyor, without a hard hat, exposed to the falling chunks of coal. The inspector also observed that the conveyor rollers weighing about 15 pounds have been known to fall off the conveyor.

Foreman, Jack Crowe, also admitted in essence that he was aware of the coal chunks falling off of the conveyor inasmuch as he told the inspector that he had intended to install sideboards to prevent the coal from falling off. It is also clear from the inspector's testimony that Mr. Crowe could easily have seen the men working without their hard hats. So under all the circumstances, I do consider that this violation was of a serious nature, and was the result of operator negligence. The cited condition was abated in a timely fashion, when the miner immediately retrieved his hard hat and put it on.

It is not disputed that the violation charged in Citation No. 2319455 was the same as that charged in the prior citation except that it involved a different miner, Richard Briggeman, not wearing his hard hat. The two men were working side by side and were exposed to the same hazards. I therefore find that this violation was also serious and was caused by operator negligence.

Citation No. 2319446 charges a violation of the regulatory standard at 30 C.F.R. 77.410, and reads as follows: "The automatic warning device did not give an audible alarm when the 988B Caterpillar No. 1 end loader was put in reverse. The end loader was operating over the entire coal crusher site."

The cited standard reads as follows: "Mobile equipment, such as trucks, fork lifts, front end loaders, tractors and graders shall be equipped with an adequate automatic warning device, which shall give an audible alarm when such equipment is put in reverse."

According to the undisputed testimony of Inspector Ozalas, there was indeed no backup alarm on the cited front-end loader. Moreover, during the course of the inspection, the loader nearly backed into the inspection party. The violation was hazardous because of the number of pedestrians moving about the premises, including truck drivers who occasionally exit their trucks, a coal sampler, the foreman, the operator of the small Bobcat front-end-loader and two other miners. The hazard was increased because of the limited visibility to the rear, and the fact that the loader was being operated carelessly. In addition, since no one was acting as a spotter, it was impossible for the machine operator to know whether pedestrians were behind him.

Although the loader operator claimed that he did not know the alarm was defective, I accept the inspector's undisputed testimony that the backup alarm is loud enough so that the operator should know when it fails. Moreover, since the foreman was situated within 20 feet of the loader, he should have been aware of the malfunctioning alarm. I find that serious and fatal injuries were likely under the circumstances and that it was therefore a serious hazard. I further find that the violation was caused by operator negligence.

Citation No. 2319457 charges a violation of the standard at 30 C.F.R. 77.400(a) and reads as follows: "A guard was not provided to prevent a person from contacting the rotating pulley and conveyor belts, and result in injury. The conveyor belt was transferring coal from the coal crusher." Citation No. 2319458 also charges a violation of that standard and reads as follows: "A guard was not provided to prevent a person from contacting the rotating pulley and conveyor belt and result in injury. The conveyor belt was transferring coal to the coal crusher."

The cited standard provides that, "Gears, sprockets, chains, drive, head, tail, and takeup pulleys, flywheels, couplings, shafts, saw blades, fan inlets, and similar exposed moving machine parts, which may be contacted by persons and which may cause injury to persons shall be guarded." Inspector Ozalas testified that the exposed belt and rotating pulley noted in Citation No. 2319457 was located only 12 inches off the ground and within 2 or 3 feet of a walkway. The unguarded area was described as approximately 4 feet long, 2 feet wide, and 5 feet across the end and over the top of the belts. In other words, both the sides and the top of the exposed area needed covering or other protection.

The conveyor was in operation when cited, and the rapidly moving pulley, indeed, posed a serious hazard to miners working nearby and to passersby contacting the moving parts, becoming entangled and having limbs crushed or broken, and even causing fatalities. Indeed, according to Inspector Ozalas, there has been a history of fatalities resulting from miners caught in such moving machine parts. The greaser and the miner responsible for cleanup around the conveyor were the most likely persons exposed to the hazard. While the foreman indicated that it was the practice for the machinery to be shut down before cleanup and/or greasing operations, it is not unusual according to Ozalas for employees to nevertheless disregard such practice and to work near these dangerous exposed moving machine parts resulting injuries and, indeed, fatalities. Under the circumstances, I find that there was a serious hazard created by this violation.

I also find that the violation was the result of a high degree of negligence and in fact was a violation known by mine management. The guard was lying adjacent to the exposed area and was partially covered with coal, indicating to the inspector that it had been lying there for some time. The mine foreman also admitted to Inspector Ozalas that he knew the protective guard had been removed.

The facts surrounding Citation No. 2319458 are similar, in that the protective guard had been removed. The guard in this case had been damaged and a part was missing. The exposed conveyor and pulley were only about a foot off the ground and the pulley was only 2 or 3 feet from a walkway known as an employee short cut. It thereby posed a serious hazard to miners working on the belt or passing nearby. The fast moving conveyor was also operating when cited and under the circumstances I find that serious hazard existed. There was also a high degree of negligence, based on the admissions

of the foreman that he had, indeed, had the guard removed from the conveyor and pulley.

Now, in determining the amount of penalty to be assessed in this case, I must look also, of course, to the size of the mine operator, and the history of its violations. The mine operator is apparently small in size, but I am particularly concerned in this case with its history of violations. The inspector has testified, and this is supported by the computer printout of record (Petitioner's Exhibit No. 6), that there has been a pattern of prior violations of the standards cited in this case. This evidence shows that on December 15, 1981, there had been an equipment guarding violation, on January 20, 1982, there had been two equipment guarding violations, and on March 2, 1983, there had been another equipment guarding violation. In addition, with respect to the failure to have a backup alarm in this case, I note that on January 20, 1982, there were two violations for failing to have operative backup alarms and again on March 2, 1983, a violation for failing to have an operative backup alarm.

This pattern of violations, with, I note, rather small assessments given, shows to me that the mine operator has not been impacted sufficiently to take corrective measures with respect to these violations. I therefore am going to assess penalties in excess of those proposed by the Secretary of Labor in this proceeding.

ORDER

The Grandview Dock Corporation is ordered to pay the following civil penalties within 30 days of the date of this decision:

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| Citation No. 2319454 | $ 112 |
| Citation No. 2319455 | 112 |
| Citation No. 2319456 | 300 |
| Citation No. 2319457 | 250 |
| Citation No. 2319458 | 250 |
| Total | $1,024 |

Gary Melick
Assistant Chief Administrative Law Judge