CCASE:
SOL (MSHA) V. ROSS GRAVEL
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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. WEST 83-111-M A.C. No. 35-00540-05501
v.	
ROSS ISLAND SAND & GRAVEL COMPANY, RESPONDENT	Ross Island Plant

DECISION

Appearances: Robert A. Friel, Esq., Office of the Solicitor, U.S. Department of Labor, Seattle, Washington, for Petitioner;
Mr. R.G. Tuttle, Corporate Director, Ross Island Sand and Gravel, Portland, Oregon, appearing Pro Se.

Before: Judge Vail

STATEMENT OF THE CASE

In the above proceeding, the Secretary of Labor on behalf of Mine Safety and Health Administration (MSHA), seeks civil penalties against the respondent for two alleged violations of mandatory safety standards. The violations were charged in two citations issued on June 1, 1983, which violations were not considered significant and substantial, and penalty assessment of $20.00 each was proposed. The respondent initially contested the citations.

On September 6, 1983, respondent wrote the Secretary proffering a check in the sum of $40.00 to settle the above matter. On September 19, 1983, the Secretary submitted a Motion to Approve Settlement to the Commission proposing that the $40.00 be accepted in full settlement. The motion was denied and an order was issued to the parties to submit additional information. Additional information was submitted and again the settlement proposal was denied. The case was then assigned to this writer for hearing.

A further supplemental petition for settlement was submitted on May 10, 1984, which was denied by order dated May 10, 1984.

The case was heard on the merits on June 22, 1984. Robert W. Funk, MSHA inspector testified on behalf of petitioner. Paul T. Godsil testified on behalf of respondent. Post hearing briefs were waived.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent is a medium sized operator. It employes approximately 15 miners at its Ross Island Plant. Payment of a reasonable penalty will not impair respondent's ability to continue in business. Respondent demonstrated good faith in correcting the two cited conditions (Transcript at 13, 14). In the previous 24 months, respondent had no citations.

Respondent admits that the two violations cited on June 1, 1983, in citation Nos. 2225917 and 2225918 existed. However, it contests the negligence and gravity of conditions involved in the violations (Tr. at 14).

Citation No. 2225917

On June 1, 1983, a citation was issued to the respondent alleging a violation of 30 C.F.R. 56.11-1. Respondent was cited for a work deck area behind the scalper screen being littered with wood and other debris.

In respondent's mining process, material is dredged from a lagoon, loaded on barges and clam-bucketed onto a hopper. The scalper screen is at the top of a hopper and collects debris in the material where it starts to be processed. A miner (stick picker) stands on a platform and picks wood and debris from this screen as it accumulates. The wood and debris is laid in a pile on the platform where the stick picker works. The platform on which the miner works is also a walkway approximately 8 feet wide. Only one person, the stick picker, is on this platform and exposed to the danger of tripping and falling if debris or wood accumulates. The inspector testified that from the size of the pile, he estimated it to be an accumulation of two days work. An injury from tripping could cause lost workdays or restricted duty.

Respondent admitted the violation but contends that the pile of wood and debris is usually cleaned up at a point half way through the shift. It is argued that removing the debris in this manner is preferred over throwing the material over the side of the platform to the ground 40 to 50 feet below.

I find, based on the facts, that there is only one employee exposed to injury at this location at a given time and the injury would be from tripping and falling and would in likelihood not be serious or fatal. Based on a consideration of the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is $20.00.

Citation No. 2225918

On June 1, 1983, Citation No. 2225918 was issued to respondent alleging a violation of 30 C.F.R. 56.16-5 due to an acetylene bottle located in the welding bay not being secured. Funk testified that he observed one acetylene bottle in respondent's welding bay area which was not in the rack supplied for storing such bottles. The risk to such a condition is that if the bottle were to fall over, acetone in the bottle can get into the valve causing it to deteriorate leaking into the hose and cause an explosion. Funk admitted that it was unlikely that an accident would occur.

Respondent admitted the above facts but contends that the bottle was empty. Also, that hoses attached to acetylene bottles have flashback arresters to eliminate the danger of flashing back and causing a fire. Based on a consideration of the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is $20.00

CONCLUSION

My assessment of the penalties herein is as follows:

1. Respondent is a medium sized operator.

2. Respondent was negligent in permitting each of the violations to occur.

3. A penalty will have no effect on respondent's ability to continue in business.

4. Respondent had no prior citations in the past 24 months.

5. The violations are not serious.

6. Respondent showed good faith in achieving rapid compliance.

ORDER

Based upon the above findings of fact and conclusions of law, respondent is ORDERED to pay the total sum of $40.00 for the two violations found herein to have occurred. I understand respondent has previously submitted payment of the $40.00 in this case in satisfaction thereof, and the above captioned matter is DISMISSED.

Virgil E. Vail
Administrative Law Judge