

CCASE:
SOL (MSHA) V. MONOLITH CEMENT
DDATE:
19840920
TTEXT:

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

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

v.

MONOLITH PORTLAND CEMENT CO.,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 84-31-M
A.C. No. 04-00196-05502

Docket No. WEST 84-35-M
A.C. No. 04-00196-05504

Docket No. WEST 84-56-M
A.C. No. 04-00196-05505

Monolith Cement Plant

DECISION

Appearances: Herbert Jay Klein, Esq., Office of the
Solicitor, U.S. Department of Labor,
Los Angeles, California, for Petitioner;
Jim Day, Safety and Training Supervisor,
Monolith Portland Cement Company, Monolith,
California, for Respondent.

Before: Judge Merlin

These cases are petitions for the assessment of civil penalties filed under section 110(a) of the Act by the Secretary of Labor against Monolith Portland Cement Company for alleged violations of the mandatory safety standards.

Stipulations

At the hearing, the parties agreed to the following stipulations (Tr. 4):

1. The operator is the owner and operator of the subject mine.
2. The operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The administrative law judge has jurisdiction of these cases.
4. The inspectors who issued the subject citations were duly authorized representatives of the Secretary.

~2171

5. True and correct copies of the subject citations were properly served upon the operator.
6. Imposition of any penalty will not affect the operator's ability to continue in business.
7. The alleged violations were abated in good faith.
8. The operator has a small history of prior violations.
9. The operator is moderately large in size.

WEST 84-31-M

Citation No. 2365907 sets forth the violative conditions or practices as follows:

The area where employees eat lunch was not kept clean and orderly in the Lab building. Several employees eating there were exposed to a fire hazard as well as a health hazard as the floor appeared unkempt.

30 C.F.R. 56.20-3(a) provides as follows:

At all mining operations: (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

The parties stipulated to the facts set forth in the citation (Tr. 6). An over-filled trash bin presented a definite fire hazard. However the Solicitor advised that it was now the Secretary's position that the operator was guilty of moderate negligence rather than recklessness (Tr. 6-7). The operator agreed that the occurrence of a fire was reasonably likely because employees smoked in the area (Tr. 7). The violation was serious and the operator was negligent. A penalty of \$150 is assessed.

WEST 84-35-M

Citation No. 2086560 provides as follows:

The passageway and working area of the 2 pier at the kiln had poor housekeeping and was not kept clean of tools and other materials. Employees assigned tasks in this area could trip, slip, or fall. These areas (piers) are traveled often.

~2172

30 C.F.R. 56.20-3(a) is the same mandatory standard as involved in the prior docket number.

In this instance also the parties stipulated with respect to the facts set forth in the petition (Tr. 10-11). The area in question was between two walkways where there is occasional traffic at the end of each shift. The presence of some tools presented a tripping hazard (Tr. 10). The type of accident which would occur would probably result in a lost work day (Tr. 11). The violation was serious and the operator was negligent. A penalty of \$200 is assessed.

WEST 84-56-M

The Solicitor moved to vacate the one citation involved in this matter (Tr. 14). The Solicitor adequately explained the basis for vacating this citation and as I have held previously in other cases, vacation of a citation and withdrawal of penalty petition with respect to it is within the Solicitor's discretion.

ORDER

It is Ordered that the operator pay \$375 within 30 days of the date of this decision.

Paul Merlin
Chief Administrative Law Judge

~2173

AMENDED ORDER

The Order in the above-captioned case is amended to read "It is Ordered that the operator pay \$350 within 30 days of the date of this decision."

Paul Merlin
Chief Administrative Law Judge