

CCASE:
SOL (MSHA) V. UNITED STATES STEEL
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TTEXT:

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

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

v.

UNITED STATES STEEL
CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. LAKE 83-95-M
A.C. No. 21-00282-05508

Minntac Mine

Docket No. LAKE 83-100-M
A.C. No. 21-00797-05501

Minntac Warehouse

Docket No. LAKE 84-5-M
A.C. No. 21-00819-05502

Docket No. LAKE 84-11-M
A.C. No. 21-00819-05503

Maintenance Department

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the
Solicitor, U.S. Department of Labor,
Chicago, Illinois, for Petitioner;
Louise Q. Symons, Esq., U.S. Steel
Corporation, Pittsburgh, Pennsylvania,
for Respondent.

Before: Judge Melick

These consolidated cases are before me upon the petitions 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, 30 U.S.C. 801 et seq., the "Act", for violations of regulatory standards. The general issue before me is whether the United States Steel Corporation (U.S. Steel) has violated the regulations as alleged, and, if so, what is the appropriate penalty to be assessed in accordance with section 110(i) of the Act.

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The Secretary moved to vacate Citation Nos. 2089195, 2089196, 2089198, 2089369, and 2089370 for the reason that all of the equipment cited for insufficient grounding or other protection was in fact "U.L." (Underwriters Laboratory) approved. This approval was deemed sufficient to meet the requirements of the cited standard and accordingly the citations were dismissed at hearing. That determination is now affirmed.

The remaining citations in these cases (Nos. 2089362, 2089367, 2089192, 2089223, and 2089227) allege violations of the regulatory standard at 30 C.F.R. 55.12-30. That standard provides that when a potentially dangerous condition is found, it shall be corrected before equipment or wiring is energized. The facts surrounding the violations (with the exception of the violation charged in Citation No. 2089193) all relate to the improper wiring of electrical receptacles in that the "hot and neutral" wires had been interchanged.

According to MSHA Inspector Thomas Wasley, the condition was dangerous because of the existent shock hazard. He indicated for example that if a polarized plug was used in any of the improperly wired sockets and the equipment used had a defect such as a broken wire, it could become "hot" and its user would be subject to burns or even electrocution from the 110 volt circuit.

According to MSHA electrical engineer Terrence Dinkel, the wiring described by Inspector Wasley was in violation of the National Electrical Code, the industry standard throughout the United States. Dinkel pointed out an additional hazard if, for example, a power drill with a three prong electrical cord had a wiring fault with the black wire faulted to the frame, then the drill motor would automatically be in the "on" position exposing an unsuspecting user to abrasions, cuts, and punctures from the operating drill. Dinkel also opined that the reverse polarity of the improperly wired outlets was "one step out of two" for causing a fatality.

U.S. Steel does not deny the existence of the violations but maintains that they were of low gravity. According to Frank Ergevec, general foreman for the central shops, there was no significant hazard because it is unlikely that an appliance would be defective. While he also observed that U.S. Steel had a program for testing electrical recepta

~2176

cles, those tests were admittedly limited to newly installed outlets and would not therefore have led to the discovery of the defectively wired outlets in the cases at bar.

In determining the seriousness of the hazard, I give the greater weight to the highly qualified MSHA expert, electrical engineer Terrence Dinkel. Based on this testimony, corroborated by MSHA inspector Wasley, I find that serious hazards of electrical shock, burns, and electrocution could result from the cited conditions and that those hazards were not remote given the circumstances. I further find that a significant hazard existed from the possibility of the automatic startup of equipment such as drills and handsaws that might be plugged into one of the defectively wired outlets.

Negligence is difficult to assess in these cases since the cited outlets had been wired many years ago by the outside contractor who built the premises. U.S. Steel had presumably relied upon that contractor to comply with the electrical standards. There is no dispute that the cited conditions were corrected in a timely manner.

Citation No. 2089193 also alleges a violation of the standard at 30 C.F.R. 55.12-30 but presented a different hazard. The citation alleges that the 220 volt heater located under the seat in the changing room did not have a guard over the heating fins. According to Inspector Wasley, this presented a burn hazard to persons coming into contact with the heater while sitting on the bench. Wasley conceded that it was unlikely that the heater would have been used for several months until colder weather set in.

According to Ronald Rantella the Minntac mine safety engineer, the thermostat on the heater was in the "off" position at the time of the citation. In addition, Rantella opined that the heater located beneath the bench was not in a position to contact anybody. Rantella also observed that it was the policy each fall to "usually" check heaters.

Within this framework of evidence, I conclude that a violation of the cited standard did in fact occur, but that the hazard described by Inspector Wasley was not as imminent as described. Negligence is also difficult to assess in this case, because the cited heater was clearly not being used at the time of the citation and had been turned off. The violation was promptly abated by the removal of the

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heater.

Considering the size of the operator, its prior history of violations, and the criteria above discussed, I find the following civil penalties to be appropriate. Citation No. 2089362 - \$40; Citation No. 2089367 - \$40; Citation No. 2089192 - \$40; Citation No. 2089193 - \$30; Citation No. 2089223 - \$40; Citation No. 2089227 - \$40.

ORDER

Citation Nos. 2089369, 2089370, 2089195, 2089196 and 2089198 are vacated and dismissed. The U.S. Steel Corporation is hereby ordered to pay the following civil penalties within 30 days of the date of this decision: Citation No. 2089362 - \$40; Citation No. 2089367 - \$40; Citation No. 2089192 - \$40; Citation No. 2089193 - \$30; Citation No. 2089223 - \$40; Citation No. 2089227 - \$40.

Gary Melick
Assistant Chief Administrative Law Judge