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SOL (MSHA) V. PRICE CONSTRUCTION
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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

v.

PRICE CONSTRUCTION, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 84-45-M
A.C. No. 41-02926-05502

Crusher No. 2 Mine

DECISION

Appearances: Ronnie A. Howell, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas, for
Petitioner;
Bobby Price, Vice-President, Price Construction,
Inc., Big Spring, Texas, for the Respondent.

Before: Judge Koutras

Statement of the Case

This case concerns a civil penalty proposal initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$20 for an alleged violation of mandatory safety standard 30 C.F.R. 56.6-20(e).

The respondent filed a timely answer and notice of contest and requested a hearing on the alleged violation. A hearing was convened in Big Spring, Texas, on November 13, 1984, and the parties appeared pursuant to notice.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977; Pub.L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

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Stipulations

The parties stipulated that exhibit P-1, is an MSHA computer print-out reflecting the respondent's history of prior violations for the period February 2, 1982 to February 14, 1984 (Tr. 8). The print-out reflects three prior citations for which the respondent paid civil penalty assessments totalling \$119, and that none of the citations are repeat violations (Tr. 9).

The parties agreed that the respondent is a small operator, and that it operates two mines engaged in the mining of a limestone crushed base material used for road construction. The mine in question employs approximately 18 miners and had an annual production of approximately 40,060 man-hours (Tr. 8-9).

The parties agreed that the respondent acted immediately in good faith and abated the cited condition on the same day on which it was pointed out to him (Tr. 9).

Respondent also stipulated that payment of the civil penalty assessment for the violation in question will not adversely affect his ability to continue in business (Tr. 9).

Discussion

The respondent was cited for failure to ground two metal constructed explosive magazines located at the site of one of his crushers. Information developed during the hearing indicates that the magazines were the property of a contractor who brought them to the site, and they were left as part of a lease arrangement (Tr. 13). The crusher has since been removed from the site and is no longer operational (Tr. 11).

Respondent's vice-president, Bobby Price, confirmed that the crusher is no longer in operation, and he stated that he assumed that the magazines were properly grounded at the time they were delivered and installed at the site. He pointed out that the magazines are not in the possession of the respondent at all times (Tr. 13-14).

Mr. Price indicated that this case was initially contested by the company safety director, and that he (Price) had only become personally involved on the day prior to the hearing. He conceded the fact of violation and indicated that he would like to dispose of the matter by paying the \$20 proposed assessment.

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Petitioner's counsel asserted that the magazines in question were located approximately 200 yards away from the major mine operations, and that the inspection in question was the first visit to the site (Tr. 12). He also confirmed that abatement was achieved that same day, and that employee exposure to any hazard was minimal (Tr. 12). Counsel confirmed that upon consultation with the MSHA inspector who issued the citation, and who was present in the courtroom, the inspector would agree that the payment of the assessed civil penalty would be a reasonable compromise for the citation in question (Tr. 16).

Findings and Conclusions

After careful consideration of the facts in this case, including the six statutory criteria found in section 110(i) of the Act, and the arguments presented by the parties in support of their proposed disposition of this case, I rendered a bench decision finding a violation of section 56.6-20(e), and imposing a civil penalty of \$20 for the violation. Although the respondent was negligent in permitting the violation to occur, I have considered the fact that the respondent is a small operator, has a good compliance record, and the fact that there was immediate abatement of the cited conditions. I have also considered the fact that the magazines were somewhat isolated from the other mining operation, and the lack of any evidence that there were any hazards presented by the cited conditions. My bench decision is hereby reaffirmed.

ORDER

The respondent IS ORDERED to pay a civil penalty in the amount of \$20 within thirty (30) days of the date of this decision and order. Upon receipt of payment by the petitioner, this case is dismissed.

George A. Koutras
Administrative Law Judge