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SOL (MSHA) V. SYLVA SAND & 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 84-17-M  
A.C. No. 04-04643-05501

v.

Sylva Sand & Gravel Mine

SYLVA SAND & GRAVEL, INC.,  
RESPONDENT

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,  
U.S. Department of Labor, San Francisco, California  
for Petitioner.

DECISION

Before: Judge Merlin

The Solicitor filed a proposal for the assessment of civil penalties for three alleged violations dated December 5, 1983 in the above-captioned action. On December 6, 1983 the operator wrote me, stating that it wished a hearing.

On August 24, 1984 an Order of Assignment was issued assigning this case to me. The Order of Assignment was mailed Certified Mail and the file contains the green certified card signed by the operator indicating it received the Order of Assignment. Thereafter on September 21, 1984 a Notice of Hearing was issued and on November 21, 1984 an Amended Notice of Hearing was issued. The operator's copies of both notices were returned unclaimed.

Pursuant to the Amended Notice of Hearing a hearing was held on February 6, 1985. The Solicitor appeared but the operator did not. The Solicitor withdrew the penalty petition with respect to one of the citations. The inspector testified regarding the remaining two citations. Citation No. 2088036 was issued for a violation of 30 C.F.R. 50.10, a failure to notify MSHA of an accident. The inspector's description of the accident in which a miner's arm was caught in a conveyor belt adequately established a prima facie case that the occurrence fell within the mandatory standard and that there was a violation. Citation No. 2088038 arising out of the same accident was issued for a failure to guard the head pulley of the conveyor belt. Here too, the inspector's recitation of the accident sufficiently made out a prima facie case that the required guarding was not present and that a violation occurred.

~516

After the hearing a show cause order was issued requiring the operator to show cause why it should not be held in default for failure to appear. 29 C.F.R. 2700.63. The operator responded to this show cause order stating he was not notified of the hearing on February 6, 1985. He further advised that he had moved over 10 months ago and that the hearing notices were not sent to his new address. Finally, he alleges that the last notice he received was a show cause order requiring the Solicitor to file a penalty petition.

The operator must be held in default. According to his own admission he moved several months ago. He knew a case was pending against him. Contrary to his assertion, the last thing he received was not the show cause order directed to the Solicitor dated January 12, 1984 but the Order of Assignment dated August 24, 1984. It was the operator's responsibility to give written notice of his change of address. 29 C.F.R. 2700.5. The Commission had no way of knowing where he moved. Having failed to notify the Commission of his new address the operator's complaints in his letter of March 18, 1985, are without merit.

It is Ordered that the operator is in default and that the proposed penalties of \$100 for Citation No. 2088036 and \$500 for Citation No. 20888038 are final.

The operator is Ordered to pay \$600 within 30 days of the date of this decision.

Paul Merlin  
Chief Administrative Law Judge