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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 84-46-M
A.C. No. 41-02577-05505

Crusher No. 1

APPEARANCES: Allen Reid Tilson, Esq., Office of the
Solicitor, U.S. Department of Labor, Dallas,
Texas, for Petitioner;
Robert Price, Vice President, Price
Construction Inc., Big Spring, Texas,
for Respondent.

DECISION

Before: Judge Melick

This case is before me upon the petition for 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 a "significant and substantial" violation of the regulatory standard at 30 C.F.R. 56.12-16. The general issues before me are whether Price Construction Inc. (Price Construction) has violated the regulation as alleged and, if so, what is the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act. The special "significant and substantial" findings in the citation are not challenged.

The citation at bar (No. 2235106) as modified on February 1, 1984 alleges as follows:

An employee performing welding on a rolls crusher (Pioneer Model Number 33-R Triplex) was seriously injured when the rolls crusher was inadvertantly energized. The investigation revealed that a lock-out procedure had not been established also a lock-out device was not available on the master switch.

The cited standard provides in part as follows:

Electrically powered equipment shall be deenergized before mechanical work is done on such equipment. Power switches shall be locked-out or other measures taken which shall prevent equipment from being energized without the knowledge of the individuals working on it.

The evidence shows that Alvin Parrish, a welder for Price Construction with 25 years experience at crusher plants lost one of his legs when he was injured by the rollers of a crusher he was working on. The steel crusher rollers, 18 inches in diameter and 30 inches long, had worn down and were to be rebuilt by welding additional steel over the worn out sections. Parrish was setting up to perform this task and called to the plant foreman Roger Junker to start the generator to activate the welder. The same generator powered both the crusher rollers on which Parrish was to work and the welder to be used for the repairs. In order to activate the crusher rollers however, both a master switch and a roller switch had to be engaged. To activate the welder only the master switch had to be engaged. Although Junkers had worked with Parrish in rebuilding rollers on prior occasions he apparently misunderstood Parrish's command to start only the generator and Junkers also engaged the master switch. Since the roller switch had admittedly not been locked-out and had apparently been left in the "on" position, as soon as the master switch was engaged the crusher rollers began rotating and Parrish's leg was caught and crushed.

Respondent's safety director, James Hill, admitted to MSHA Inspector Charles Price that he knew a padlock had to be used on the roller switch to conform with required lock-out procedures. (Footnote.1) Plant superintendent Luther Wright also admitted that at the time of the accident he did not require padlocks to lock-out the roller switches. Under company procedures then in effect a "lock-out" was accomplished by merely turning off the generator and cutting the switches. Within this framework of evidence it is clear that the violation at bar was caused by the gross negligence of management personnel. This negligence is imputed to the mine operator. Secretary v. Ace Drilling Co., 2 FMSHRC 790 (1980).

