

CCASE:
SOL (MSHA) v. ANDERSEN SAND AND GRAVEL
DDATE:
19850510
TTEXT:

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

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

v.

ANDERSEN SAND AND GRAVEL CO.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-107-M
A.C. No. 20-00667-05501

Lexis Road Dredge and Mill

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois,
for Petitioner;
Frank Andersen, President, Andersen Sand & Gravel
Co., for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

On August 9, 1984, five citations were issued to Respondent alleging violations of mandatory safety standards. Respondent contested the penalties assessed and requested a hearing. Pursuant to notice, the case was heard in Saginaw, Michigan, on April 9, 1985. Frank Penkevich, a Federal mine inspector, testified for Petitioner; Frank Andersen testified for Respondent. The parties waived their rights to file posthearing briefs. Based on the entire record and considering the contentions of the parties, I make the following decision.

Respondent operates a sand and gravel plant in Tuscola County, Michigan. Its operation includes a dredge, a wash plant and a screening plant. It is a seasonal operation and normally employs three people. It produces approximately 22,000 tons per year. Respondent's operation is generally clean and safe. It has no prior history of violations. All of the conditions cited in this proceeding were promptly abated. Respondent for the most part did not contest the factual findings of the inspector. He argued, however, that because he abated the conditions promptly and has an excellent

~676

safety record, the penalties were unfair. The Federal Mine Safety and Health Act of 1977 requires MSHA and the Commission to assess a civil penalty for each violation of a mandatory health or safety standard. Prompt abatement and a good prior record may reduce the penalty but may not eliminate it.

Citation No. 2090096 alleged that guards on the top of six tail pulleys were absent, exposing pinch points. The pulleys were at ground level and were moving. A walkway existed beside the pulleys but was not frequented by employees. The possibility of an injury was unlikely. The condition was abated by extending the guards to cover the pinch points. I conclude that a violation of 30 C.F.R. 56.14-3 ("Guards at . . . conveyor tail pulleys shall extend a distance sufficient to prevent a person from accidentally reaching behind the guard and becoming caught between the belt and the pulley") was established. The gravity and negligence were low. I conclude that an appropriate penalty for the violation is \$20.

Citation No. 2090097 was issued because a stacker was not guarded over the tail pulley in violation of 30 C.F.R. 56.14-1 which requires that moving machine parts which may be contacted by persons and cause injury be guarded. Respondent, however, testified that the stacker had been disassembled and the guard taken off prior to its being moved. It was not being operated, and Respondent intended to replace the guard before it was placed back in operation. Under the circumstances, Petitioner has not established a violation. The citation is VACATED and no penalty is imposed.

Citation No. 2090098 alleged a violation of 30 C.F.R. 56.9-54 because of an inadequate berm on the ramp leading to the hopper. The ramp was 12 feet wide and the elevation was 4 feet on one side and 2 feet on the other. The operator did not dispute the facts relied on by the inspector, but argued that many highways have similar conditions. The violation was abated by replacing the berm with wooden rails on each side of the ramp. The violation was not serious and the inspector believed its negligence was low. I conclude that a violation was shown and the penalty is \$20.

Citation No. 2090099, charged a violation of 30 C.F.R. 56.11-1 because of a missing portion of railing on the walkways around the dredge. About 10 to 12 feet of the railing was missing. The standard requires that safe means of access shall be provided and maintained to all working places. The walkways were about 1 foot from the water which was deep. Although the machine was down, workers were using

~677

the walkway to repair the pinion shaft. They wore life jackets. The violation was abated by repairing and replacing the railing. I conclude that a violation was shown and that it was moderately serious. I believe an appropriate penalty is \$50.

Citation No. 2090100 charged a violation of 30 C.F.R. 56.4-27 because of the absence of a fire extinguisher on a front-end loader. The standard requires that self-propelled mobile equipment shall be provided with a suitable fire extinguisher readily accessible to the equipment operator. The loader was used all over the yard moving material from one area to another. It travelled up to about 300 yards from the plant where fire extinguishers were available. The violation was abated by providing a fire extinguisher for the loader. The violation was deemed by the inspector to be non serious and the operator's negligence low. I conclude that a violation was shown and that an appropriate penalty is \$20.

ORDER

Based on the above findings of fact and conclusions of law, Respondent is ORDERED to pay within 30 days of the date of this decision the following civil penalties for violations found herein:

CITATION	PENALTY
2090096	\$ 20
2090097	0
2090098	20
2090099	50
2090100	20
Total	\$110

James A. Broderick
Administrative Law Judge