

CCASE:  
SOL (MSHA) v. UTELITE CORPORATION  
DDATE:  
19851218  
TTEXT:

~2180

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 84-155-M  
A.C. No. 42-00071-05503

v.

Utelite Mine

UTELITE CORPORATION,  
RESPONDENT

DECISION

Appearances: Margaret Miller, Esq., Office of the Solicitor,  
U.S. Department of Labor, Denver, Colorado,  
for Petitioner;  
Mr. Carsten Mortensen, Utelite Corporation,  
Coalville, Utah,  
pro se.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges respondent with violating a safety regulation promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801 et seq., (the Act).

After notice to the parties, a hearing on the merits took place in Salt Lake City, Utah on September 19, 1985.

The parties waived post-trial briefs.

Citation No. 2084153 proposes a penalty of \$74 and alleges respondent violated 30 C.F.R. 55.14-1 which provides as follows:

Guards

55.14-1 Mandatory. Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.

Issue

The issue centers on the appropriate penalty for the violation of the regulation.

Stipulation

After commencement of the hearing the parties stipulated that respondent violated the regulation.

Further, it was agreed that the unguarded sprocket was separated from a walkway by a welded handrail. A miner could not accidentally trip or fall into the sprocket. A miner would not be near the sprocket and inside the handrail unless he was doing routine maintenance. In those circumstances the machine would have been turned off (Tr. 6-8).

A computer printout indicates that in the two year period before July 11, 1984 six violations were assessed against respondent (Exhibit P1).

The company employs 20 workers in its open pit mine. It further has a capacity of producing 200,000 yards of material a year. Further, the proposed penalty will not cause undue hardship on the respondent. The condition was rapidly abated (Tr. 8-11).

Discussion

The statutory criteria for assessing a civil penalty is contained in Section 110(i) of the Act, now 30 U.S.C. 820(i). It provides as follows:

(i) The Commission shall have authority to assess all civil penalties provided in this Act. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

In connection with the above, I consider that respondent's prior history of six violations in the two years before July 11, 1984 is not excessive. I further find that, with only 20 workers and a small capacity, the operator's size should be considered as small. The fact that a welded handrail separated workers from

~2182

the unguarded sprocket causes me to conclude that both negligence and gravity are not severe. The assessment of a penalty will not cause a hardship on the operator, which rapidly abated the violative condition.

In view of the statutory criteria, I conclude that the proposed penalty of \$74 is excessive. I believe \$30 constitutes an appropriate penalty.

#### Conclusions of Law

Based on the entire record and the factual findings made in the narrative portion of this decision, the following conclusions of law are entered:

1. The Commission has jurisdiction to decide this case.
2. Respondent violated 30 C.F.R. 55.14-1 and the citation should be affirmed and a penalty assessed for the violation.

#### ORDER

Based on the foregoing facts and conclusions of law I enter the following order:

1. Citation No. 2084153 is affirmed and a civil penalty of \$30 is assessed.
2. Respondent is ordered to pay to the Secretary the sum of \$30 within 40 days of the date of this decision.

John J. Morris  
Administrative Law Judge