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SOL (MSHA) V. TRIPLE B
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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. KENT 86-56
A.C. No. 15-10516-03508

v.

No. 1 Surface Mine

TRIPLE B CORPORATION,
RESPONDENT

DECISION

Appearances: Theresa Ball, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee
for Petitioner;
Gary A. Branham, Triple B. Corporation,
Prestonsburg, Kentucky for Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed 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," charging the Triple B Corporation (Triple B) with five violations of regulatory standards. The issues before me are whether Triple B has committed the violations as alleged and if so whether those violations were of such nature as could have significantly and substantially contributed to the cause and effect of a coal or other mine safety or health hazard, i.e., whether the violations were "significant and substantial". If violations are found it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with the criteria set forth in section 110(i) of the Act.

Citation No. 2302122 alleges "significant and substantial" violations of the standard at 30 C.F.R. 77.1605(b) and charges as follows:

The DM 800 Mack Grease, Oil and Fuel Truck is not equipped with an adequate braking system. Upon testing of the braking system the foot brakes are weak and the truck is not equipped with a parking brake

The cited standard requires that "mobile equipment . . . be equipped with adequate brakes, and all trucks . . . also be equipped with parking brakes."

Inspector Andrew Reed, Jr. of the Federal Mine Safety and Health Administration (MSHA), was performing an inspection of the Triple B surface mine on October 30, 1985, when he found the cited Mack truck with no parking brake. The essential shoe and drum were missing. Reed acknowledged that the truck also had a dump brake but that system would be effective as a parking brake for only 5 to 10 minutes. It is not disputed that this truck would be parked while servicing other vehicles and, without a parking brake, could roll into pedestrians causing fatal injuries. Under the circumstances I find that the violation was serious and "significant and substantial". Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984).

The operator was also negligent in not having the required parking brake. Since the shoe and drum had been missing and the brake was not functioning at all, it is the type of violation that should have been easily discovered during the course of the required inspections of the vehicle whether those inspections were performed by supervisory personnel, by the truck driver, or by some other employee. Even if the inspections were performed by the truck driver or other nonsupervisory personnel the fact that this obvious defect was not reported and corrected shows negligent training and/or supervision.

The citation alleges a second violation of the same standard for defects in the primary braking system. (FOOTNOTE 1) According to Inspector Reed the brakes were weak and the stopping time was delayed. Triple B president Gary Branham, admitted the violation but denied that it was "significant and substantial." There is no evidence as to the length of any alleged delay or how far the brakes deviated from the accepted norm. In light of the admission I find that the violation is proven as charged but in the absence of more specific evidence I cannot determine whether the violation was "significant and substantial".

In addition because of the lack of specific evidence concerning the alleged "delay" in the functioning of the primary braking system I can not determine whether the violation was one which should have been known to either management or the truck driver and therefore I am unable to attribute any negligence to the operator. Consistent with these findings I note that the violation was easily abated by a simple adjustment to the braking system.

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Citation No. 2302123 alleges a "significant and substantial" violation of the standard at 30 C.F.R. 77.1606(c) and charges as follows:

An equipment defect affecting safety is present on the DM 800 Mack Grease, Oil and Fuel Truck which has not been corrected prior to the truck's use. The steering wheel has excessive play and the right side tie rod end is worn out.

The cited standard requires that equipment defects affecting safety shall be corrected before the equipment is used.

According to the undisputed testimony of Inspector Reed there was "excessive play in the steering" which made handling of the vehicle difficult and likely that the driver would lose control. Under the circumstances an accident was reasonably likely resulting in disabling or fatal injuries to the driver. The violation was caused by a defective tie rod on the right side. While the evidence is again sparse I find it to be sufficient to support Inspector Reed's conclusions that the admitted violation was indeed "significant and substantial" and serious. Mathies, supra.

I also find that the defective tie rod and the excessive play in the steering were defects of such a nature as should have been discovered and corrected during the course of pre-shift inspections of the vehicle and during its use early on the shift. The failure to have reported and/or corrected this condition again demonstrates operator negligence in employee training and supervision.

Citation No. 2302124 alleges a "significant and substantial" violation of the standard at 30 C.F.R. 77.410 and charges as follows:

The reverse alarm is inoperative on the DM 800 Mack Grease, Oil and Fuel Truck.

The cited standard requires that "mobile equipment such as trucks . . . shall be equipped with an adequate automatic warning device which shall give an audible alarm when such equipment is put in reverse."

According to Inspector Reed the cited vehicle would be operated in reverse in the vicinity of pedestrian traffic thereby presenting a serious and "significant and substantial" hazard of disabling or fatal injuries to such personnel. The truck driver himself is able to hear whether or not the alarm is functioning and therefore clearly should have known

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of the violation. The mine operator is again chargeable with negligent training and supervision for the failure of its employees to report and/or correct this condition.

Citation No. 2302125 alleges another "significant and substantial" violation of the standard at 30 C.F.R. 77.1605(b) and charges as follows:

The International 350 Rock Haulage Truck is not equipped with an adequate braking system upon testing. The parking brake is found to be inoperative.

It is not disputed that with the subject parking brake engaged there was not even a delay or restriction of movement with the truck on a "slight" grade. According to Inspector Reed the truck could therefore "roll off during the course of the day when they park for dinner, park for servicing or park at the end of the day" and cause "crushing injuries" to pedestrians in its path. The violation was accordingly serious and "significant and substantial." Mathies, supra. Since the parking brake was not functioning at all it was clearly due to operator negligence in the training and/or supervision of its employees in failing to have such a condition reported and/or corrected.

Citation No. 2302126 also alleges "significant and substantial" violations of the standard at 30 C.F.R. 77.1606(c) and charges as follows:

Equipment defects affecting safety are present on the International 350 Rock Haulage Truck which have not been corrected prior to use of the truck. In that (1) three of the rear view mirrors (two provided on each side of the truck) are cracked and cause a broken and/or distorted view of rearward visibility. (2) The pins and/or bushings in the stationary ends of both steering jacks are badly worn and cause excessive play in the steering system and difficult handling.

Again the violations are not disputed but only the "significant and substantial" findings and the amount of penalty related thereto. According to Inspector Reed the condition of the rear view mirrors was reasonably likely to cause the truck to back into pedestrians or back over the highwall thereby causing disabling or fatal injuries. This evidence is undisputed and I find it sufficient to support the "significant and substantial" findings and a determination that the violation was serious.

It is undisputed that the worn-out pins and bushings and the broken bushing caused excessive play in the steering

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thereby causing extremely difficult handling and control of the truck. Reed observed the truck in operation and noted that the driver was having difficulty keeping it on the road. Reed opined without contradiction that the condition was therefore reasonably likely to cause the truck to strike other vehicles or leave the road thereby causing serious disabling and/or fatal injuries. The violation was accordingly "significant and substantial" and serious. Mathies, supra.

Reed observed that the cited conditions would have developed over several weeks or months and accordingly should have been discovered during the company's inspection process. The inspection process, a management responsibility, was therefore deficient showing a negligent lack of supervision and/or training. The violation was accordingly the result of operator negligence.

In determining the amount of penalties I am assessing in this case I have given great weight to the fact that the mine operator is relatively small in size, has only a minor history of reported violations, and abated the violative condition in a timely manner. Within this framework the following penalties are deemed appropriate:

Citation No.	2302122	\$ 50
Citation No.	2302123	\$ 50
Citation No.	2302124	\$ 50
Citation No.	2302125	\$ 50
Citation No.	2302126	\$ 50
	Total	\$250

ORDER

The Triple B Corporation is hereby ordered to pay civil penalties of \$250 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

1 The mine operator did not object to the multiple charging in one citation.