

CCASE:
SOL (MSHA) V. BRENDA FAYE COAL SALES
DDATE:
19860918
TTEXT:

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 85-112
A.C. No. 15-10198-03506

v.

Brenda Faye Coal Tipple Mine

BRENDA FAYE COAL SALES CO.,
INC.,
RESPONDENT

DECISION

Appearances: Charles Merz, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, TN, for
Petitioner;
Daniel E. Karst, Esq., Brenda Faye Coal Sales
Company, Inc., Closplint, KY, for Respondent

Before: Judge Fauver

The Secretary seeks a civil penalty for an alleged violation of a mandatory safety standard under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq.

The charge was issued in connection with the investigation of an accident. Joseph Shuler, a contract coal hauler, was permanently disabled when a Michigan front-end loader operated by Respondent's employee struck Shuler and mashed his leg against the front of his coal truck.

Shuler's leg was amputated as a result of severe, multiple fractures and lacerations of his leg. The front-end loader had defective brakes at the time of the accident.

A hearing was held in Lexington, Kentucky. Having considered the testimony, arguments, and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. Respondent operates a coal tippie in Harlan County, Kentucky, which is part of a business enterprise of corporations controlled by Edward Karst. The enterprise is a medium size business, producing 300,000 tons of coal annually. It was stipulated at the hearing that a penalty within the limits of the Act would not affect Respondent's ability to continue in business.

2. On January 11, 1985, a coal hauling truck with an attached tandem trailer was loaded with coal at the tippie, and ready to leave. Its exit was a 10-12% grade, dirt road. Because of slippery conditions, the truck was unable to climb the grade.

3. David Karst, an employee at the tippie, and son of Edward Karst, drove a Michigan 275B front-end loader toward the site where the truck was stuck. He intended to descend the road, stop near the front of the coal truck, have a tow chain attached and tow the truck up the exit road.

4. When Karst descended the road toward the truck, he saw the truck driver in front of the truck. The driver was there to hook up the tow chain. Karst tried to stop the front-end loader to avoid hitting the driver and the coal truck, but he was unable to stop the front-end loader because of defective brakes. The brakes were only 35-40% effective. The bucket of the front-end loader struck the driver and the coal truck. The driver's left leg was crushed against the truck. Multiple fractures and lacerations of the leg resulted in amputation of the leg at the hospital. The coal truck's front-end was severely damaged by the collision.

5. Extensive repairs of the brakes of the front-end loader were required to bring the braking capacity up to a normal, safe operating condition. The extent of the brake deterioration and the type of repairs needed to correct it showed that the brake defects had not suddenly occurred but were detectable for a considerable period before and up to the time of the accident.

~1372

6. The driver of the front-end loader did not test the brakes before he started downhill toward the coal truck. At the top of the incline, he saw the driver in peril, in front of the coal truck, and had sufficient time and distance if the brakes were normal to stop the front-end loader without hitting the driver or the coal truck. However, because the brakes were defective his vehicle collided with the driver and the truck.

DISCUSSION WITH FURTHER FINDINGS

I find that Respondent was grossly negligent in operating the Michigan front-end loader with defective brakes. The loader is a very large vehicle, with wheels over eight feet high. Moving the vehicle around other equipment and personnel with only 35-40% effective brakes was a highly hazardous practice. The federal inspector issued an imminent danger order on the front-end loader, forbidding its use until the brakes were repaired. Respondent should have taken the vehicle out of service for proper brake repairs before January 11, 1985, the day of the accident. The gravity of the violation was very high, and, with normal brakes, and by exercising reasonable care, the front-end loader driver could have avoided the accident. He could have stopped his vehicle and told Shuler to get out of the way before proceeding downhill toward the coal truck. The defective brake condition was a direct cause of the accident and permanent disabling injury of Joseph Shuler on January 11, 1985.

Respondent argues that Joseph Shuler should not have been standing in front of his coal truck and that his negligence contributed to the accident. However, with safe brakes, Karst would have been able to stop his vehicle and tell Shuler to stand aside before he proceeded down-hill. In addition, with safe brakes and by exercising reasonable care, Karst would not have struck the coal truck, which was substantially damaged by the collision. His collision with the coal truck was in no way caused by Shuler's presence in front of the truck.

~1373

Despite Respondent's arguments about an "unavoidable" accident, it is clear that, if there had been adequate brakes and reasonably prudent performance by the front-end loader driver, the front-end loader would not have struck Shuler and the coal truck.

Considering all of the criteria in section 110(i) for assessing a penalty, a civil penalty of \$2,000 is deemed appropriate for this violation.

CONCLUSIONS OF LAW

1. The Judge has jurisdiction over the subject matter of this proceeding.
2. Respondent violated the safety standard as charged in Citation No. 2476582.
3. Respondent is ASSESSED a civil penalty of \$2,000 for the above violation.

ORDER

Respondent shall pay the above assessed civil penalty of \$2,000 within 30 days from the date of this Decision.

William Fauver
Administrative Law Judge