

CCASE:
SOL (MSHA) V. MICHAEL BRUNSON
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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. SE 86-40-M
A.C. No. 01-02340-05504-A

v.

Pit No. 4

MICHAEL BRUNSON,
RESPONDENT

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner; Michael Brunson, Saraland, Alabama,
pro se.

Before: Judge Broderick

STATEMENT OF THE CASE

Petitioner (the Secretary) seeks a civil penalty from Respondent under section 110(c) of the Federal Mine Safety and Health Act (the Act). The Petitioner charges that Respondent, acting as an agent of the corporate mine operator, knowingly authorized, ordered or carried out a violation by the operator of the mandatory safety standard contained in 30 C.F.R. 56.9003. Respondent denied authorizing, ordering or carrying out the violation. Pursuant to notice, the case was heard on January 13, 1987 in Mobile, Alabama. Charles Bates, Charles Gwin and Robert Lee Evert testified on behalf of the Secretary. Respondent testified on his own behalf. Both 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.

FINDINGS OF FACT

The Brunson Construction Company, Inc., a corporation, produces sand and gravel, and, as of January 1985, operated two sand and gravel pits in the State of Alabama, including Pit No. 4 in Clarke County, Alabama. Its products were sold within the State, but much of its equipment was manufactured out of the

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State. The company began its business in 1947. In January 1985, there were two employees working at the No. 4 Pit.

Respondent Michael Brunson was the Vice President of Brunson Construction Company, Inc. He did not regularly visit the sand and gravel pits, but spent most of his time in the company office in Saraland, Alabama. He is shown in MSHA records as the person in charge of health and safety for the company.

On January 23, 1985, a combined 107(a) order 104(a) citation was issued to the Brunson Construction Company by Federal Mine Inspector Charlie Bates. The order/citation charged that a caterpillar front end loader was being operated in the No. 4 pit without any brakes. The citation charged a violation of 30 C.F.R.

56.9003. This standard requires that powered mobile equipment be provided with adequate brakes. The left front wheel brake booster was leaking, and there was a leak in the air line from the compressor. The brakes would not stop the vehicle on an incline.

The operator of the loader, Charles Gwin, who testified under subpoena, stated that he knew of the leak in the booster brakes, and that he had reported this to the company mechanic and to W.D. Brunson, the company president. His testimony concerning when he reported the brake problem to Respondent Michael Brunson was contradictory, but he finally stated that he told Michael Brunson about one week before the order was issued that the brakes were going bad. Respondent told him if the brakes were bad to shut down the machine. Gwin replied that the brakes had a leak but were holding. Brunson testified that he did not recall being told this by Gwin. I find as a fact that Gwin orally told Respondent about a week before the order that the brakes on the loader were defective. Respondent took no action to have the brakes repaired until after the order was issued.

The order/citation was terminated on February 11, 1985 after the brakes on the loader were repaired and found to be in good operating condition. MSHA proposed an assessment of \$500 against Brunson Construction Company for the violation, and the assessment was paid by the company. The history of the company's prior violations shows that 5 violations were assessed and paid in the previous 24 months, including 2 violations of 30 C.F.R. 56.9003. No previous violations under section 110(c) of the Act were issued to Respondent.

ISSUE

Does the evidence show that Respondent knowingly permitted the operation of powered mobile equipment without adequate brakes?

CONCLUSIONS OF LAW

Brunson Construction Company, a corporation, was the operator of a mine as those terms are used in section 110(c) of the Act. Respondent, the Vice President of Brunson Construction Company, was an officer and agent of the corporation. Brunson Construction Company violated 30 C.F.R. 56.9003 in operating a front end loader without having adequate brakes. The foregoing conclusions are undisputed. The crucial issue is whether Respondent knowingly permitted the violation.

In the case of Secretary v. Richardson, 3 FMSHRC 8 (1981), the Commission held (in a case under section 109(c) of the 1969 Coal Act which is substantially indetical to section 110(c) of the Mine Act) that the term knowingly means knowing or having reason to know. It does not imply willfulness, bad faith or evil purpose. I have accepted as factual the testimony of Charles Gwin that he told Respondent about a week before the order, that the brakes on the loader were going bad. I therefore conclude that Respondent knew or had reason to know that the brakes were not adequate. Therefore, I further conclude that he knowingly permitted the violation of 30 C.F.R. 56.9003. The violation was serious. Defective brakes on mobile equipment are the largest single cause of fatalities and serious accidents in the sand and gravel industry. I conclude that an appropriate penalty for the violation is \$300.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED that Respondent shall, within 30 days of the date of this decision, pay to MSHA the sum of \$300 for the violation of section 110(c) of the Act found herein.

James A. Broderick
Administrative Law Judge