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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. WEST 87-172
A.C. No. 48-01353-03503 K48

v.

Rochelle Mine

TICÄTHE INDUSTRIAL COMPANY
OF STEAMBOAT SPRINGS, INC.,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado,
for Petitioner;
John L.C. Black, Esq., TICÄThe Industrial Company
of Steamboat Springs, Inc., Steamboat Springs,
Colorado, for Respondent.

Before: Judge Cetti

Statement of the Case

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., ("Mine Act"). The Secretary of Labor, on behalf of the Mine Safety and Health Administration, charges the operator of a coal mine with violating regulation 30 C.F.R. 77.1401 which requires:

"Hoists and elevators shall be equipped with overspeed, overwind, and automatic stop controls and with brakes capable of stopping the elevator when fully loaded."

This proceeding was initiated by the Secretary with the filing of a proposal for assessment of a civil penalty. The operator filed a timely appeal contesting the existence of the alleged violation and the amount of the proposed penalty.

Discussion

The Petitioner charges Respondent with using a "Grove crane RT 6205" (a mobile crane) as a manlift to hoist miners 60 feet up the side of the transfer building in a basket which was attached to the hoisting cable hook. The crane was not provided with overspeed, overwind, and automatic stop control.

It was Respondent's position that the hoisting standard cited does not apply to mobile cranes unless they are positioned over a shaft and used to lower and raise men or materials in the shaft. Respondent contends that 77.1401 was intended to apply only to lifting devices used to raise or lower men or materials from or to an underground mine site and that the citation, therefore, was improperly issued. Respondent points out that the Dictionary of Mining, published by the Bureau of Mines, makes no mention of mobile cranes in its definition of hoists.

At the hearing the parties negotiated and stated on the record that they had reached a settlement, subject to the approval of the Judge, under which the Petitioner moved that the proposed penalty be reduced from \$240 to \$140, and Respondent moved to withdraw its notice of contest.

The proposed amendment to the penalty was based on information obtained by the Petitioner in its pretrial preparation of this matter. Primarily, Petitioner had found that Respondent had a written company policy setting out a number of safeguards pertaining to the use of a man-basket with a crane and that those safeguards, when used, were such that they showed that the gravity of the violation was not as severe as originally assessed by the Petitioner and further showed that the negligence of the Respondent was not as great as originally assessed by Petitioner.

Conclusion

After careful review and consideration of the pleadings, arguments, and the information placed upon the record at the hearing, I am satisfied that the proposed settlement disposition is reasonable, appropriate and in the public interest.

Accordingly, the motions made at trial are granted.

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ORDER

Citation No. 2830003 is affirmed and respondent is ORDERED to pay a civil penalty of \$140 within 30 days from the date of this decision.

August F. Cetti
Administrative Law Judge