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MSHA V. N.A. SAND AND GRAVEL
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FMSHRC-FCV
MAY 12, 1988

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
Petitioner

v.

NORTH AMERICAN SAND AND
GRAVEL CO.,
Respondent

CIVIL PENALTY PROCEEDING

Docket No. LAKE 88-7-M
A.C. No. 11-02666-05501

Vandalia Mine

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor,
U.S. Department of Labor, Chicago, Illinois, for
the Petitioner; Charles W. Barenfanger, Jr., President,
North American Sand and Gravel Co., Vandalia, Illinois,
pro se.

Before: Judge Maurer

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges respondent with a violation of the safety regulations 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 was held on the merits at St. Louis, Missouri, on March 28, 1988.

Gene Upton, a mine inspector employed by MSHA, had occasion on June 25, 1987, to inspect the Vandalia Mine.

On that occasion he observed a 440-volt power cable which was being used to supply electrical power to the pea gravel conveyor belt. This power cable had several cracks and breaks in the outer layer of its double insulation, which allowed both rainwater and sunlight to reach the inner insulation. There was wet ground under the cable where it drooped down to within three feet of the ground near the steps used to gain access to the plant, and the cable was energized at the time the inspector saw it.

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The inspector issued S&S Citation No. 3058100 and cited the respondent for a violation of 30 C.F.R. § 56.12030 which states in its entirety:

When a potentially dangerous condition is found
it shall be corrected before equipment or wiring
is energized.

The inspector felt that because of the wet conditions under the cable where it drooped down within three feet of the ground and that people did travel in this area, the fact that the outer insulation was missing in places was a potentially dangerous condition. I saw the cable in question at the hearing and I agree that it is a potentially dangerous condition and is therefore a violation of the cited standard.

I disagree however, that this violation is a "significant and substantial one.

A "significant and substantial" violation is described in section 104(d)(1) of the Mine Act as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 C.F.R. § 814(d)(1). A violation is properly designated significant and substantial "if, based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard--that is, a measure of danger to safety- contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129, (1985) the Commission stated further as follows:

We have explained further that the third element of the Mathies formula 'requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury.' U.S. Steel Mining Co., 6 FMSHRC 1834, 1836, (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574-75 (July 1984).

The facts of this case are to the effect that the interior insulation on all the individual wires was still intact and in good condition at the time of the inspector's visit. It was the outer jacket or the double insulation which was in a deteriorated condition.

The potential hazard involved is electrical shock, but the only way for a person to actually receive such a shock would be for him to come into contact directly with one or more of the bare wires, or if there is sufficient "leakage" through the first layer of insulation. The testimony was that the first layer of insulation was in good condition and I likewise observed it to be so at the hearing. That negates any possibility of a person actually touching a bare wire and receiving an electrical shock. The other possibility simply fails of proof. The inspector testified at (Tr. 27):

Q. Is there any danger of electrical shock by touching a wire like this with the insulation in this condition?

A. The -- it depends on how good the insulation is. I'm not an electrician and I don't have the instruments to tell me how much leakage there is through that, and that would be the only way I could determine if there's a shock potential there, or how much of a shock potential is by putting a meter on it, and actually measuring the voltage.

Therefore, I find and conclude that the record in this case establishes a nonsignificant and substantial violation of the cited regulation and I further conclude that a civil penalty of \$20 is appropriate.

Conclusions of Law

1. The Commission has jurisdiction to decide this case.

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2. Respondent violated the mandatory safety standard published at 30 C.F.R. § 56.12030 as alleged in Citation No. 3058100.

3. The violation was not "significant and substantial" within the meaning of the Act.

4. The appropriate penalty for the violation is \$20.

ORDER

Citation No. 3058100 is affirmed as nonsignificant and substantial and the respondent IS ORDERED to pay a civil penalty of \$20 to the Secretary within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge

Distribution:

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