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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. WEST 88-6-M
A.C. No. 05-00571-05501 R83

v.

London Mine

J.S. REDPATH CORPORATION,
RESPONDENT

DECISION

Appearances: James H. Barkley, Esq., Office of the Solicitor,
U.S. Department of Labor, Denver, Colorado, for Petitioner;
Patrick J. Dougherty, Senior Mining Engineer, J.S. Redpath
Corporation, Mesa, Arizona, for Respondent.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and
Health Administration (MSHA), charges respondent, J.S. Redpath
Corporation, with violating a safety regulation 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 on the merits was held
in Phoenix, Arizona on May 17, 1988.

The parties waived their right to file post-trial briefs and
submitted the case on oral argument.

Jurisdiction

J.S. Redpath Corporation is a subcontractor providing a
service for a mine owner. In turn, the mine owner produces a
mineral product (Tr 24-26).

The foregoing facts establish jurisdiction.

Summary of the Case

Citation 2639288 charges respondent with violating 30 C.F.R.
57.15004, which provides as follows

57.15004 Eye Protection

All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.

The alleged violative condition, as modified, was described as follows:

(2) Employees was not wearing safety glasses prior to commencing rock bolting underground. A eye injury could exist without protecting the employee's eyes with suitable protective devices.

(Exhibit P3)

Summary of the Evidence

On June 23, 1987 federal mine inspector Ronald Simpson inspected a mine facility operated by Cobb Resources Corporation (Tr. 6-8). Employees of J.S. Redpath were doing development work in driving drifts and raises (Tr. 8). When the inspector came on the working area the man had just stopped drilling. The inspector was the last one to reach the end of the drift. Upon checking, he asked if they were using eye protection. They replied it was foggy and hard to see. At least one of the miners had safety glasses but he wasn't wearing them (Tr. 10, 11, 18 and 21). The driller didn't have any glasses on his person. The inspector left the area when the helper gave him his glasses (Tr. 11).

Failure to provide eye protection can cause permanent eye damage including loss of sight (Tr. 12, 14). The inspector presented evidence for eye injuries incurred on a nationwide basis since 1981 (Tr. 15-17, Ex. P1).

The workers did not acknowledge that they had drilled without glasses. The miner actually doing the drilling stated he had taken the glasses off because of the foggy conditions (Tr. 22, 23). The foggy conditions could have been definitely helped with use of the ventilation bag (Tr. 23).

When he talked to the driller, the driller's helper pulled a pair of glasses out of his pocket and gave them to the driller.

Harold Roy Walker, a retired superintendent, testified for Redpath. He indicated that as the inspection party approached miners Sullivan and Herrera, the men took their glasses off. Sullivan put his glasses inside his hard hat. Herrera put his in his pocket (Tr. 27, 28). The inspector came in, quizzed the men about the glasses, and the two miners exchanged their glasses (Tr. 28). The inspector did not observe the two miners in the act of drilling (Tr. 29-30).

Mr. Walker, who has a hearing impairment, observed Herrera and Sullivan switch glasses (Tr. 36-39).

Patrick John Dougherty, a senior mining engineer for Redpath, testified that the company stresses a nonadversarial relationship with regulatory agencies. Arguments with inspectors are avoided (Tr. 45).

Witness Dougherty was not present on the day of the inspection (Tr. 47).

Discussion and Evaluation

A credibility issue is presented here as to whether the miners were wearing safety glasses. On this issue I credit the testimony of Redpath's witness Walker. He was the first to arrive at the point where the drilling was taking place. The inspector agrees he arrived after the drilling had stopped. The foggy conditions in the draft merely confirmed why the miners removed their glasses when they finished drilling.

In addition, the violative practice described by the inspector in his citation does not constitute a violation of 57.15004. The violative condition is that the employees were not wearing safety glasses prior to commencing rock bolting. The regulation requires eye protection where a hazard exists, not prior thereto.

ORDER

Based on the foregoing findings of fact and conclusions of law I hereby enter the following order:

Citation No. 2639288 and all penalties therefor are vacated.

John J. Morris
Administrative Law Judge