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SOL (MSHA) V. MOLTAN
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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. SE 88-54-M
A.C. No. 40-02968-05501

v.

Moltan Company Mine

MOLTAN COMPANY,
RESPONDENT

DECISION

Appearances: G. Elaine Smith, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
Edward J. Lucas, Plant Superintendent, Moltan
Plant, Middleton, Tennessee, for the Respondent.

Before: Judge Maurer

The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges the respondent with violating safety regulations promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., hereinafter the "Act".

Pursuant to notice, a hearing on the merits was held on November 18, 1988, at Jackson, Tennessee.

The parties stipulated that the Moltan Company was subject to regulations promulgated under the authority of the Act and that this Commission and this Administrative Law Judge have jurisdiction to hear and decide this case. They further stipulated that payment of the penalties assessed in this proceeding would not adversely affect the operator's ability to continue in business.

This non-S&S citation charges the respondent with a violation of the mandatory standard found at 30 C.F.R. 56.14001(FOOTNOTE 1) for the following alleged condition:

The head pulley pinch points are not guarded on the inclined belt conveyor that feeds the shuttle belt conveyor in the clay shed. The exposed pinch point is approximately one foot to the right of and approximately one foot to the rear of the conveyor's drive motor electrical disconnect cabinet. The pinch point is approximately forty-eight inches above the plane of the walkway alongside the conveyor.

MSHA Inspector Don B. Craig issued this citation on March 9, 1988, when he observed the above-referenced pinch point unguarded, even though he deemed it unlikely that any employee would get into this pinch point. He clarified this somewhat by stating that it may be contacted by a person, but it's just unlikely that it would be.

The plant superintendent, Mr. Lucas, testified that this inclined belt is only operated in daylight hours and in fair weather. This is significant in that because of the fair weather only operation and the way the transfer point is designed, there is no clay buildup on the belt which can be deposited on the head pulley which would in turn require cleaning of the head pulley.

Mr. Lucas further testified that in an effort to see what position a man would have to get into in order to reach that pinch point, he found that a man would have to either reach in and back behind his back with his right arm, or use his left hand and reach in through and around a corner through the structure to get to the pinch point itself---but he would have to squat down to do it.

On cross-examination, Mr. Lucas reiterated that in the seven years he has been at the plant, this head pulley has never required cleaning. Further, any maintenance that would be required on the head pulley would require that the unit be shut down and locked out. He flatly stated that there would be no maintenance that you could perform on the head pulley with it in operation.

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In summary, Mr. Lucas acknowledges that this pinch point was not guarded with a "guard", but was guarded nonetheless by its location. He contends that there was no violation due to the fact that it could not reasonably be contacted by accident or inadvertence. I agree and this citation will be vacated.

Citation No. 3252464

This non-S&S citation charges the respondent with a violation of the mandatory standard found in 30 C.F.R. 56.20003(a)(FOOTNOTE 2) for the following alleged condition:

The walkway alongside the shuttle conveyor in the clay shed building is cluttered with channel iron, angle iron, wood boards, bars, grease containers and clay spillage. This condition is a slip and fall hazard to employees using the walkway.

Inspector Craig issued this citation on March 9, 1988, when he observed clutter in the walkway alongside the shuttle conveyor in the clay shed. This clutter consisted of angle iron, wood, grease containers, etc., and was in the opinion of the inspector a slip and fall hazard. This walkway was the only access to that belt and was the only walkway alongside the belt conveyor.

Mr. Lucas testified that the clutter was the result of maintenance personnel who had been working in the area failing to clean-up after recent repairs. He admits, however, that the materials were on the walkway. He disagrees that they constituted a tripping hazard or a violation.

I don't have any trouble finding that a "walkway" is synonymous with the "passageway" cited in the pertinent section of the regulations and that the condition observed by the inspector on this occasion is a violation of that regulation. Therefore, Citation No. 3252464 will be affirmed and a civil penalty of \$20 assessed, as proposed by the Secretary.

Citation No. 3252465

This non-S&S citation charges the respondent with a violation of the mandatory standard found at 30 C.F.R. 56.12030(FOOTNOTE 3) for the following alleged condition:

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The 480 volt, 3 phase Cutler-Hammer starter cabinet for the primary clay shredder has a defective operating handle safety mechanism. The defective mechanism allows the cabinet doors to be opened while the starter is energized and the operating handle is in the on position. Reportedly this cabinet is never entered by anyone except an electrician.

Inspector Craig issued this citation on March 9, 1988, when he found that the safety handle on this cabinet did not trip the power when the cabinet door was opened, as it was designed to do. The regulation requires that when a potentially dangerous condition is found, it shall be corrected before the equipment is energized. In the opinion of the inspector, the inoperative safety device had the potential to make the cabinet dangerous and that is why he wrote the citation.

The inspector spoke to both the superintendent and the plant engineer to satisfy himself that the cabinet was entered by electricians only, but what he specifically was citing here was the fact that the cabinet could be opened by anyone without it being de-energized.

I find that this malfunctioning latch should have been found by the operator and repaired and the failure of the respondent to do so constitutes a violation of the cited regulation. Before the inspector left the property on March 11, the safety mechanism was repaired and tested and found to be functioning normally. This meant that the cabinet could not be opened unless the operating handle was placed in the off position, de-energizing the cabinet. Citation No. 3252465 will be affirmed and a civil penalty of \$20 assessed, as proposed by the Secretary.

Citation No. 3252468

This non-S&S citation charges the respondent with a violation of the mandatory standard found at 30 C.F.R. 56.4603(b)(FOOTNOTE 4) for the following alleged condition:

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The oxygen cylinder containing approximately 800 pounds pressure and the acetylene cylinder containing approximately 50 pounds pressure was found unattended in the clay shed building. The cylinder valves were open and the hoses were spread out across the floor where maintenance personnel had been performing repairs before going to lunch.

Inspector Craig issued this citation on March 9, 1988, when he observed an oxygen cylinder and an acetylene cylinder with the pressure gauges, regulating gauges, valves and hoses hooked up to the cylinders with the cylinder valves in the open position and no one in attendance. The employees using this equipment had gone to lunch.

The respondent attempts to defend here by arguing that the front end loader operator was in the general area and he was, in effect, "attending" the cylinders. The inspector didn't think too much of this defense and neither do I. Just because he was in the same building with the cylinders does not equate to being in "attendance". Those employees who had been working with those cylinders were not in the area and the inspector did not observe any other employees in the immediate area that could conceivably be responsible for those cylinders. Accordingly, I find and conclude that the cited standard was indeed violated as alleged and Citation No. 3252468 will be affirmed. A civil penalty of \$20 will also be assessed, as proposed by the Secretary.

Citation No. 3252469

This non-S&S citation charges the respondent with a violation of the mandatory standard found at 30 C.F.R. 56.11012(FOOTNOTE 5) for the following alleged condition:

Two sections of mid-rail are missing from the handrail on the number two mill scrubber fan platform. This condition could allow an employee to fall through the openings to the ground level which is approximately twenty feet below. The openings are approximately five feet long and approximately thirty-six inches high on each.

Inspector Craig issued this citation on March 9, 1988, when he found the midrails missing on the number 2 mill scrubber platform handrail. This left two openings, each approximately 30 inches high by 5 feet long on both sides of a corner post on this platform. In the opinion of the inspector, these openings were such that a person could have fallen through. The area is depicted on Respondent's Exhibit Nos. 4 and 5, photographs of the No. 2 mill fan work platform as the respondent calls it. The openings described were caused by the removal of a midrail for maintenance. There was a top rail and a toeboard in place at the time the citation was written, but the inspector believed that the openings were still such that an employee could have fallen through to the ground level, approximately twenty feet below.

The respondent contends that the area cited was not a travelway, but in fact, was a "work platform". I find this to be a matter of semantics; a distinction without a difference, and I conclude that the Secretary has met her burden of proof concerning this citation and violation. Accordingly, the citation will be affirmed and a civil penalty of \$20 assessed, as proposed by the Secretary.

Citation No. 3252470

This non-S&S citation charges the respondent with a violation of the mandatory safety standard found at 30 C.F.R. 56.20003(a) for the following alleged condition:

The walkway at the number two mill scrubber platform is cluttered with angle iron, channel iron and grease containers. This condition is a trip and fall hazard compounded by the fact that the ground level is approximately twenty feet below.

Inspector Craig issued this citation on March 9, 1988, when he observed angle iron, channel iron and grease containers laying on the walkway in the same area cited above for the missing midrail. In fact, the inspector testified that this angle iron was the missing midrail. It was also a slip, trip and fall hazard. This walkway was, as stated previously, approximately twenty feet above a concrete floor area. A slip, trip and fall through that opening would mean that a person could fall twenty feet to a concrete floor.

I find and conclude that the violation of the cited standard is established. Citation No. 3252470 will be affirmed and a civil penalty of \$20 assessed, as proposed by the Secretary.

Citation Nos. 3252472 and 3252474

These two non-S&S citations charge that the respondent violated the mandatory safety standard found at 30 C.F.R. 56.11012 at two different locations at its facility. The citations are for all practical purposes identical except for their location. Citation No. 3252472 refers to the Number 2 mill building, while Citation No. 3252474 refers to the Number 1 mill building. The common allegation is that:

Two irregular shaped openings appear beside the walkway on the elevated platforms in the two mill buildings. One opening is between the stair step first handrail post and the structures diagonally installed brace member. This opening is in the shape of a triangle and is approximately thirty-six inches high and approximately thirty-six inches long. The opening to the right of the structure brace is also in the shape of a triangle and is approximately the same size. The openings are approximately twenty-five feet above the concrete floor below.

Inspector Craig issued these citations on March 9-10, 1988, when he found the two elevated walkways without a handrail, approximately twenty-five feet above a concrete floor. The area is depicted in photographs marked and received into evidence as Respondent's Exhibit Nos. 6 and 7.

It is clear from the pictures and the testimony that although there was no handrail or midrail installed at the time the citation was written, there was a connecting brace bisecting the opening at these locations which formed two triangles of open space with maximum dimensions of 36 inches on each side, tapering down to zero at the point of intersection with the walkway.

The plant superintendent agreed with the inspector that it was unlikely that anyone would fall through these openings. I agree, and although I believe the current installation is superior and safer than the one cited, I also believe the cited condition was not in violation of the standard. I find the bisecting brace was in substantial compliance with the mandatory standard and was a sufficient railing/barrier. Therefore, Citation Nos. 3252472 and 3252474 will be vacated.

Citation Nos. 3252475 and 3252476

These two non-S&S citations charge that the respondent violated the mandatory safety standard found at 30 C.F.R. 56.14001 at two different pump installations at their facility. The citations are identical in all respects except No. 3252475 refers to the No. 1 or South water pump and No. 3252476 refers to the No. 2 or North water pump. The common allegation is that:

The shaft flanges containing bolt heads on each side of the rubber centered "Dodge" brand coupling between the motors and the water pumps are not provided with a guard. The coupling is approximately ten inches in diameter and the shaft center line is approximately twelve inches above the motor/pump mounting frame. Employees service this pump by removing the lubricant sight gauge and adding lubricant while the motor is in operation. While doing so, their hands are within approximately twelve inches of the moving parts.

Inspector Craig issued these citations on March 10, 1988, when he observed that the Dodge couplings between the motor and the pump shaft were not guarded on either the No. 1 or No. 2 water pump. He testified that there were bolt heads or cap screws projecting from the flanges on each side of the coupling that somebody could come into contact with and incur a disabling injury. He believed it was a significant and substantial violation because he thought it was reasonably likely to occur and if someone came into contact with this moving part, the injury resulting could be permanently disabling.

Mr. Lucas, on behalf of the operator, argues that the pump, motor and coupling were all purchased as a unit from a single manufacturer and it (the assembly) came from the manufacturer without a guard. Furthermore, he states that the Dodge coupling is one of the safest couplings made and it doesn't need a guard.

Mr. Lucas does not deny that the condition exists, but rather asserts that it has always been that way, a guard has not previously been required, the manufacturer makes it that way, it is a safe coupling and such a guard is not needed. However, with regard to the fact of violation, I credit the inspector's expertise on the issue of whether a guard would enhance the safety of this pump assembly.

Conversely, with regard to the special finding of "significant and substantial", I find in favor of the respondent that the likelihood of an injury resulting from this violation is so remote as to be "unlikely" as opposed to "reasonably likely". Therefore, Citation Nos. 3252475 and 3252476 will be affirmed as non-S&S citations only and a civil penalty of \$20 for each one assessed.

ORDER

1. Citation Nos. 3252463, 3252472 and 3252474 ARE VACATED.

2. Citation Nos. 3252464, 3252465, 3252468, 3252469, 3252470, 3252475 and 3252476 ARE AFFIRMED.

3. The operator is ordered to pay a civil penalty of \$140 within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge

AA

FOOTNOTES START HERE

~FOOTNOTE_ONE

1. 30 C.F.R. 56.14001 provides as follows:

"Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded."

~FOOTNOTE_TWO

2. 30 C.F.R. 56.20003(a) provides as follows:

At all mining operations -- (a) Workplaces, passageways, storerooms, and service rooms shall be kept clean and orderly.

~FOOTNOTE_THREE

3. 30 C.F.R. 56.12030 provides as follows:

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

~FOOTNOTE_FOUR

4. 30 C.F.R. 56.4603(b) provides as follows:

"To prevent accidental release of gases from hoses and torches attached to oxygen and acetylene cylinders or to manifold systems, cylinder or manifold system valves shall be closed when

* * * * *

(b) The torch and hoses are left unattended."

~FOOTNOTE_FIVE

5. 30 C.F.R. 56.11012 provides as follows:

"Openings above, below, or near travelways through which persons or materials may fall shall be protected by railings, barriers, or covers. Where it is impractical to install such protective devices, adequate warning signals shall be installed."

