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SOL (MSHA) V. MEDUSA CEMENT CO-CIV/ MEDUSDA CORP
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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 89-109-M A.C. No. 09-00053-05522
v.	Clinchfield Mine
MEDUSA CEMENT COMPANY-DIV/ MEDUSA CORPORATION, RESPONDENT	

DECISION

Appearances: Michael T. Hagan, Esq., Office of the Solicitor, U.S. Department of Labor, Atlanta, Georgia, for the Petitioner;
Tom W. Daniel, Esq., Hulbert, Daniel & Lawson, Perry, Georgia, for the Respondent.

Before: Judge Maurer

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of $126 for an alleged violation of the mandatory safety standard found at 30 C.F.R. 56.14211(d).

Pursuant to notice, a hearing was held in Macon, Georgia on September 26, 1989, and post-hearing briefs with proposed findings have been filed by both parties, which I have considered along with the entire record in making this decision.

STIPULATIONS

The parties stipulated to the following, which I accepted at the hearing:

1. Medusa Corporation is the owner and operator of the subject mine, and subject to the Federal Mine Safety & Health Act of 1977; 30 U.S.C. 801, et seq.

2. The Federal Mine Safety and Health Review Commission has jurisdiction in this case.

3. The inspector who issued the subject citation was a duly authorized representative of the Secretary and a true and correct copy of the subject citation was properly served on respondent.

4. Imposition of a penalty will not affect the operator's ability to continue in business.

5. The alleged violations were abated in good faith.

6. The operator's history of prior violations, as shown on the computer printout (Secretary's Exhibit 1) is correct; and the operator's size is large.

7. If a violation of the standard exists as cited, the proposed penalty of $126 is a reasonable penalty.

8. The Lorain mobile crane had a "mechanical pawl locking device" in good working order and hydraulic check valves in place on both hydraulic lifting cylinders at the time of the inspection.

DISCUSSION AND FINDINGS

Pursuant to a telephone safety complaint, MSHA Inspector Grabner conducted an inspection of the respondent's facility on February 15, 1989, and as a result issued three citations, only one of which is contested herein.

Citation No. 2857907, issued on February 15, 1989, alleges as follows:

> The Lorain Mobile Crane Model No. LRT-40 U, Serial No. 36706 was being used to raise, and lower men in a work platform which was attached to swivel hook load wire rope. No provision was provided to prevent free and uncontrolled descent of the work platform.

The citation charges a violation of 30 C.F.R. 56.14211(d) which provides:

> Under this section, a raised component of mobile equipment is considered to be blocked or mechanically secured if provided with a functional load-locking device or a device which prevents free and uncontrolled descent.

The inspector determined that there were adequate functional load-locking devices on the crane, but not on the work platform itself. He testified that there were no devices to prevent free and uncontrolled descent of the work

platform in certain foreseeable situations. He opined that the wire rope could snap if it were inadvertently drawn up to the top of the crane's extendable boom, in which event the ball and hook attached to the end of the wire rope would run into the shieve wheel on the end of the boom, and likely separate.

If that occurred, the work platform and everybody on it would plummet to earth. There would obviously be serious injuries likely to result if the work platform was more than 15-20 feet above ground level when and if this occurred.

As a matter of fact, a scenario very much like this did occur on February 10, 1989, when two of the respondent's employees were working approximately thirty feet up in the air with the work platform attached to the crane by the wire rope and swivel hook, in the pre-abatement configuration.

The two employees testified at the hearing. They related a harrowing tale that the crane's extendable boom started to go out on its own, apparently uncontrollable by the operator. They went from about 30 feet above the ground to approximately 60 feet up in the air before the boom stopped. Most importantly, as the boom extends out, the wire rope shortens up relative to the end of the boom. By the time they stopped, the ball and hook arrangement on the end of the wire rope was only a couple feet away from the end of the boom and the shieve wheel located there. Mr. Hair opined that the wire rope supporting the work platform would have snapped if the ball and hook had dead-headed against the shieve. Of course, had this happened the two employees would have fallen some sixty feet to the ground.

The work platform is the raised component of mobile equipment spoken to in the cited regulation, the crane being the mobile equipment. The work platform itself must be provided with a functional load-locking device or a device to prevent free and uncontrolled descent to comply with the standard. It was not, and therefore a violation exists. Furthermore, I find that it is a "significant and substantial" violation. Mathies Coal Co., 6 FMSHRC 1, 3, 4 (January 1984)

Based on the entire record, I further conclude that the violation was serious and was caused by a moderate degree of negligence. Additionally, under the criteria in section 110(i) of the Act, I find an appropriate penalty for the violation is $126, as originally proposed.

ORDER

Accordingly, it is ORDERED that Citation No. 2857907 IS AFFIRMED.

It is further ORDERED that the operator pay $126 within 30 days from the date of this decision as a civil penalty for the violation found herein.

Roy J. Maurer
Administrative Law Judge