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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 89-51-M
A. C. No. 40-02968-05502

v.

Moltan Company

MOLTAN COMPANY,
RESPONDENT

DECISION

Appearances: William F. Taylor, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, TN
for the Petitioner;
Mr. Edward J. Lucas, Plant Superintendent,
Moltan Company, Middleton, KY, for the Respondent.

Before: Judge Fauver

This civil penalty case was brought by the Secretary of
Labor under 110(a) of the Federal Mine Safety and Health Act of
1977, 30 U.S.C. 801 et seq.

Having considered the hearing evidence and the record as a
whole, I find that a preponderance of the substantial, reliable,
and probative evidence establishes the following Findings of Fact
and further findings in the Discussion below:

FINDINGS OF FACT

1. MSHA Inspector Craig holds an electrical certification
issued by the Commonwealth of Kentucky and he has maintained such
certification to the present.

2. Inspector Craig inspected Respondent's Molton mine, in
Hardeman County, Tennessee, on March 9 and 10, 1988.

3. On March 10, 1988, Inspector Craig issued Citation No.
3252473, alleging the following conditions: "The number one
cooler control electrical cabinet's three circuit breakers and
six starter relays can only be operated and/or reset by opening

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the cabinet door and reaching inside the cabinet. Employee's [sic] thus expose themselves to the bare 480 volt terminals and conductor ends inside the cabinet. This area of the plant is monitored and operated by the number one kiln operator employee."

4. The inspector's attention was drawn to the electrical cabinet because he observed that someone had left the cabinet door open.

5. The electrical cabinet door was not equipped with a standard safety latch or disconnecting mechanism that would automatically deenergize the electrical components within the cabinet when the cabinet door was opened.

6. In the event of a motor shut down, the kiln operator would open and reach into the electrical cabinet to reset the motor starter operating controls (relays), thereby placing himself in danger of electric shock because of the close proximity to energized conductors and terminals carrying 480 volts of electrical power.

7. In the citation, Inspector Craig designated the alleged violation "S & S" ("significant and substantial"). Later his supervisor ordered him to change it to a "non-S & S" violation, in an effort to avoid litigation. Inspector Craig did not agree with this change, but modified the citation as directed. The supervisor later ordered the citation to be modified to restore the original allegation of an "S & S" violation.

DISCUSSION WITH FURTHER FINDINGS

The citation alleges a violation of 30 C.F.R. 56.12040, which provides:

Operating controls shall be installed so that they can be operated without danger of contact with energized conductors.

This case raises two issues: (1) were the motor starter controls inside the cabinet "operating controls" within the meaning of 56.12040? (2) If there was a violation, was it "significant and substantial" as found by the inspector?

I find that the motor starter controls were an essential part of the motor operating controls and therefore are covered by the safety standard. The motors could not be operated unless the reset buttons were in the on position, and if they were pushed out to the disconnect (or off) position by a motor overload, the kiln operator had the job of resetting them in order to restart the motor.

The inspector, an electrician with long mining and enforcement experience, testified that a motor overload in the systems controlled by the electrical cabinet could occur at any time and might occur as often as daily or several times a day. Respondent's only witness was a former kiln operator, a member of management at the time of the hearing, who had worked as a kiln operator about two years before the citation. He testified that at that time he had reset the motor starter controls about once or twice a year. He did not know the experience of other shifts. The kiln operated three shifts a day, seven days a week. This witness was not an electrician.

I credit Inspector Craig's expert opinion testimony that the motors could overheat and require resetting inside the cabinet at any time, and perhaps even several times a day. I also credit his expert opinion of the danger involved in reaching inside the cabinet where live wires and conductors were exposed.

It was a violation of the safety standard to have exposed live wires and terminals in the cabinet near the reset buttons for the motor circuits.

The reliable evidence amply sustains the inspector's finding that the violation was of a "significant and substantial" nature. Respondent's practice was reasonably likely to result in a fatal or other serious injury if not abated. When a miner reached into the cabinet, even slight inattention or a slight tumble or fall could result in death by electrocution.

Considering all the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$300 is appropriate for this violation.

CONCLUSIONS OF LAW

1. The judge has jurisdiction in this proceeding.
2. Respondent violated 30 C.F.R. 56.12040 as alleged in Citation No. 3252473.

ORDER

WHEREFORE IT IS ORDERED that:

1. Citation No. 3252473 is AFFIRMED.
2. Respondent shall pay the above penalty of \$300 within 30 days of this Decision.

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William Fauver
Administrative Law Judge