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MSHA V. BROWN BROTHERS SAND  
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION  
FALLS CHURCH, VA  
April 27, 1990

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	CIVIL PENALTY PROCEEDING  Docket No. SE 90-12-M A.C. No. 09-00265-05510  Junction City Mine
v.	
BROWN BROTHERS SAND COMPANY, Respondent	

DECISION

Appearances: Ken S. Welsch, Esq., Office of the Solicitor,  
U.S. DePartment of Labor, Atlanta, Georgia, for  
Petitioner; Mr. Carl Brown, Brown Brothers Sand  
Company, Howard, Georgia for Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging the Brown Brothers Sand Company (Brown Brothers) with one violation of the regulatory standard at 30 C.F.R. 56.14130(g) and proposing civil penalties of \$20 for the violation. The general issue before me is whether Brown Brothers violated the cited regulatory standard and, if so, the appropriate civil penalty to be assessed in accordance with Section 110(i) of the Act.

Citation No. 2856364 issued July 27, 1989 pursuant to Section 104(a) of the Act alleges a violation the mandatory standard at 30 C.F.R.

56.14130(g) and charges that "the loader operator was not wearing hi seat belt while operating his loader". The cited standard provides in relevant part that "seat belts shall be worn by the equipment operator".

The testimony of Inspector Albert Moats of the Department of Labor's Federal Mine Safety and Health Administration (MSHA) is not disputed in essential respects. According to Moats upon his inspection of the Brown Brothers Junction City Georgia operation on July 27, 1989, he observed a worker operating a front-end loader without his seat belt

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on. Moats testified that upon reporting to the mine office he then informed company President Carl Brown of this observation. Upon returning to the office several hours later Moats again saw the worker operating the loader without his seat belt on. Moats thereupon issue the citation at bar. He later terminated the citation after the loader was parked and he advised the operator of the necessity to wear his seat belt. Moats concluded that the violation was not serious because the loader was operating in a level area. He considered it unlikely that it would strike any other equipment or roll over. There is no contradictory evidence and I am therefore constrained to accept the testimony of Inspector Moats in this regard. Since Mr. Carl Brown was notified that one of his employee's was operating the front-end-loader without a seat belt and after several hours had still not corrected the condition, it is clear that Respondent is chargeable with negligence.

Counsel for the Government observed in closing argument that the son and grandson of Mr. Carl Brown actually run the subject business and have demonstrated that they are generally responsible supervisors. In addition counsel observed that no other seat belt violations have been observed at the subject mine. Accordingly it appears that Mr. Carl Brown's adamant position at hearing that he does not and will not require his employees to wear seat belts is his own personal and aberrant viewpoint not followed by the operating management. Government counsel further observed that in light of Mr. Brown's statements at hearing, MSHA would certainly be on notice in the future. Under the circumstances and considering the criteria under Section 110(i) of the Act, I accept the Secretary's proposed civil penalty of \$20.

ORDER

Citation No. 2856364 is affirmed and Brown Brothers Sand Company is hereby directed to pay a civil penalty of \$20 for the violation therein within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge

Distribution:

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