

CCASE:
SOL (MSHA) V. OTIS ELEVATOR
DDATE:
19900511
TTEXT:

~1155

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 89-427
A.C. No. 42-01944-03502 B70

v.

Cottonwood Mine

OTIS ELEVATOR COMPANY,
RESPONDENT

ORDER

This order addresses petitioner's motion to compel discovery on the grounds that respondent's responses to her requests were evasive, incomplete and unresponsive. Respondent has filed in opposition to petitioner's motion.

The issues presented are as follows:

I

Request for Admission No. 4: Please admit that said electrician Billy Syddall on or about February 9, 1989, was employed by Otis Elevator Company to test, maintain, repair and trouble shoot the elevator system located at the Cottonwood Mine, Emery County, Utah operated by Utah Power and Light Company.
Response: Respondent denies that Billy Syddall was an electrician. Respondent does not know what petitioner means by the term "employed" as it is used in this admission request. On February 8, 1989, Mr. Syddall found that unqualified persons including MSHA inspectors and mine electricians were operating the elevators in an unsafe manner. Respondent believes no elevator work was performed on February 9, 1989.

Discussion

In Request for Admission No. 1, Otis admitted that Billy Syddall was an "employee" of Otis but Otis now claims Syddall was not "employed" in the mine on February 9, 1989.

In view of these assertions Otis should either admit or deny request for admission No. 4.

~1156

The judge recognizes that the requests herein do not establish that Syddall was an "electrician". However, Otis' present response is inadequate.

Accordingly, petitioner's motion to compel is granted and respondent is ordered to answer Request for Admission No. 4 within 20 days of the date of this order.

II

Request for Admission No. 5: Please admit that on or about February 9, 1989, that said Billy Syddall, an employee of Otis Elevator Company, was not a "qualified person" as that term is defined at 30 C.F.R. 77.103. Response: Respond admits that Mr. Syddall does not carry a green mine electrician's card and nor has he taken any tests administered for mine electricians. Mr. Syddall is a highly qualified elevator mechanic and has completed all requirements to be a journeyman mechanic.

Discussion

The cited regulation, section 77.103, is an extensive regulation setting forth in what manner an individual can be a "qualified person."

The answer of respondent is not responsive. Respondent can either admit or deny that Billy Syddall is a qualified person. Since the request for admission refers to 30 C.F.R. 77.103, respondent can cite the particular portion of the regulation respondent relies on in support of its position.

In its response Otis states that petitioner's request No. 5 is improper because it calls for an admission of law and not fact. However, Rule 33, F.R.C.P., in many instances has allowed such interrogatories as they serve a useful purpose of narrowing the issues. Wright and Miller 2167.

Accordingly, petitioner's motion to compel is granted and respondent is ordered to answer request for admission No. 5 within 20 days of the date of this order.

III

Request for Production No. 2: Please produce for the period of February 9, 1988, to February 9, 1989, any and all service logs, work orders, time cards, repair and maintenance orders complied by Billy Syddall and performed at the Cottonwood Mine, Emery County, Utah operated by the Utah Power and Light Company on the elevator system at that mine.

Response: Respondent objects to this request on the grounds that it is ambiguous, overly broad, and seeks documents for a period of time which is not relevant to the issues in controversy. The only issue in this case concerns the events related in the citation. To the extent the request goes further it is in the nature of a fishing expedition. Beyond that, it seeks documents which may be the private property of Mr. Syddall.

Discussion

Citation No. 3416117 herein alleges electrician Billy Syddall was not qualified person. Further, his duties required testing and trouble shooting the elevator system. The citation was issued on February 9, 1989.

Petitioner's request of documents for a year prior to the date of the citation is reasonably calculated to lead to admissible evidence. The period of time for which the documents are sought is reasonable.

I am unable to see how service logs, work orders, time cards, repair and maintenance orders could be the private property of any employee.

The relevancy of the information sought is apparent. Namely, did an unqualified person perform duties at the mine. The records sought also seem to be normal records maintained in the course of any business involving a maintenance contract.

~1158

Otis states it is prepared to defend against allegations the regulation was violated on February 9, 1989, but it objects to the Secretary's "fishing expedition." As indicated above, the evidence sought may be relevant to establish a violation on February 9, 1989.

Accordingly, petitioner's motion to compel is granted and respondent is ordered to produce the documents requested in Request No. 2 within 20 days of the date of this order.

John J. Morris
Administrative Law Judge