

CCASE:  
SOL (MSHA) v. GFD CONSTRUCTION  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

GFD CONSTRUCTION CO., INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. SE 90-6-M  
A.C. No. 08-01046-05508

Green's Pit

DECISION

Appearances: William Lawson, Esq., Office of the Solicitor,  
U.S. Department of Labor, Birmingham, Alabama,  
for the Secretary of Labor (Secretary);  
Anthony Green, Sr., Owner, GFD Construction Co.,  
Pensacola, Florida, for GFD Construction (GFD).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for three alleged violations of mandatory health and safety standards by GFD. Pursuant to notice, the case was called for hearing in Pensacola, Florida, on November 27, 1990. Anthony Green was called as an adverse witness by the Secretary; Ralph Hawks and Lawrence Richardson testified on behalf of the Secretary; Anthony Green, Sr., testified on behalf of GFD. Both parties were given the opportunity to file post-hearing briefs. The Secretary filed such a brief. GFD did not. I have considered the entire record and the contentions of the parties and make the following decision.

FINDINGS OF FACT

I

GFD is the owner and operator of a masonry sand extraction operation in Pensacola, Florida, known as Green's Pit. The sand is separated from foreign material and trucked by GFD to home builders, the U.S. Naval Air Station, the State of Florida, Escambia County, Florida, the city of Pensacola and other purchasers. GFD has drills, pumps, a separator, front end loaders, drag lines and trucks. About 17 to 18 persons are

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employed by GFD. It has been in business in Pensacola for 19 years. It is a small operator.

## II

On July 11, 1989, MSHA cited GFD for failing to file a quarterly report for the first quarter of 1989. GFD had been cited on 3 prior occasions for the same violation. The citation was terminated the same day it was issued.

## III

On October 18, 1988, Federal Mine Inspector Lawrence Richardson conducted an inspection of Green's Pit. He found that the LK 600 Kobelco front-end loader had an inoperative reverse signal alarm. The loader was classified as heavy duty mobile equipment. Its wheel diameter was about 5 feet, the overall height was about 12 feet, and its length was over 25 feet. The vehicle had a rear motor protruding out approximately 8 feet which obstructed the operator's view to the ground at the rear of the vehicle. Inspector Richardson issued a 104(a) citation alleging a violation of 30 C.F.R. 56.9087 (now | 56.14132). No work activity was observed at the time, but two employees were proceeding to the dredge.

The citation was not issued in written form on the date the violation was observed, because Mr. Green ordered the inspector off the mine property. It was later served by mail. The citation was terminated July 11, 1989, after the back-up alarm had been repaired.

Mr. Green contended that the front-end loader was in the shop at Pensacola Ford Tractor, Inc. on October 18, 1988, and was not on the mine property. He submitted a repair estimate dated October 12, 1988, estimating repairs at \$7,231. I have carefully considered this evidence and the testimony of Mr. Green and Inspector Richardson. I find that the loader was at the mine on October 18, 1988, and did not have an operative back-up alarm.

## IV

On October 18, 1988, the automatic reverse signal alarm on the Kobelco LK 700 front-end loader was not operative. The LK 700 loader is larger than the LK 600. The operator of this machine also has obstructed vision to the rear. The citation was terminated July 11, 1989, after the back-up alarm had been repaired.

## V

GFD had five prior violations of the regulation requiring back-up alarms between March 1978 and October 1988. When the

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cited equipment was purchased by GFD, they did not have back-up alarms; GFD had them installed. The machines cost over \$100,000 each; the back-up alarms cost about \$30 each. Because of the nature of GFD's operation, the wires to the back-up alarms are frequently cut and have to be repaired.

#### REGULATIONS

30 C.F.R. 50.30(a) provides in part as follows:

Each operator of a mine in which an individual worked during any day of a calendar quarter shall complete a MSHA Form 7000-2 . . . and submit the original . . . .

30 C.F.R. 9087 provides as follows:

Heavy duty mobile equipment shall be provided with audible warning devices. When the operator of such equipment has an obstructed view to the rear, the equipment shall have either an automatic reverse signal alarm which is audible above the surrounding noise level or an observer to signal when it is safe to back up.

#### ISSUES

1. Whether the cited violations were established by a preponderance of the evidence?
2. If so, what are the appropriate penalties?

#### CONCLUSIONS OF LAW

##### I

GFD is subject to the provisions of the Mine Act in the operation of Green's Pit, and I have jurisdiction over the parties and subject matter of this proceeding. Green's Pit is a mine; it produces and sells a mineral, masonry sand, to private business entities, and to local, state and Federal government agencies. Its equipment or some of it, was manufactured in other states and foreign countries. Its business affects interstate commerce.

##### II

There is no dispute concerning the violation of 30 C.F.R. 50.30(a). A quarterly report was not timely filed. The violation was not serious, but resulted from GFD's negligence. I conclude that \$50 is an appropriate penalty for the violation.

III

The two violations cited for inoperative front-end loaders were established by a preponderance of the evidence. They were moderately serious, and resulted from GFD's ordinary negligence. There is no evidence concerning the abatement of the violations. The fact that Mr. Green ordered the inspector off his property was presumably the subject of another citation (and a criminal proceeding in the Federal District Court), and is no part of this case. I conclude that a penalty of \$300 is appropriate for each of these violations.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Citations 2856056, 2856057 and 3429647 are AFFIRMED.
2. Respondent GFD Construction Company shall, within 30 days of the date of this order, pay to the Secretary, the sum of \$650 for the violations found herein.

James A. Broderick  
Administrative Law Judge