CCASE:
SOL (MSHA) v. DON FRAZE & RANDEE LANHAM
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
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Falls Church, Virginia 22041

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER v. DON FRAZE, EMPLOYED BY LITER'S QUARRY OF INDIANA, INCORPORATED, RESPONDENT	CIVIL PENALTY PROCEEDING Docket No. LAKE 91-63-M A.C. No. 12-00004-05530-A Atkins Plant
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER v. RANDEE LANHAM, EMPLOYED BY LITER'S QUARRY OF INDIANA INCORPORATED, RESPONDENT	CIVIL PENALTY PROCEEDING Docket No. LAKE 91-73-M A.C. No. 12-00004-05529-A Atkins Plant

DECISION

Appearances: Robert Cohen, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for the Petitioner;
Robert Liter, Liter's Quarry, Inc., Louisville, Kentucky, on behalf of the Respondents.

Before: Judge Melick

These consolidated cases are before me upon the petitions for civil penalties filed by the Secretary, pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging Don Fraze and Randee Lanham, as agents of a corporate mine operator, Liter's Quarry of Indiana, Inc., (Liter's Quarry) with knowingly authorizing, ordering, or carrying out a violation of the mandatory safety

standard at 30 C.F.R. 56.11001 by the named mine operator. (Footnote 1) A motion for settlement filed in these proceedings on June 5, 1991, was denied by order issued the same date and the cases proceeded to trial as scheduled on June 12, 1991.

At hearing, Robert Liter, the Respondents representative acknowledged that the alleged violative condition existed as charged. Moreover, it has never been denied that both Respondents were agents of the named mine operator, knew of the existence of the cited condition and knowingly authorized and ordered that condition. Liter argued only that the corporate operator had already paid a penalty of $800 for the violation and that it was an improper interference into the operator's management function to also subject its former employees to additional civil penalties. In essence, this argument is against the enacted statutory provisions of section 110(c) and, as such, can be redressed only through the legislative process. Regardless of the merits, vel non, of the argument, I am bound in this proceeding to follow the statutory provisions of section 110(c).

The violative condition is described in the underlying citation as follows:

> A safe means of access was not provided for travel around the primary crusher or travel to its booth. The floor covering for the V-belt drive & counter balance of the jaw crusher was not in place with the crusher in operation. Two employees were observed traveling from the crusher booth back to their pit haul units without the flooring in place. On the way back to the trucks they passed within about 2-1/2 foot of this opening on the counter balance side. Reportedly the crusher had been used two shifts without the flooring in place. The drop off by the crusher was about 12 ft. deep. Also the two steps leading from the outside to the booth area sloped toward these openings and were covered with spilled rock & dust.

According to the undisputed testimony of MSHA Inspector Jerry Spruce, the absence of floor boards and guard rails along the walkway over an opening in the crusher, created an "imminent danger" of fatal injuries to miners. In addition, it is undisputed that both Respondents had authorized and ordered that the cited floorboards and railings remain removed while miners proceeded along a narrow passageway adjacent to an opening into the crusher below ostensibly for easier observation and adjustment of newly replaced bearings in the crusher unit. No evidence has been presented that either Respondent has any history of violations under the Act or regarding their ability to pay civil penalties. Under the circumstances, and considering the seriousness of the violation and the egregious negligence involved, I find the Secretary's proposed penalties to be appropriate. The penalty against Lanham is greater inasmuch as he had supervisory authority, as general manager, over Fraze and directed Fraze to continue operations without the floorboards and guardrails.

ORDER

I find that Don Fraze and Randee Lanham acting as agents of the corporate mine operator, Liter's Quarry of Indiana, Incorporated, knowingly authorized, ordered, or carried out a violation of the mandatory safety standard at 30 C.F.R. 56.11001 on March 26, 1990, and they are directed to pay civil penalties of $500 and $600, respectively, for the aforesaid violations within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

1. Section 110(c) of the Act reads as follows:

"Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under section (a) or section 105(c), any director, officer, or agent of such corporate who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsection (a) and (d)."