CCASE:
MSHA V. ROBERT SHICK
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. LAKE 91-64-M
Petitioner	:	A. C. No. 12-01550-05509A
	:	
v.	:	Shick Sand & Gravel Mine
	:	
ROBERT SHICK, employed by	:	
MUNCIE SAND & GRAVEL, INC.,	:	
Respondent	:	

DECISION

Appearances: J. Philip Smith, Esq., Arlington, VA, for Petitioner; Mr. Robert Shick, Muncie, Indiana, Respondent.

Before: Judge Fauver

This is a petition for civil penalty under 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., charging Robert Shick, as an agent of a corporate mine operator, with knowingly authorizing, ordering or carrying out a violation by the mine operator.

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. At all material times, Muncie Sand and Gravel, Inc., a corporation, operated an open pit mine, known as Shick Sand and Gravel Mine, in Delaware County, Indiana, where it produced sand and gravel for use and sales in or substantially affecting interstate commerce.

2. At all material times, Respondent, Robert Shick was Superintendent of the mine.

3. On March 28, 1990, a federal mine inspector (of MSHA, United States Department of Labor) found an imminent danger at the mine in that a Caterpillar 966 front-end loader did not have operable service brakes, and was used to load customers' trucks and to travel on inclined haulage roads into and out of the pit. The inspector issued 107(a) Order No. 3441750, charging a violation of 30 C.F.R. 56.14101(a)(1), which provides:

> Self-propelled mobile equipment shall be equipped with a service brake system capable of stopping and holding the equipment with its typical load on the maximum grade it travels. This standard does not apply to equipment which is not originally equipped with brakes unless the manner in which the equipment is being operated requires the use of brakes for safe operation. This standard does not apply to rail equipment.

4. Before this inspection, the equipment operator told Respondent, the mine Superintendent, that the brakes were defective. However, Respondent ignored the request for repairs, and told the operator to continue operating the equipment, knowing that the only way he could try to stop the vehicle was by dropping its loading bucket. The gist of his response to the operator was that management would get around to the repairs later, but there was no hurry because the MSHA inspector would probably not visit the mine for two or three months.

5. In a safety test, the inspector found that the vehicle could not be stopped by its brakes. Dropping the bucket to try to stop a front-end loader is not a safe practice.

6. The brakes on the front-end loader were inoperable. Its use in such condition, to load customers' trucks and to travel on inclined haulage roads, created an imminent danger to mine personnel and customers.

DISCUSSION WITH FURTHER FINDINGS

The Commission has defined the term "knowingly," as used in 110(c) of the Act, as follows

> "Knowingly," as used in the Act, does not have any meaning of bad faith or evil purpose or criminal intent. Its meaning is rather that used in contract law, where it means knowing or having reason to know. A person has reason to know when he has such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence.... We believe this interpretation is consistent with both the statutory language and the remedial intent of the Coal Act. If a person is a position to protect employee safety and health fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition, he has acted knowingly and in a manner contrary to the remedial nature of the statute. [Kenny Richardson v. Secretary of Labor, 3 FMSHRC 8, 16 (1981), 689 F.2d 632 (6th Cir. 1982), cert. denied, 461 U.S. 928 (1983).]

I find that Respondent knowingly authorized and ordered a violation of 30 C.F.R. 56.14101(a)(1), within the meaning of 110(c) of the Act. He knew that the vehicle had defectiv brakes, when the driver told him before the inspection, and he knowingly authorized and ordered continued use of the vehicle with defective brakes.

The danger to the driver, other vehicle drivers, and persons on foot near the front-end loader constituted an "imminent danger" within the meaning of the Act. Gravity was therefore more than a "significant and substantial" violation. The violation was due to aggravated conduct beyond ordinary negligence because it was "knowingly" committed.

Considering the civil penalty assessed against the corporation ($1,000) for its violation concerning this incident, and the criteria for a civil penalty in 110(i) of the Act, I find that a civil penalty of $400 is appropriate for the violation found herein.

CONCLUSIONS OF LAW

1. The judge has jurisdiction in this proceeding.

2. Respondent, Robert Shick, knowingly authorized and ordered the violation of 30 C.F.R. 56.14101(a)(1) alleged in Order No. 3441750.

ORDER

1. Order No. 3441750 is AFFIRMED.

2. Respondent, Robert Shick, shall pay to the Secretary of Labor a civil penalty of $400 within 30 days of the date of this decision.

William Fauver
Administrative Law Judge

Distribution:

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