

CCASE:
MSHA V. SOUTHWAY CONSTRUCTION
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. CENT 91-167-M
Petitioner : A.C. No. 29-01880-05501 BY 2
:
v. :
:
Goat Ridge Mine
SOUTHWAY CONSTRUCTION COMPANY, :
INCORPORATED, :
Respondent :

DECISION

Appearances: William E. Everheart, Deputy Regional Solicitor,
U.S. Department of Labor, Dallas, Texas,
for Petitioner;
Mr. John T. Ungefug, Engineer, SOUTHWAY CONSTRUCTION CO., INC., Alamosa, Colorado,
for Respondent.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges Southway Construction Company, Incorporated ("Southway") with violating safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq. (the "Act").

A hearing on the merits was held in Alamosa, Colorado, on April 7, 1992. The parties waived the filing of post-trial briefs.

At the commencement of the hearing, Southway moved to withdraw its notice of contest as to Citation No.s 3900555 and 3900556. The motion should be granted.

STIPULATION

The parties stipulated as follows:

1. Southway is subject to the jurisdiction of the Commission.

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2. The operator's size is 57,690 hours of work per year.
3. The Citations herein were abated in good faith and civil penalties will not affect the operator's ability to continue in business.
4. The Goat Ridge Mine is not owned by Southway. The owner is Lucina Mine.

ISSUE

The issue is whether Southway is required to provide a suitable communication system at a mine owned by another party.

Citation 3900557 alleges a communication system was not provided. The regulation, 30 C.F.R. 56.18013 provides that "[a] suitable communication system shall be provided at the mine to obtain assistance in the event of an emergency,."

Southway maintains it is the obligation of the mine owner (Lucina) to provide the communication system.

WILLIAM TANNER, experienced in mining, inspected this open pit silica mine on April 2, 1991. There were four Southway employees at the mine using a crusher, conveyor belts, loaders, and haul trucks. Southway was crushing for the mine owner. There were no Lucina employees on the site.

The morning after the inspection, the forman said he had a radio but no one knew the call numbers. Abatement was achieved by the presence of the foreman with a radio.

JOHN UNGEFUG confirmed that Southway was working as the crusher contractor. He further submitted quotes and copies of start-up and termination activities. (Ex. R1-R5).

DISCUSSION

Section 3 of the Mine Act states as follows:

Sec. 3. For the purposes of this [Act], the term--

(d) "Operator" means any owner, lessee, or other person who operates, controls, or supervises a coal or other mine or any independent contractor performing services or construction at such mine;

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The uncontroverted evidence establishes that Southway is within the statutory definition of an "operator" cf. Otis Elevator Company, 11 FSMHRC 1896, 1899 (1989), aff'd, 921 F.2d 1285 (1990); Bulk Transportation Services, Inc., 13 FMSHRC 1354 (1991).

Southway was the crusher operator, both controlling and supervising the crushing operation. this operation is an integral portion of the mineral extraction process. Accordingly, Southway was an operator within the meaning of the Act. As such, Southway is obligated to furnish a suitable communication system to be used in the event of an emergency. Citation No. 3900557 should be affirmed.

Considering the criteria under Section 110(a) of the Act, I find that the penalties assessed herein are appropriate.

ORDER

1. Citation No. 3900555 and the proposed penalty of \$98 are AFFIRMED.

2. Citation No. 3900556 and the proposed penalty of \$20 are AFFIRMED.

3. Citation No. 3900557 and the proposed penalty of \$20 are AFFIRMED.

4. Respondent is ORDERED TO PAY to the Secretary of Labor the sum of \$138 within 40 days of the date of this decision.

John J. Morris
Administrative Law Judge

Distribution:

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