CCASE:
MSHA V. BROWN BROTHERS SAND
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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	:	CIVIL PENALTY PROCEEDING
	:	Docket No. SE 92-84-M
	:	A.C. No. 09-00265-05514
v.	:	
	:	Junction City Mine
BROWN BROTHERS SAND CO., Respondent	:	

DECISION

Appearances: Michael K. Hagan, Esq., Office of the Solicitor, U.S. Department of Labor, Atlanta, Georgia, for Petitioner;
Mr. Carl Brown, Brown Brothers Sand Co., Howard, Georgia, for Respondent.

Before: Judge Barbour

STATEMENT OF THE CASE

This civil penalty proceeding was initiated by the Secretary of Labor ("Secretary") against Brown Brothers Sand Company ("Brown Brothers") pursuant to Sections 105 and 110 of the Federal Mine Safety and Health Act of 1977 ("the Mine Act"), 30 U.S.C. 815 and 820. The issues are whether Brown Brothers violated two mandatory safety standards for surface metal and non-metal mines and, if so, the amount of the civil penalty to be assessed for each violation. The case was heard in Macon, Georgia.

STIPULATIONS

At the commencement of the hearing the parties stipulated as follows:

1. Brown Brothers is subject to the Act and to the Commission's jurisdiction.

2. Brown Brothers is a small operator employing nine to ten persons.

3. The payment of the proposed civil penalty assessments will not adversely affect Brown Brother's ability to continue in business. (Footnote 1)

4. During the two year period prior to the date of the first alleged violation at issue, records of the Mine Safety and Health Administration ("MSHA") indicate that Brown Brothers has an history of five prior violations of the mandatory standards.

5. Brown Brothers exhibited good faith in abating both of the alleged violations in a timely fashion.

See Tr. 3-4.

DISCUSSION

Mine Act Section	Citation No.	Date	30 C.F.R.
Section 104(a)(Footnote 2)	3601603	09/04/91	56.14130(i)

Citation No. 3601603 alleges that Brown Brothers failed to adequately maintain a seat belt on a self-propelled mobile equipment vehicle and that the violation was not a significant and substantial contribution to a mine safety hazard. The citation states in pertinent part:

> The seatbelt is broken on the John Deere . . . dozer.

Exh. P.2.

The Secretary presented her case through the testimony of MSHA Inspector Darrell Brennan. He confirmed that on September 4, 1991, while conducting an inspection of Brown Brothers sand operation, he examined a John Deere bulldozer. Brennan testified that a bolt fastening the seat belt to the frame of the bulldozer was broken, making the seat belt

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1The Secretary proposed a civil penalty of $20 for each alleged violation.

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230 U.S.C. 814(a).

inoperable. Tr. 20. Because Section 56.14130(i) requires that the seat belts on such equipment be properly maintained, he issued the citation.(Footnote 3) Id.

Brennan stated that the bulldozer had been brought out of the pit and was being used on level terrain. Therefore, he considered it unlikely that an accident would occur and an injury would result because of the violation. Tr. 20-21. He also believed Brown Brothers was negligent in allowing the violation to exist, but the degree of negligence was not high because mine personnel had not reported the condition of the seat belt to mine management. Id.

Brown Brothers, through the statement of its representative Carl Brown, pointed out a recent instance at the mine in which a bull dozer had overturned and the bull dozer operator would have been severely injured, perhaps fatally, had he been wearing a seat belt and been trapped in the equipment. Tr. 24-26.

CONCLUSIONS

There is really no dispute about the existence of the violation. The defecting bolt made the seat belt unusable.
Thus, the seat belt was not maintained in functional condition, and I so find. I further conclude that Brown Brothers was negligent in failing to properly maintain the seat belt. It is the operator's duty to ensure that equipment at its mine is properly maintained. To effectively carry out that duty, an operator must make certain equipment defects are promptly observed and reported. Here, Brown Brothers failed to meet the mandated standard of care required of an operator.

I also conclude that the violation was not serious. As the inspector rightly noted, the fact that the bull dozer was being operated on level ground made the chance of an injury causing accident extremely unlikely, and there was no testimony offered that the bull dozer was scheduled to be taken back to the pit or to be used on more hazardous ground.(Footnote 4)

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330 C.F.R. 56.14130(i) states:

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4 However, I would be remiss if I did not comment on Brown Brothers' apparent argument that use of a seatbelt can, in and of itself, be more hazardous than non-use. Undoubtedly there are instances where such is the case, perhaps even in the episode discussed by Mr. Brown, but common sense and experience dictates that in the vast majority of instances properly maintained and used seat belts save, not cost lives. Examples of equipment operators who were maimed or crushed while not wearing seat

Seat belt maintenance. Seat belts shall be maintained in functional condition, and replaced when necessary to assure proper performance.

CIVIL PENALTY

The Secretary proposed a civil penalty of $20 (Tr. 18), which I find appropriate in view of Brown Brother's negligence, the non-serious nature of the particular violation, and Brown Brother's stipulated small history of previous violations, its small size, its good faith abatement of the violation and the lack of effect of the penalty on Brown Brother's ability to continue in business.

Mine Act Section	Citation No.	Date	30 C.F.R.
Section 104(a)	3601604	09/11/91	56.14107(a)

Citation No. 3601604 alleges that Brown Brothers failed to guard a coupling on a water gun pump motor and that the violation was not a significant and substantial contribution to a mine safety hazard. The citation states:

> The water gun pump motor drive coupling is not provided with a guard.

Exh. P-3

Inspector Brennan again testified for the Secretary. He stated that during the course of the September 11 inspection he observed that the coupling connecting the drive shaft of the water gun pump to the water gun was not guarded. Tr. 16. The pump provides the pressurized water that is "shot" from the water gun in order to wash down sand during the mining process. The inspector testified that the coupling was turning fast (at an estimated 1,800 RPM) and that miners could have been caught in the unguarded part. Tr. 10. He believed that if a miner's clothing had become entangled in the coupling, the miner could have been pulled into the rotating machinery and could have endured lost workdays or restricted duty on account of injuries resulting from the accident. Tr. 9, 13-14. In his opinion, the coupling was a moving machine part that pursuant to Section 56.14107(a) should have been guarded.(Footnote 5)

4(...continued)
belts or while wearing seat belts that failed thorough the lack of proper maintenance were obviously too numerous for the Secretary to ignore when promulgation regulations governing the use of self-propelled mobile equipment at surface metal and non-metal mines, and the rare exception but proves the rule.

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530 C.F.R. 56.14107(a) states:

Moving machine parts shall be guarded to protect persons from contacting gears, sprockets, chains, drive, head, tail, and takeup pulleys, fly wheels, couplings, shafts, fan blades, and similar moving machine parts that can cause injury.

The inspector also believed Brown Brothers was negligent in allowing the violation to occur. The inspector stated he had been told by management personnel that the rapidly rotating coupling had been guarded previously by a protective "house" enclosing the pump motor and the coupling. However, when Brown Brothers replaced the pump motor with a larger unit, the house was not enlarged proportionally and the coupling was "pushed" outside the house. Id.

Inspector Brennan stated that it was unlikely any miners would be injured due to the violation because there was very little exposure of miners to the pump motor. Tr. 9. He observed that the motor was located away from where miners usually worked and that the only time a miner would have been in its immediate vicinity was to start it up or to service it. Inspector Brennan believed that one miner probably came once a day to service the pump, and Carl Brown agreed this was correct. Tr. 18.

CONCLUSIONS

The standard's requirements are clear. As Commission Administrative Law Judge George Koutras has aptly stated, "The . . . language found in [Section] 56.14107(a) specifically and unequivocally requires guarding of any of the enumerated moving machine parts, as well as any similar moving part that can cause injury if contacted. The obvious intent of the standard is to prevent contact with a moving part." Highland County Board of Commissioner, 14 FMSHRC 270, 291 (February 1992) (quoted with approval Overland Sand & Gravel Co., 14 FMSHRC 1337, 1341 (August 1992)(ALJ Barbour)). Here, there is no doubt but that the cited moving coupling was not guarded, and I accept the inspector's testimony that a miner's clothing could have become entangled in the turning part causing injury to the miner. Therefore, I find that the violation existed as alleged.

In addition, I agree with the inspector that there was very little exposure of miners to the hazard posed by the violation and that this was not a serious violation. I also agree with his opinion and I find that Brown Brothers negligently failed to make sure that the coupling continued to be guarded when it installed the new pump motor. I infer from the presence of the previous guard that Brown Brothers was well aware of what the standard required.

CIVIL PENALTY

The Secretary proposed a $20 civil penalty, which I find appropriate in view of Brown Brother's negligence, the non-serious nature of the violation, Brown Brother's stipulated small history of previous violations, its small size, its good faith abatement of the violation and the lack of effect of the penalty on Brown Brother's ability to continue in business.

ORDER

In light of the foregoing findings and conclusions, Brown Brother's is ordered to pay a civil penalty of $20 for the violation of Section 56. 14130(i) cited in Citation No. 3601603 and a civil penalty of $20 for the violation of Section 56.14107(a) cited in Citation No. 3610604. Brown Brothers shall pay the civil penalties within thirty (30) days of the date of this Decision, and, upon receipt of payment, this matter is DISMISSED.

David F. Barbour
Administrative Law Judge
(703) 756-5232

Distribution:

Michael Hagan, Esq., Office of the Solicitor, U.S. Department of Labor, 1371 Peachtree Street, N.E., Room 339, Atlanta, GA 30367 (Certified Mail)

Mr. Carl Brown, Brown Brothers Sand Company, P.O. Box 22, Howard GA 31039 (Certified Mail)

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