

CCASE:  
SOL (MSHA) V. THE HARRIMAN COAL  
DDATE:  
19930616  
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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5203 LEESBURG PIKE  
FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. PENN 92-648  
Petitioner : A. C. No. 36-06440-03512  
v. :  
 : Penag/Goodspring No. 1  
THE HARRIMAN COAL CORPORATION, : Mine East & West  
Respondent :

DECISION

Appearances: Richard W. Rosenblitt, Esq., Office of the  
Solicitor, U. S. Department of Labor, Philadelphia,  
Pennsylvania, for the Secretary;  
Mr. Herbert Trovinger, Brockton, Pennsylvania, for  
Respondent.

Before: Judge Maurer

This proceeding was filed by the Secretary of Labor, under  
section 110(a) of the Federal Mine Safety and Health Act of 1977,  
30 U.S.C. 820(a) (hereinafter the Act), to assess civil  
penalties against the Harriman Coal Corporation (Harriman).

Pursuant to notice, this matter was heard on January 22,  
1993, in Reading, Pennsylvania. Both parties appeared,  
introduced evidence and made oral argument on the record, which I  
have considered in making this decision.

With regard to the history of previous violations by  
Harriman, I find the number of violations in the 2 years previous  
to the inspection at issue to be few and that the size of  
Harriman can be considered small. Furthermore, in the absence of  
any specific evidence to the contrary, I find that the proposed  
penalties, if they are assessed in that approximate amount, will  
not affect the ability of Harriman to continue in business.

~1177

Citation No. 3079894

The inspector alleged in the citation that:

The Caterpillar Excavator, Model 245, Serial No. 84X620 being used to move overburden at the mine site was not provided with handrails along and around the walkways or platforms on each side of the machine.

30 C.F.R. 77.409(b) provides that:

Shovels and draglines shall be equipped with handrails along and around all walkways and platforms.

Inspector Harold J. Smith, a mine inspector employed by MSHA for approximately 4 years, had occasion to issue the above citation on September 25, 1991. He testified that the subject Caterpillar Model 245 Excavator, which could be described as a shovel, was not provided with an adequate and proper handrail along the outer edge of the walkways or platforms on either side of the machinery. He considered this to be a violation because the mandatory standard found at 30 C.F.R. 77.409(b) specifically requires that shovels be so equipped.

Harriman does not dispute these facts, but for their defense cite the fact that the manufacturer, Caterpillar, has not seen fit to install these handrails on the outer side of the walkway, but rather has put handholds on the inner side of the walkway. Harriman believes this is sufficient to comply with the cited mandatory standard.

I disagree. There is no handrail provided to prevent a worker from slipping and falling off the equipment, and this is what is specifically required by the standard. The pertinent language recites that handrails will be "along and around" all walkways and platforms. I read this to require the handrails to be on the outer side of the walkways. I also find that the violation is "S&S" because in inclement weather conditions, such as rain, sleet or snow, it is reasonably likely that a worker would slip and fall off this equipment and sustain a serious injury.

I accordingly affirm Citation No. 3079894 as an "S&S" violation and find that a civil penalty of \$50 is appropriate, considering the statutory criteria contained in section 110(i) of the Act and the evidence adduced in this record.

~1178

Citation No. 3079895

The inspector issued this citation on September 25, 1991, for an alleged violation of 30 C.F.R. 77.410 for the following condition:

The Ford truck, Model 8000, used by the mechanic at the mine site is not equipped with an automatic warning device which shall give an alarm when such equipment is put in reverse.

30 C.F.R. 77.410(a)(1) provides that:

(a) Mobile equipment such as front-end loaders, forklifts, tractors, graders, and trucks except pickup trucks with an unobstructed rear view, shall be equipped with a warning device that--

(1) Gives an audible alarm when the equipment is put in reverse.

Respondent stipulates that the truck was being operated on mine property on the day in question without a back-up alarm, that a back-up alarm is required on the truck, and it therefore was a violation of the cited standard. (Tr. 62-64) I could not agree more, and I also find that violation to be "S&S", and serious because of the obvious danger of an inattentive person standing or walking behind the vehicle being run over.

Taking into account the seriousness of the violation as well as the other statutory factors contained in section 110(i) of the Act, I conclude and find that a civil penalty of \$100 is appropriate for the violation found herein.

#### ORDER

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

1. Citation Nos. 3079894 and 3079895 ARE AFFIRMED.
2. Respondent, Harriman Coal Corporation, shall pay to the Secretary of Labor a civil penalty in the sum of \$150 within 30 days of the date of this decision.

Roy J. Maurer  
Administrative Law Judge

~1179

Distribution:

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