

CCASE:
SOL (MSHA) V. BONANZA MATERIALS
DDATE:
19930713
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
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July 13, 1993

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 92-505-M
Petitioner	:	A.C. No. 26-01488-05532
	:	
	:	Docket No. WEST 92-532-M
v.	:	A.C. No. 39-01488-05534
	:	
	:	Docket No. WEST 92-576-M
BONANZA MATERIALS INC.,	:	A.C. No. 39-01488-05535
Respondent	:	
	:	Docket No. WEST 92-602-M
	:	A.C. No. 39-01488-05536
	:	
	:	Bonanza Materials

DECISION

Before: Judge Lasher

These four penalty proceedings arose upon the filing by Petitioner of four penalty proposals covering a total of 10 Citations and Withdrawal Orders pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820 (herein "the Act").

By my Order dated January 15, 1993, the matter was deemed to be submitted for decision on the basis of stipulated facts and briefs and, the sole issue being one of jurisdiction, it was determined inter alia that should jurisdiction lie the penalties proposed by Petitioner would be assessed.

As set forth in the Joint Response To Prehearing Order filed herein, Respondent does not contest the factual bases for the violations alleged by Petitioner and concedes the substance of the said violations. Respondent asserts that MSHA has no jurisdiction over the physical area in which these violations were located and defends solely on that basis.

FINDINGS

The parties having stipulated to all the relevant facts in their Joint Response to Prehearing Order, I find as follows:

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1. The instant violations, as set forth in Exhibits A to the Proposals on file herein, were all located in the mechanic's shop at Bonanza Materials Inc. ("Bonanza") in Henderson, Nevada.

2. The said Proposals were duly filed against the Respondent Bonanza in accordance with the Rules of the Federal Mine Safety and Health Review Commission published in Title 29, Code of Federal Regulations, Section 1700.27.2, and duly contested by Respondent.

3. Bonanza is a sand and gravel operation which consists of an open pit, a sand and gravel plant, cement batch plant, hot batch plant, and general construction operations. The mining activities conducted by Bonanza include traditional extraction and processing of sand and gravel minerals.

4. The mechanic shop is located on mine property, directly between the open pit and the sand and gravel plant. There are no fences or barriers separating the shop from these areas.

5. The access road which is used to transport materials from the pit to the plant is the same road used to access the mechanic shop.

6. The shop is operated by Bonanza employees, which particular employees are not considered by the company to be miners.

7. The mechanic shop services and maintains approximately 295 units of equipment belonging to Bonanza. Approximately 12 of these units, or between 3 and 4 percent of this total, are units (generators/vehicles) which are used directly by Bonanza in its mining operations. These mining vehicles include approximately six front-end loaders used in the mine pit. The said mining vehicles also include approximately two water trucks which are used in mining operations to reduce dust. The balance of the units serviced in the shop are not used in any mining activity whatsoever.

8. Work performed on the mining equipment is not performed in any physically distinct area of the mechanic shop.

9. The shop is the equipment-leasing arm of the company that maintains equipment for a variety of Bonanza's operations, the least significant of which is mining.

10. The cement batch plant and the hot batch plant are both located adjacent to the mining operations.

11. MSHA has previously cited the operator for violations occurring in the said mechanic shop. In these previous instances, the Respondent did not contest MSHA's jurisdiction to cite in the mechanic shop.

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12. The Respondent has contested the instant violations on the basis of MSHA's alleged lack of jurisdiction over the mechanic shop and sought a formal legal opinion to that effect. The Office of the Solicitor, on behalf of the Secretary of Labor and after consultation with MSHA and a review of the facts of the case, issued an opinion that MSHA did have jurisdiction over the mechanic shop in the instant case and that the Citations were valid.

13. OSHA is not asserting jurisdiction over the subject mechanic shop and has issued no citations regarding same.

14. Bonanza Materials, Inc., is a mine subject to the Act in that its products enter into or affect interstate commerce.

DISCUSSION

Upon consideration of the evidence presented and the arguments and briefs submitted by the parties, it is concluded that Petitioner's position is meritorious and it is here adopted.

1. The Broad Statutory Definition of Mine Includes Functionally Related Structures, Such As The Subject Mechanic Shop

The mechanic shop is a "facility" or "structure" within the meaning of Section 3(h)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a) of the Act, because it is directly "used in ... the work of extracting ... minerals," and is therefore under MSHA jurisdiction. [Section 3(h)(1)(C)]. Section 3(h)(1) defines MSHA's jurisdiction expansively, as including not only the actual extraction of minerals, but also other peripheral activities which are functionally integrated to any degree to the mining and milling operations, as well as facilities and structures used therein. Further, as remedial legislation, the Act's already wide definition of "mine" must be read broadly and inclusively. *Marshall v. Stoudt's Ferry Preparation Co.*, 602 F.2d 589 (1979), cert. denied, 444 U.S. 1015, 100 S. Ct. 665 (1980); *Donovan v. Carolina Stalite Co.*, 734 F.2d 1547, 1554 (1984); *Cyprus Industrial Minerals Co.*, (9th Cir. 1981), 2 MSHC 1554; *Oliver M. Elam, Jr., Co.*, 4 FMSHRC 5, 6 (January 1982). The subject mechanic shop services mining vehicles such as front-end loaders and pit haulage trucks, which are an integral part of Respondent's mining operations. This functional integration brings the shop within the broad definitional scope of Section 3(h)(1).

2. MSHA's Jurisdiction Over Mechanical Maintenance Facilities is Clear

MSHA's jurisdiction over mechanical maintenance facilities has been expressly confirmed in *Martin Marietta Aggregates Central Division*, 2 FMSHRC 2163 (ALJ Koutras, Sept. 1980). In the latter case, the facility was not even located on the mining property, in contrast to the instant case where the mechanic shop is on Bonanza's mining property. Similarly, in the case of *W.R. Saunders & Sons*, 1 FMSHRC 2130 (ALJ Melick, Feb. 1980), a store-room which held parts, most of which were used in non-mining operations and only a small portion of which were parts used on mining vehicles, was held to be a mine under the Act: "(i)t is immaterial that some of the equipment and machinery, or even most of it, may have been used in areas that may not have been under the Secretary's jurisdiction."

3. The Interagency Agreement Confirms MSHA's Jurisdiction

The administrative Interagency Agreement between MSHA and OSHA, on which Respondent seeks to rely, takes as its starting point the broad statutory jurisdiction of MSHA, then carves out specific areas over which OSHA is given jurisdiction. Interagency Agreement, Mine Safety and Health Administration, Occupational Safety and Health Administration, Federal Register, Vol. 44, No. 75. Significantly, these exceptions to MSHA jurisdiction neither expressly nor impliedly exclude equipment servicing facilities, nor facilities in which the majority of the servicing is directed to non-mining operations. Finally, the Interagency Agreement reiterates the congressional mandate that any doubts regarding jurisdiction are to be decided in favor of MSHA jurisdiction. For all of these reasons, the said Interagency Agreement does not serve to limit the scope of the Act, as argued by Respondent, so as to render Respondent immune from prosecution thereunder.

4. Respondent's Position is Inconsistent with the Act and Case Law

Respondent argues that the statutory definition of "mine" in the Act does not expressly mention the term "mechanic shop." Petitioner submits that the broad wording of Section 3(h)(1) is sufficiently inclusive on its face to cover the mechanic shop in issue here. The case law interpreting this definitional and scope section of the Act, as discussed above, has consistently mandated that the section be given a broad reading as befits the remedial nature of the 1977 Act. Moreover, this language, also as noted above, has been interpreted to cover a mechanic shop such as Respondent's.

Respondent further argues that because only a small percent- age of the vehicles worked on in the mechanic shop are used in the mining operations they should be ignored in assessing whether MSHA has jurisdiction over the shop. However, the Act offers no support for such a de minimus argument. To the contrary, as dis- cussed above, the governing jurisprudence has held that any ac- tivity which is functionally integrated with the mining activity necessitates the imposition of MSHA jurisdiction even where that activity is minor or removed from the mining site.

Respondent also observes that the mechanics working in the shop are not considered miners by either themselves or the com- pany, while the practice in nearby sand and gravel operations in the vicinity is that mechanic shops have not been inspected by MSHA. For these reasons, the Respondent argues, MSHA jurisdic- tion should be avoided here. However, the views of the me- chanics as to their own classification as miners as a term of art under the Act is irrelevant. Similarly, the material facts re- garding other operators in the vicinity are unknown and not part of the determination here.

MSHA's jurisdiction to cite violations occurring in the mechanic's shop, where mining vehicles are serviced, is AFFIRMED. The Citations and proposed assessments are AFFIRMED.

The following penalties are ASSESSED:

- 1. Docket No. WEST 92-505-M

Citation No.	Penalty
3922399	\$903

- 2. Docket No. WEST 92-532-M

Citation No.	Penalty
3922392	\$903
3922393	\$903
3922395	\$903
3922396	\$ 50
3922397	\$ 50
3922398	\$ 50
3922401	\$ 50

- 3. Docket No. WEST 92-576-M

Citation No.	Penalty
3922407	\$1,298

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4. Docket No. WEST 92-602-M

Citation/
Order No.

Penalty

3922406

\$7,500

ORDER

Respondent SHALL PAY to the Secretary of Labor within 40 days from the date of issuance of this decision the total sum of \$12,610.00 as and for the civil penalties herein assessed.

Michael A. Lasher, Jr.
Administrative Law Judge

Distribution:

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