

CCASE:  
SOL (MSHA) V. TANOMA MINING  
DDATE:  
19940131  
TTEXT:



No guards of any kind were installed on the discharge roller and drive rollers of the C-1 No. 2 belt drive. This belt drive had been installed on September 22, 1992 and coal was loaded with this drive on September 23, 1992 on the 12:00 a.m. to 8:00 a.m., shift. This condition is easily observed and the area had been pre-shifted. This drive is also in a location where responsible persons travel on a frequent basis during the shift and should have been observed. This area was a wet slippery location and persons could fall and come in contact with these rollers.

After an MSHA-operator conference, the order was modified to read:

Due to the results of a Health and Safety Conference. This order is hereby modified to show Section I No. 8 as deleting the first sentence and including the following.

Adequate guarding was not provided for the discharge roller and drive rollers of the C-1 No. 2 belt drive in that a wooden plank was attached to posts on each side of the belt drive that persons could reach over, under and around and become caught in the inadequately guarded rollers. This order is also modified to show Section I No. 9(c) as 75.1722(b) instead of 75.1722(a).

The regulation cited, 30 C.F.R. 75.1722(b), states:

75.1722 Mechanical equipment guards.

(b) Guards at conveyor-drive, conveyor-head, and conveyor-tail pulleys shall extend a distance sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley.

3. The operator had installed a board on each side of the low belt drive. Each board, nailed to 2 posts, was about 14 feet long, 4 to 6 inches wide, and about 1 to 1-1/4 inches thick.

4. On the "clearance side" of the belt drive, the discharge roller extended about 20 inches beyond the edge of the belt. The board was about 36 inches from the mine floor, and about 4 feet from the pinchpoint of the drive roller. Each end of the board extended about 6 inches from the post, leaving an exposed area of the belt drive of 2 or 3 feet. The discharge roller was not reasonably accessible to accidental contact because the discharge roller was above the center of the main belt, 56 to 57 inches above the mine floor. The nearest

~182

pinchpoint on the drive rollers was about 45 or 46 inches from the board. A person falling under the board might reach out to break the fall and come in contact with a pinchpoint on a belt drive roller. Also, a person might fall beyond the end of the board and accidentally come in contact with a belt drive roller pinchpoint.

5. On the "tight side" of the belt drive, the nearest pinchpoint of the drive rollers was about 2 feet from the board and the travelway was about 2 feet wide. The nearest pinchpoint of the discharge roller was also close to the board. Persons on the tight side might fall and accidentally come in contact with a pinchpoint of a drive or discharge roller.

6. The mine floor around the belt drive was wet and slippery.

7. A low belt drive discharges coal onto a main belt. The low belt is mobile, and usually moves in a month or two, whereas the main belt is immobile and kept in one place for a long period.

8. Low belts are stopped for maintenance work (lubrication, adjustments, repairs, etc). Also, cleanup work around a low belt is usually done when the belt is stopped. However, at times miners may shovel or clean up around a moving belt. Miners travel on the clearance side of the belt and on less frequent occasions may have duties on the tight side of the belt drive.

9. The operator used the board-and-posts method of guarding low belt drives for years, and continued to use this method after the citation was terminated. To abate the condition cited by Inspector Gay, the operator installed belting material to prevent contact with the belt drive and discharge rollers. However, when the low belt conveyor was moved after the citation, the belting material was not used and the operator resumed the same practice of using a board nailed to two posts as the only guard of the low belt drive.

10. Before and after the citation issued by Inspector Gay, low belts drives were frequently inspected by MSHA but no other MSHA inspector cited a violation for the board-and-posts method of guarding a low belt drive.

Citation No. 3708614

11. On October 13, 1992, Federal Mine Inspector Joseph E. Colton issued Citation No. 3708614, alleging in part:

Guards were not provided to prevent a person from contacting the rotating tail pulley of the Low belt

~183

located in the 016 active section. This tail pulley was approximately 9" in diameter and centered 10" above the mine floor. Both sides of this conveyor system tail pulley area contained a 13" x 7 1/2" opening on each end of this pulley and bearing block assembly. And a 7 1/2" x 22" opening directly in front of this pulley. The tail piece is located 48" from the coal rib and the height of this entry is approximately 52".

12. On the sides of the tail pulley, there were openings about 13 inches by 7-1/2 inches on each end of the tail pulley and bearing block assembly. There also was an opening about a 7-1/2 inches by 22 inches directly in front of the pulley.

13. Guarding for the tail pulley did not extend down the sides to prevent contact or to prevent a person from reaching in and coming in contact with pinchpoints.

#### DISCUSSION, FURTHER FINDINGS AND CONCLUSIONS

Order No. 3486015

30 C.F.R. 75.1722(b) provides: "Guards at conveyor-drive, conveyor head, and conveyor tail pulleys shall extend a distance sufficient to prevent a person from reaching behind and becoming caught between the belt and the pulley."

The only guarding for the C-1, Number 2 belt drive was a four to six inch wide board on each side of the pulley, nailed on two posts and positioned about 36 inches from the ground.

Each board ended about 6 inches beyond the posts, and left the discharge rollers exposed on both sides of the belt. The boards served more as a warning, rather than a guard, and plainly did not "extend a distance sufficient to prevent a person from reaching behind and becoming caught between the belt and the pulley." Also, as stated in the Findings, above, in places the boards would not prevent accidental contact with the pinchpoints.

I therefore find a violation of 75.1722(b).

The Secretary alleges that the violation was "significant and substantial." A "significant and substantial" violation is defined in 104(d)(1) of the Act as a violation of "such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." The Commission has developed the following tests (in Mathies Coal Co., 6 FMSHRC 1, 3-4 (1984)):

In order to establish that a violation of a mandatory safety standard is significant and substantial . . . the Secretary of Labor must prove:

~184

(1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard-- that is, a measure of danger to safety --contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129, the Commission stated further:

We have explained further that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of Section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining Company, Inc., 6 FMSHRC 1866, 1868 (August 1984); U.S. Steel Mining Company, Inc., 6 FMSHRC 1573, 1574-75 (July 1984).

The question of whether a violation is significant and substantial must be based on the particular facts surrounding the violation. Texasgulf, Inc., 10 FMSHRC 498 (1988); Youghiogheny & Ohio Coal Company, 9 FMSHRC 1007 (1987).

I find there was a reasonable likelihood that, if the condition remained unabated, a miner would come in contact with a roller pinchpoint and suffer a serious injury. Contact could result from reaching out to break a fall and becoming caught between the belt and roller.

I therefore find that the violation was significant and substantial.

The Secretary also alleges that the violation was "unwarrantable" within the meaning of the Act. In Emery Mining Corp., 9 FMSHRC 1997, 2004 (1987), the Commission held that "unwarrantable" means aggravated conduct constituting more than ordinary negligence. Applying this test, I find that the Secretary has not proved an "unwarrantable" violation. The operator regarded the board-and-posts method as an adequate guard and a number of MSHA inspectors apparently had seen this type guard and not cited a violation. I find there was ordinary negligence.

Considering all the criteria for a civil penalty in 110(i) of the Act, I find that a civil penalty of \$1,800 is appropriate for this violation.

Citation No. 3708614

On each side of the tail pulley there was an opening of about 7-1/2 inches by 13 inches. There also was an opening in front of the tail pulley. I find there was a reasonable likelihood that, if the condition remained unabated, a miner would come in contact with a roller pinchpoint and suffer a serious injury. I therefore find that this was a "significant and substantial" violation.

Considering all the criteria for a civil penalty in 110(i) of the Act, I find that a civil penalty of \$288 is appropriate for this violation.

CONCLUSIONS OF LAW

1. The judge has jurisdiction.
2. Respondent violated 30 C.F.R. 75.1722(b) as alleged in Order No. 3486015 with the exception of the allegation of an "unwarrantable" violation.
3. Respondent violated 30 C.F.R. 75.1722(b) as alleged in Citation No. 3708614.

ORDER

1. Order No. 3486015 is converted to a 104(a) citation without an allegation of an "unwarrantable" violation and as such is AFFIRMED.
2. Citation No. 3708614 is AFFIRMED.
3. Respondent shall pay civil penalties of \$2,088 within 30 days of the date of this Decision.

William Fauver  
Administrative Law Judge

Distribution:

Maureen A. Russo, Esq., Office of the Solicitor, U.S. Department of Labor, Room 14480 Gateway Building, 3535 Market Street, Philadelphia, PA 19104 (Certified Mail)

Joseph A. Yuhas, Esq., Tanoma Mining Company, 1809 Chestnut Avenue, Ebensburg, PA 15714 (Certified Mail)

/ew-fb