

CCASE:

SOL (MSHA) V. J. HETER & G. HALUSKA & G. MOULIN & E. GONZALES

DDATE:

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TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
1244 SPEER BOULEVARD #280
DENVER, CO 80204-3582
(303) 844-5267/FAX (303) 844-5268
October 17, 1994

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 93-313-M
Petitioner	:	A.C. No. 04-05134-05505 ABXN
	:	
v.	:	Docket No. WEST 93-314-M
	:	A.C. No. 04-05134-05506 ABXN
JOHN HETER, GEORGE HALUSKA,	:	
GERALD MOULIN, and	:	Docket No. WEST 93-329-M
ELIEZER GONZALES, employed	:	A.C. No. 04-05134-05504 ABXN
by EIU OF CALIFORNIA	:	
Respondents	:	Docket No. WEST 93-458-M
	:	A.C. No. 04-05134-05502 ABXN
	:	
	:	Specialty Sand Plant

DECISION

Appearances: Edward H. Fitch, IV, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for Petitioner;

John Heter, Saugus, California; George Haluska,
Simi Valley, California; Gerald Moulin, Cyprus,
California; Eliezer Gonzales, Bakersfield,
California, all employees of EIU of California and
all appearing pro se.

Before: Judge Morris

The Secretary of Labor, on behalf of the Mine Safety and
Health Administration (MSHA) charged Respondents Heter, Haluska,
Moulin and Gonzales with violating Section 110(c) of the Federal
Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the
"Act").

A hearing commenced in Simi Valley, California on August 30,
1994. After evidence was partially heard, the Secretary moved
for the following disposition:

1. The Secretary moved to withdraw his request for civil
penalties against Respondents Heter and Haluska. (Tr. 120).

2. The Secretary has further concluded that there is in-
adequate evidence to establish that Respondent Moulin knowingly
authorized, ordered or carried out a violation of 30 C.F.R.

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57.12002 and therefore, the Secretary withdraws the request for a 110(c) civil penalty as to said Respondent. (Tr. 123).

3. After considering the testimony of Respondent Gonzales, the Secretary has agreed to reduce his proposed civil penalty to \$1,000.00 payable in monthly installments of \$100.00 per month with the first payment due October 20, 1994.

Respondent Gonzales accepted this arrangement. (Tr. 128).

4. The Secretary has concluded that there is adequate evidence to establish that as an independent contractor the OHM Corporation (Footnote 1) should be charged by MSHA with a 110(a) corporate violation of 30 C.F.R. 57.12002 based on the totality of the events which transpired. These events are the result of the joint effort between OHM Corporation personnel and CZS Corporation personnel relating to an incorrect electrical installation. (Tr. 123, 124).

5. It is further agreed that a civil penalty of \$2,500.00 will be assessed in any corporate case brought by MSHA against OHM Corporation for a violation of 30 C.F.R. 57.12002. (Tr. 123-125).

6. Additional statements by the parties also involve OHM Corporation and CZS Corporation. Such statements are in the record of the proceedings.

I have reviewed the settlement and I find it is reasonable and in the public interest. The settlement was approved at the hearing and the approval is formalized in this decision.

Accordingly, I enter the following:

ORDER

1. In re: Secretary v. John Heter, WEST 93-313-M.

The Secretary's motion to withdraw his request for penalties herein is GRANTED and the case is DISMISSED.

2. In re: Secretary v. George Haluska, WEST 93-314-M.

The Secretary's motion to withdraw his request for penalties herein is GRANTED and the case is DISMISSED.

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OHM Corporation is not a party in the captioned cases but it designed a 16 KV Electrical Power Distribution System for use in the Specialty Sand Plant operated by CZS Corporation (Joint Stipulation of Facts filed August 30, 1994).

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3. In re: Secretary v. Gerald Moulin, WEST 93-329-M.

The Secretary's motion to withdraw his request for penalties herein is GRANTED and the case is DISMISSED.

4. In re: Secretary v. Eliezer Gonzales, WEST 93-458-M.

The Secretary's motion to reduce the proposed civil penalty to \$1,000.00 is GRANTED.

Accordingly, it is ORDERED that Respondent Gonzales pay a penalty of \$1,000.00 in accordance with the payment schedule set forth below:

DATE	PAYMENT
October 20, 1994	\$100
November 20, 1994	\$100
December 20, 1994	\$100
January 20, 1995	\$100
February 20, 1995	\$100
March 20, 1995	\$100
April 20, 1995	\$100
May 20, 1995	\$100
June 20, 1995	\$100
July 20, 1995	\$100

Payments shall be made by certified or cashier's check made payable to "The U.S. Department of Labor - MSHA," and mailed to Mine Safety and Health Administration, P.O. Box 360250M, Pittsburgh, PA 15251-6250. Each payment instrument shall include the relevant docket number, WEST 93-458-M, and the Assessment Control Number, 04-05134-05502-ABXN. Compliance with this payout scheme requires Respondent to have his monthly payments deposited in the U.S. Mail by the dates above listed.

In the event of Respondent Gonzales' default on any of the above recited installments, the total amount of the proposed penalties as amended, less any monies paid before Respondent's default, shall become due and payable and interest shall be assessed against such remaining unpaid balance at a rate provided by 28 U.S.C. 1961 from the date of default until the total amount is paid in full. Furthermore, Respondent shall be liable for all court costs, attorney fees, and other expenses reasonably incurred by the U.S. Department of Labor in pursuing the recovery of the remaining unpaid balance plus any interest assessed thereon.

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Upon payment of the agreed settlement in full, Docket No. WEST
93-458-M is DISMISSED.

John J. Morris
Administrative Law Judge

Distribution:

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