

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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February 9, 2001

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2000-287-M
Petitioner	:	A.C. No. 29-01999-05530
v.	:	
	:	
RIBBLE CONTRACTING INC.,	:	
Respondent	:	
	:	Ribble Crusher #1

**DECISION**

Before: Judge Weisberger

Appearances: David C. Rivela, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, for the Petitioner;  
Norman C. Ribble, Ribble Contracting Incorporated, Albuquerque, New Mexico, for the Respondent.

**Statement of the Case**

This case is before me based upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor (“Secretary”) seeking the imposition of civil penalties against Ribble Contracting Inc. (“Ribble”) for allegedly violating various mandatory safety standards set forth in Title 30 of the Code of Federal Regulations. Subsequent to notice, the matter was heard in Los Lunas, New Mexico on November 14, 2000.

**I. Citation No. 7886651**

**A. Violation of 30 C.F.R. § 56.14107(a)**

Ribble’s Crusher No. 1 Mine is a sand and gravel operation. On November 29, 1999, MSHA Inspector Abel Cisneros, Jr. inspected the mine. Cisneros observed that the tail pulley under the grizzly feeder (crusher) was completely exposed. According to Cisneros, the belt was running at the time. Cisneros concluded that this condition created the hazard of a miner becoming entangled in the moving tail pulley, and suffering a serious injury. He issued a citation alleging a violation of 30 C.F.R. Section 56.14107(a) which provides, as pertinent, that “[m]oving

machine parts shall be guarded to protect from contacting ... tail, and take-up pulleys, and similar moving parts that can cause injury.”

Barney Jones, Jr., Ribble’s Crushing Superintendent, testified that when the grizzly was in operation sizing stones, the guard was in place, and the area was cordoned off with caution tape. According to Ribble, the grizzly was a new piece of equipment, and at the time of the inspection, the guard on the tail piece had been removed in order to observe the belt in motion so it could be properly adjusted.

Joe Granillo, the crusher operator, testified that he never saw the grizzly being run without the guard in place.

It thus appears to be the position of Ribble that it was not in violation of Section 56.14107(a) supra, as the guard was not in place to allow for maintenance to be performed.

The clear language of Section 56.14107(a) supra, requires, in the absolute, that tail pulleys be guarded. Section 56.14107(a) supra, does not allow for any exception for maintenance work. Based on the uncontradicted testimony of Cisneros I find that, on the date cited, the tail pulley was in motion, it was not guarded, and persons were not protected from contacting the tail pulley. Accordingly, I find that it has been established that Ribble did violate Section 56.14107(a) supra.

**B. Significant and Substantial**

According to Cisneros, in essence, the violation was significant and substantial inasmuch as there was a reasonable likelihood of an injury as a consequence of the violation. He explained that because the pulley was completely exposed an employee at that site would be subject to inadvertent contact with the pulley, which could result in an injury caused by the moving pulley. He indicated that employees work in the area of the pulley in order to clean and adjust the belts. In this connection he testified that when he was on the site three days before the date in question, he saw some employees cleaning with a shovel around the tail pulley of the stacker belt. Cisneros indicated that they were within 18 inches of a guarded pulley and that the machinery was in operation at the time. He noted that when he was at the mine on the date of the inspection it was in operation. Cisneros indicated that on a weekly basis he receives reports of fatal injuries stemming from unguarded pulleys.

On the other hand, Norman C. Ribble testified that employees clean around and under the tail pulley when it is not in operation. In the same fashion Joe Granillo, the crusher operator, testified that he never saw the pulley being run without a guard when the plant was in operation. In this connection he said that when the plant is in operation and the area is marked with caution tape, as it is dangerous to be present. He indicated that a laborer cleans the area in question when it is not in operation.

Barney Jones, Jr., the crushing superintendent, who is in charge of operations at the plant,

explained that the crusher at issue accepts large pieces of rock placed on top of its cone shaped upper portion. The rocks are then sized, as a result of vibration of the grizzly, and dropped onto a belt which is operated by the tail pulley at issue. He explained that the crusher was a new piece of equipment and, when cited, had not yet commenced to size large pieces of rock, but instead was being run so that the belt could be aligned properly. Jones indicated that, in normal operations, employees would not be in close proximity to the tail pulley at issue due to the hazard of being hit by large pieces of rock falling from the top of the vibrating crusher. According to Jones, small pieces of rock, ("fines"), which accumulate under and near the belt are cleaned by loaders, and not by manual labor.

A "significant and substantial" violation is described in section 104(d)(1) of the Mine 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." 30 U.S.C. § 814(d)(1). A violation is properly designated significant and substantial "if based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." *Cement Division, National Gypsum Co.*, 3 FMSHRC 825 (April 1981).

In *Mathies Coal Co.*, 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under *National Gypsum* the Secretary of Labor must prove: (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 (August 1985), the Commission stated further as follows:

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).

I find, as discussed above, (I(A), infra) that the cited condition was in violation of a mandatory safety regulation, and contributed to the hazard of an employee becoming entangled in

the moving tail pulley. I also find, within the context of this record, that inasmuch as employees were in close proximity to a moving tail pulley that was totally unguarded, an injury producing event, i.e., inadvertent contact with the tail pulley was reasonably likely to have occurred. Also, I note that Cisneros' testimony that contact with the unguarded tail pulley could result in a serious injury or fatality. Since this testimony was not contradicted or impeached, I accept it. Thus, within the framework of this record, I find that the violation was significant and substantial.

### **C. Penalty**

I find that, as discussed above, the level of gravity of this violation was relatively high. However, I find that the record supports a finding, as agreed to by the parties of the hearing, that the level of Ribble's negligence was only moderate. Also, I note the parties' stipulations that Ribble demonstrated good faith in abating the violation, and that Ribble's operation was small. Further, I have reviewed the history of violations and, significantly, find that aside from the violations at issue in this case, Ribble was not cited for any violations after the plant had become Ribble's property. There is no evidence that the imposition of a penalty would have any effect on Ribble's ability to remain in business.

Considering all the above factors, I find that a penalty of three hundred dollars is appropriate.

## **II. Citation No. 7886659**

### **A. Violation of 30 C.F.R. § 56.12030**

#### **1. The Secretary's Case**

Cisneros testified that during his inspection on November 29, 1999, he had observed an electrical box in a control room at the subject plant. He indicated that the box was provided with a handle on the outside door covering the box. According to Cisneros the handle was designed to be moved up or down in order to open or close a breaker located inside the box, which energized a generator that supplied electricity to the crusher. He noted that the door was open approximately three inches, which exposed 480 v. conductors that were located inside the box. Cisneros noted that the handle was broken, and that approximately 80 percent of it was missing.

Cisneros indicated that Granillo told him that because the handle was broken, the only way to energize the switch for the generator was to open the box and do it manually. According to Cisneros, Granillo also told him that the switch had to be turned on and off on a daily basis.

Cisneros concluded that the box was in disrepair and that since the off/on switch, located inside the box, had to be operated by hand, a person performing this operation would be exposed to energized conductors. Also, when the door was left open to operate the interior switch, the

box could explode, and persons in the area would not have any protection and could suffer burns.<sup>1</sup>

Cisneros issued a citation under C.F.R. 30, Section 56.12030 which provides as follows: “[w]hen a potentially dangerous condition is found it shall be corrected before equipment or wiring is energized.”

## **2. Ribble’s Evidence**

Granillo explained that he starts the crusher by pushing buttons that are located on another compartment. Granillo said that he never placed his hand inside the box at issue, and never opened it.

Jones explained that although a five inch portion had been broken off the handle on the outside of the box, a star shaped stump remained. Accordingly, Ribble had fashioned a wrench to place over the star shaped stump, which allowed the interior breaker switch to be turned on and off from outside the box. He explained that, in normal operations, the crusher is started and stopped by pushing “cone starter buttons”, that are located elsewhere, i.e., not inside the box and not on the box. Jones explained that the breaker switch inside the box is not switched on and off on a daily basis, and that the only time that it is switched off is in order to check voltage or amperage on the crusher. According to Jones, on the date cited, the door had been left open as the crusher had gone down, and he was in the process of checking voltage and amperage, a task performed only by him.

## **3. Discussion**

Section 56.12030, supra, requires the correction of “... a potentially dangerous condition”. For the reasons that follow, I find that the record establishes that Ribble failed to correct “a potentially dangerous condition.”

The handle on the outside of the box was broken. Since it was designed to open or close a breaker inside the box, a dangerous condition was made possible thereby i.e., a person being exposed to energized conductors inside the box, after opening the door of the box to gain access to the breaker in order to open or close it. Accordingly, although Ribble had provided a wrench to be attached to the stump of the handle to allow it to be raised or lowered from the outside the box, the failure to repair the handle clearly was potentially dangerous (See *Webster’s Third New International Dictionary* (1996 Ed.), at 1775)). Hence, I find that it has been established that Ribble did violation Section 56.12030 supra.

## **4. Significant and Substantial**

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<sup>1</sup>It was stipulated should Daniel Lambert, an MSHA electrical inspector, testify, his testimony would be the same as Cisneros’.

Since the record establishes that Ribble did violation Section 56.12030 supra, and a discreet safety hazard was contributed to by the violation i.e., contact with energized conductors inside the box, I find that the first two elements set forth in Mathies, supra, have been met.

Cisneros opined that it was reasonably likely that a serious injury would have occurred because the handle had been broken, and was not repaired. In this connection, Cisneros testified, based solely on what was told to him by Granillo, that because the handle was broken, the door was left open as "... the only way that they could energize the switch, off and on, was to open the box and do it by hand". (tr. 92) Similarly, he testified, based upon "... what was explained" to him by "the supervisor" (tr. 98), that the switch inside the box had to be switched on and off on a daily basis, as it was the main switch for the cone crusher. However, in this regard I place more weight on the testimony of Barney Jones, the crusher superintendent, based on his personal knowledge that, when cited, the box was open because he was checking amperage due to some difficulties that had been encountered with the crusher. Further, I place more weight on the testimony of Granillo, as it was based upon his personal knowledge and not contradicted or impeached, that he starts the crusher by pressing buttons located on another compartment. In other words, the box is not opened daily in order to start the crusher. Further, Granillo, the crusher operator, has never opened the box at issue. Also, I note the uncontradicted testimony of Jones that Ribble had fashioned a wrench to place over the stump of the broken handle which allowed the interior breaker switch to be turned on and off from outside the box. Within this context, I find that it has not been established that the hazard of contact with energized conductors inside the box was reasonably likely to have occurred as a result of the violation herein. Therefore I find that it has not been established that the violation was significant and substantial.

## **5. Penalty**

I find that should a miner have made inadvertent contact with energized conductors inside the box as a result of the violative condition that a serious injury could have resulted. Thus I find that the gravity of the violation was relatively high. Further, since Ribble fashioned a wrench to be used because the handle had been broken, it is clear that Ribble had notice of the violative condition. I thus find that Ribble's negligence was moderate. Further, taking into account Ribble's history of previous violations, size, and good faith in abating the violation as stipulated to by the Secretary, that a penalty of \$300.00 is appropriate for this violation.

## **III. Citation Nos. 7886652, 7886653, 7886654, 78866555, 7886656 and 7886657.**

The parties filed a joint motion seeking the approval of a settlement regarding the above citations. The Secretary originally sought a penalty for these violations of \$3,162.00. The parties proposed to settle these citations for \$1,516. 10. I have reviewed the representations in

the motion as well as the record regarding these citations and find that the settlement is appropriate under the terms of The Federal Mine Safety and Health Act of 1977 and I approve it.

**ORDER**

It is **Ordered** that, within 30 days of this Decision, Ribble pay a total civil penalty of \$2,116.10.

Avram Weisberger  
Administrative Law Judge

Distribution: (Certified Mail)

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