

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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July 31, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. CENT 2001-218-M
Petitioner	:	A.C. No. 39-00022-05547
v.	:	
	:	
DACOTAH CEMENT,	:	
Respondent	:	Dacotah Cement Plant

DECISION

Appearances: Edward Falkowski, Esq., U.S. Department of Labor, Office of the Solicitor, Denver, Colorado, for the Petitioner;
Donald P. Knudson, Esq., Gunderson, Palmer, Goodsell & Nelson, LLP, Rapid City, South Dakota, for the Respondent.

Before: Judge Schroeder

Procedural History

This case is before me on a Petition by the Secretary of Labor alleging a violation of a mine safety regulation. Amendment of the Petition was permitted at the beginning of the hearing to broaden the scope of the regulation alleged to be violated. The Petition as amended alleges a violation of 30 C.F.R. § 46.7 for which the Secretary seeks to assess a Civil Penalty of \$5,000.00. The Respondent filed an answer and a prehearing order was issued which required the parties to develop their factual and legal positions in advance of a hearing. A hearing was convened on January 15, 2002, in Rapid City, South Dakota. Both sides filed briefs after the hearing and the briefs have been considered.

Issue Presented

The issue presented in this case is what constitutes a violation of 30 C.F.R. § 46.7, which concerns the requirement of training each miner in the tasks the miner is to perform. The regulation reads specifically as follows:

New task training.

(a) You must provide any miner who is reassigned to a new task in which he or she has no previous work experience with training in the health and safety aspects and safe work procedures specific to that new task. This training must be provided before the miner performs the new task.

(b) If a change occurs in a miner's assigned task that affects the health and safety risks encountered by the miner, you must provide the miner with training under paragraph (a) of this section that addresses the change.

(c) You are not required to provide new task training under paragraphs (a) and (b) of this section to miners who have received training in a similar task or who have previous work experience in the task, and who can demonstrate the necessary skills to perform the task in a safe and healthful manner. To determine whether task training under this section is required, you must observe that the miner can perform the task in a safe and healthful manner.

(d) Practice under the close observation of a competent person may be used to fulfill the requirement for task training under this section, if hazard recognition training specific to the assigned task is given before the miner performs the task.

(e) Training provided under this section may be credited toward new miner training, as appropriate.

(Emphasis added)

My task in this case is to first determine whether a violation of this regulation was established in the record and, if so, the amount of a civil penalty that constitutes an appropriate sanction.

Factual Findings

Dacotah Cement operates a large portland cement production facility in Rapid City, South Dakota. In the production of cement, crushed limestone, shale, and iron ore are mixed together and sent to a losche mill. This mill consists of two rolling cylinders that press down against a rotating turntable. The ground material is mixed with water and sent through a kiln to become clinker. In the losche mill, the downward grinding pressure of the two rolls is controlled by a hydraulic system. When this system is energized for grinding, the oil in the system is pressurized to approximately 1000 psi. (Tr.14, 103, 117, 185, 200). The mill control panel includes valves for reduction and relief of this pressure in the event work is required on the system.

The hydraulic pressure is transmitted from a pump to the mill through heavy duty hoses. From time to time, these hoses develop leaks and need to be replaced. Responsibility for replacement of hoses falls on a group of employees of Dacotah Cement who generally service and maintain equipment. On January 12, 2001, two service and maintenance crew employees

were assigned to replace one of the hydraulic hoses of a losche mill. The employees were Mr. Robert Rohrback and Mr. Fred Juopperi.

Mr. Rohrback has been a maintenance employee for Dacotah Cement for more than ten years. Mr. Juopperi has been in maintenance for a little less than three years. (Tr. 101, 164). Mr. Juopperi had never performed significant maintenance work on the losche mill prior to January 12, 2001, but Mr. Rohrback had performed work on the mill which required that he operate the hydraulic system, including the pressure relief valves. He had never replaced a hydraulic hose on the losche mill.

Both Mr. Rohrback and Mr. Juopperi worked under the direction of a supervisor, on some days one person and on other days a different person. The supervisor responsible for the activities on January 12, 2001, Mr. Melvin Wooley, testified at the hearing as to the work history and training of both Mr. Rohrback and Mr. Juopperi. He testified that neither Mr. Rohrback nor Mr. Juopperi had received specific training in heavy hydraulic hose replacement but that he had observed Mr. Rohrback perform a great number of procedures on the losche mill which required use of the pressure relief valves.

On January 12, 2001, Mr. Rohrback began the work of replacing the hoses by assembling the necessary tools and cleaning the work area. He had just about completed these preparations when he was joined by Mr. Juopperi. A different task had occupied Mr. Juopperi earlier in the morning. Mr. Juopperi soon reminded Mr. Rohrback of the mid-morning coffee break and both left the losche mill for approximately 30 minutes to join the rest of the maintenance crew for coffee and conversation. When they returned to the losche mill they resumed the process of replacing the heavy duty hoses. For reasons no witness adequately explained, Mr. Rohrback made a critical error in the process which would have dire consequences for both himself and Mr. Juopperi.

A key step in the process of replacing high-pressure hoses is releasing the pressure which is present even when the pump is turned off. Unless the pressure in the hose is released in a controlled manner, the disconnection of the hose will result in sudden and violent depressurization similar to a fire hose with too few firemen to hold it down. The losche mill control panel includes two valves for the purpose of relieving system pressure. This pressure relief step in the hose replacement process was not done.

When Mr. Rohrback and Mr. Juopperi returned from their coffee break they began the task of removing the leaking hoses from the losche mill. While the connections were sufficiently resistant to turning so as to require some unorthodox tools be used, there is no evidence that the condition of the couplings would have given any warning that the system was still pressurized. After the coupling was broken loose and turning, Mr. Rohrback noticed fluid oozing from the threaded joint. Before he could take action on his suspicions that the oozing fluid meant the system was pressurized, the coupling parted and began to thrash about and spew fluid on both men. Mr. Juopperi received a blast of fluid in the eyes as he attempted to get away from the scene. Mr. Rohrback was struck by the metal end of the hose in addition to being doused with fluid. Both men managed to scramble away from the immediate danger area and call for help.

The spewing fluid rapidly decreased the system pressure and the danger abated.

Both Mr. Rohrback and Mr. Juopperi were taken to a hospital for medical attention. Mr. Rohrback had the more serious injury in that the metal coupling had fractured his elbow. Both men were released to home in a few hours. Notice of this accident event was duly given to the local MSHA office and a field investigator was sent to look at the scene and interview the persons involved. The investigator was Mr. Joseph Steichen, who testified at the hearing.

Mr. Steichen testified in general to the facts summarized above. He covered two additional points of consequence. First, Mr. Steichen testified concerning an interview he conducted with Mr. Rohrback subsequent to Mr. Rohrback's release from the hospital. Mr. Steichen testified he asked Mr. Rohrback if he had opened the pressure relief valves prior to disconnecting the hose and the Mr. Rohrback replied he did not know where the pressure relief valves were located. (Tr. 76) Mr. Steichen went on to say that this response was the essence of the reason he believed Mr. Rohrback had not been sufficiently trained in the task he was assigned to perform.

Second, Mr. Steichen testified as to his understanding of the position taken by the Secretary as to requirements for documentation of new task training. With the assistance of counsel, it was made clear that this case does not involve any requirement for documentation of training.

I have evaluated the testimony of both Mr. Steichen and Mr. Rohrback as to Mr. Rohrback's familiarity with the pressure relief valves on the losche mill. Mr. Steichen's testimony was based on a single interview of Mr. Rohrback at a time Mr. Rohrback could be expected to be suffering from traumatic shock and effects of pain medication. Mr. Rohrback's testimony as to his training history was corroborated by his supervisor. I give substantially greater weight to Mr. Rohrback's testimony as to the extent of his training by his employer.

Analysis

Analysis of this case must begin with a recognition of the importance of the burden of proof. The Secretary bears the initial burden of proving each of the elements of the offense alleged. *Mathies Coal Co.*, 6 FMSHRC 1 (1984) The burden must be sustained by the evidence offered and accepted at the hearing. In this case, the jurisdictional facts were stipulated. The initial and critical element in dispute was whether either employee involved in the January 12, 2001, incident had been inadequately trained in violation of 30 C.F.R. §46.7. It was further stipulated this element was not a matter of documentation of training but actual evidence of training under the regulation.

As noted above, the critical evidence submitted by the Secretary on this element consisted of a sickbed conversation between the safety inspector and one of the workers. The inspector, after examining the scene of the incident at the losche mill, took what amounted to a *res ipsa loquitur* attitude toward the training requirement, i.e. such an accident could not have happened unless the worker were inadequately training as to both the techniques required and the risks

associated with incorrect performance of the task. I do not find that attitude justified in experience or in jurisprudence. Familiarity with a task, through formal training or otherwise, often leads to shortcuts and expedient abbreviations of standard steps in the task. The use, for example, of a cheater bar in rotating the hose coupling by Mr. Rohrback is more consistent with a worker trained to familiarity than a person unaware of the proper procedures.

I have not located a case (and counsel have not suggested any to me) which stands for the proposition that the mere fact of an injury accident means that the participants in the accident were inadequately trained to perform their task.

The record in this case does not demonstrate that the January 12, 2001, accident was the result of inadequate training rather than carelessness or inattention. Since the Secretary has the burden of showing in the first instance that inadequate training was provided, I am unable to find a violation of the training regulation. I find the record supports a conclusion that Mr. Rohrback had been adequately trained in the task assigned to him on January 12, 2001, and he was able to provide sufficient supervision to Mr. Juopperi.

For the foregoing reasons, I find in favor of the Respondent and against the Secretary.

Order

For the reasons given above, the Petition is **DISMISSED**.

Irwin Schroeder
Administrative Law Judge

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