

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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September 11, 2002

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. CENT 2002-171-M
Petitioner	:	A.C. No. 41-04063-05504
v.	:	
	:	
LATTIMORE MATERIALS CO., L.P.,	:	
Respondent	:	CLEBURNE PLANT #65

DECISION

Appearances: Thao Pham, Esq., Office of the Solicitor, U.S. Department of Labor, Dallas, Texas, on behalf of the Petitioner;
Trenton Horner, Safety Manager, Lattimore Materials, McKinney, Texas, on behalf of the Respondent.

Before: Judge Schroeder

Introduction

This case is before me on a Petition by the Secretary alleging a violation of a mine safety regulation. The Petition alleged a single violation for which the Secretary proposed a Civil Penalty of \$207.00. After notice, a hearing was scheduled on August 27, 2002, in McKinney, Texas. Respondent was offered the opportunity for a continuance of that hearing if witnesses essential to presentation of Respondent’s case were unavailable on that date. Respondent declined the continuance. The hearing was held as scheduled and evidence in the form of both testimony and documents was received. Both parties were afforded the opportunity for closing arguments.

Background

This case involves a very basic mine safety regulation, 30 C.F.R. § 56.11001, that requires “safe access” be provided to all work sites. The Secretary alleged Lattimore Materials failed to provide “safe access” for it’s employees to reach a site from which certain roller bearings needed to be lubricated on a frequent basis. It is my task to evaluate whether the record demonstrates that regulation was violated and, if so, what should be the appropriate sanction.

Analysis

Lattimore Materials Company operates a sand and gravel processing plant near Cleburne, Texas. The plant has operated in this location since at least 1998. The plant uses a sorting system in which material is dumped into a shaker/sorter and then in various sizes onto conveyor belts to stockpiles. The conveyor belts meet the shaker/sorter in pulleys which require lubrication on approximately weekly intervals. The pulleys are located more than 10 feet in the air within a tower structure constructed of steel beams. Resp. Exh. 1. At the time of the alleged violation, lubrication of the pulley bearings was done by a Lattimore employee who climbed into the tower structure with a grease gun. The employee wore a safety harness with a lanyard to tie-off on the tower while he used the grease gun. He walked on the steel beams of the structure to get to the various work sites. The beams had holes at numerous points to clip the lanyard to while working or moving. While using the grease gun it was necessary to use both hands on the gun and rely exclusively on the lanyard to reduce the fall hazard.

The allegations by the Secretary are based on an inspection by Mr. Fred Gatewood, a special agent employed by the Mine Safety and Health Administration, conducted on April 24, 2001. Tr. 11. Mr. Gatewood is a trained and experienced mine inspector familiar with the kind of equipment used at the Cleburne Plant. Soon after his arrival at the Cleburne Plant he identified what he believed to be a fall hazard in the pulley lubrication activity. He questioned the Plant Manager concerning the hazard. He was told the hazard had been identified several weeks before by management and a means of eliminating the danger had been ordered. The proposed solution was to install rubber hose on the pulley bearings so that lubrication could be performed from the ground. The hoses had been ordered. In Mr. Gatewood's opinion the hoses would eliminate the hazard. He was not able to identify any other method of pulley bearing lubrication in use at the Cleburne Plant that would eliminate the hazard. He did not believe a portable ladder to reach the lubrication sites was feasible or in use because of the accumulation of loose stone and mud on the concrete pad below the tower. He testified that he gave the Plant Manager ample opportunity to explain how the lubrication was done safely and he failed to provide an explanation.

Without rebuttal the testimony by Mr. Gatewood establishes a violation of 30 C.F.R. § 56.11001. Lattimore Materials argued that at least for the several weeks prior to the inspection by Mr. Gatewood, lubrication had been performed using an extension ladder to provide a solid platform for a worker to use the grease gun. No witness was offered to support this argument and the only photographs including a ladder were taken long after Mr. Gatewood's visit. Resp. Exh. 4. The record is insufficient to rebut the testimony by Mr. Gatewood.

Having found a violation of the regulation, I am required to evaluate the appropriate sanction. The Cleburne Plant is a small operation, often operated with one or two employees. The violation had been identified by management before Mr. Gatewood's visit and remedies developed, albeit without a sense of urgency. Existing safety steps (harness and lanyard) offered some degree of protection, albeit less than fully desirable. No actual injury was suffered at the

plant for lack of sufficient safety measures. I conclude that the violation warrants a Civil Penalty of \$100.00.

Order

For the reasons given above, I find Respondent violated 30 C.F.R. § 56.11001 and a Civil Penalty of \$100.00 is the appropriate sanction. Respondent is directed to pay a Civil Penalty of \$100.00 within 40 days of the date of this Order.

Irwin Schroeder
Administrative Law Judge

Distribution

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