

CCASE:  
SOL (MSHA) V. QUARTO MINING  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. LAKE 92-309  
Petitioner : A.C. No. 33-01157-04012  
 :  
v. : Powhatan No. 4 Mine  
 :  
QUARTO MINING COMPANY, :  
Respondent :

DECISION

Appearances: Kenneth Walton, Esq., Office of the Solicitor,  
U.S. Department of Labor, Cleveland, OH, for  
Petitioner;  
Daniel E. Rogers, Esq., Pittsburgh, PA, for  
Respondent.

Before: Judge Fauver

Petitioner seeks a civil penalty for an alleged a safety violation under 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

Having considered the hearing evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the Findings of Fact and further findings in the Discussion below:

FINDINGS OF FACT

1. Respondent operates a coal mine known as Powhatan #4 Mine, which produces coal for sale or use in or substantially affecting interstate commerce.

2. On March 5, 1992, Federal Mine Inspector James Jeffers observed a Caterpillar 988 front-end loader in the supply yard of the mine. The machine was idling, being warmed up for use. Inspector Jeffers asked the equipment operator, Steve Kurko, to demonstrate the steering.

3. When the steering wheel was turned far right, it locked in position, forcing the operator to rise from his seat and forcibly use both hands and his weight to turn the wheel back. Once the lock was broken by forceful turning, the steering wheel would spin very fast, causing a potential loss of control of the

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vehicle. Kurko stated to Jeffers that the condition was intermittent and that he had reported it to shop Foreman Ron Adams.

4. Adams had been aware of the problem as far back as October, 1991, when it was discovered that the steering jacks were leaking and, after the jacks were repacked, it was discovered that the steering problem was still not corrected. Adams did not take the machine out of service.

5. The loader was used in several locations throughout the plant. Shortly after Jeffers' issuance of the citation at issue, the loader was tagged out and repaired.

#### DISCUSSION WITH FURTHER FINDINGS

The standard cited by the inspector, 30 C.F.R. 77.1606(c), provides that:

Equipment defects affecting safety shall be corrected before equipment is used.

The front-end loader had an obvious safety defect in that the steering was malfunctioning. When turned to the right, it was subject to locking, and the driver would be forced to rise from the seat to brace himself against the wheel and use all the force he could muster to brake the lock on the steering. Once that occurred, the wheel would spin very fast toward center before the operator could regain control of the vehicle. The fact that the problem occurred unexpectedly and intermittently heightened the potential for an injury because the operator could not anticipate when the steering problem would occur. The fact that it was observed only in a standing position did not alter the fact that this was an unexplained, uncorrected and potentially very serious safety defect. It presented a serious risk of occurring in motion as well as in a standing position.

Any new operator of the machine would be faced with a latent, unknown defect. Respondent, through Adams and others, knew that the steering was malfunctioning and that their efforts to address the problem were unsuccessful. The failure to correct the steering defect or take the loader out of service constituted negligence of a high degree. Respondent apparently made no independent assessment of whether the malfunction was a hazard but instead relied upon its equipment operators. More was required once the foreman knew the steering was defective. The steering defect presented a hazard to the equipment operator, to foot traffic and to other vehicle drivers in the areas where the loader operated. Individuals on foot and other vehicle drivers were not likely to know of the defect in the steering system. The risk of failure to control the loader when someone was in the path of the loader was significant and substantial.

I therefore find that the violation could significantly and substantially contribute to the cause and effect of a mine safety

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hazard and that there was a reasonable likelihood that the hazard would contribute to or result in a serious injury.

I also find that there was an unwarrantable failure to comply with the cited standard. Respondent knew of the defect for several months before the inspection, but failed to correct the defect or remove the loader from service. This shows a serious lack of due care, more than ordinary negligence, and justifies the inspector's finding that there was an unwarrantable failure to comply with the standard.

Considering the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$800.00 is appropriate.

CONCLUSIONS OF LAW

1. The judge has jurisdiction.
2. Respondent violated 30 C.F.R. 77.1606(c) as alleged in Citation No. 3332171.

ORDER

WHEREFORE IT IS ORDERED that:

1. Citation No. 3332171 is AFFIRMED.
2. Respondent shall pay a civil penalty of \$800.00 within 30 days of this Decision.

William Fauver  
Administrative Law Judge

Distribution:

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