

CCASE:

SOL (MSHA) V. ARC MATERIALS WMK TRANSIT MIX

DDATE:

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TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

ARC MATERIALS CORPORATION,
WMK TRANSIT MIX,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEST 84-94-M
A.C. No. 26-00458-05502

Buffalo Road Pit and Mill

DECISION

Appearances: Marshall P. Salzman, Esq., Office of the Solicitor,
U.S. Department of Labor, San Francisco, California,
for Petitioner;
Michael Glancy, General Manager, WMK Transit Mix,
Las Vegas, Nevada, for Respondent.

Before: Judge Morris

This is a civil penalty proceeding initiated by the
petitioner against the respondent in accordance with Section
110(a) of the Federal Mine Safety and Health Act of 1977, 30
U.S.C. 820(a). The civil penalties sought here are for the
violation of a safety regulation. The petitioner seeks \$98.00 for
each violation.

Citations 2245538 and 2245539

These citations charge respondent with violating Title 30,
Code of Federal Regulations, Section 56.9Ä3, which provides as
follows:

56.9Ä3 Mandatory. Powered mobile
equipment shall be provided
with adequate brakes.

Summary of MSHA's Evidence

MSHA Inspector Vaughn Cowley inspected respondent's open pit
sand and gravel operation on January 30, 1984 (Tr. 7, 8).

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The company used trucks to haul materials from the pit to the crusher dump area (Tr. 8). On the day of the inspection, the company was using its two rubber-tired WABCO Model CÄ35 dump trucks (Tr. 8, 9). Each vehicle hauls approximately 35 tons.

The inspector requested a ride to the dump area with the company foreman (Tr. 9). He also requested that the driver engage the brakes on a 175ÄyardÄlong ramp. The truck, travelling at 15 miles per hour, hardly slowed down as it came to a stop (Tr. 10, 11). The truck finally came to a stop 25 yards after it entered the flat area. The brakes were not working since they would not stop the truck on the grade (Tr. 11).

After the truck came to a stop, the inspector wrote an imminent danger order due to the company's failure to provide adequate brakes (Tr. 11).

The inspector found that the same condition also existed on the WABCO company truck number 2. The company mechanics stated they had never had the time to completely go through the brakes to fix them (Tr. 12).

Extensive repairs were made by the company to the two vehicles (Tr. 13, 14).

After testing the brakes, the inspector felt they were adequate. However, he did notice the brake linings were smoking and had to be adjusted. He told the operator to back off the linings (Tr. 14, 15).

Respondent's Evidence

Michael Glancy, General Manager for WMK Transit Mix, indicated that the company's two WABCO trucks operated at a speed of 20 to 22 miles per hour on the haul road. The 10ÄfootÄwide trucks operate in a 22 to 30ÄfootÄwide roadway (Tr. 19, 20).

The company employees are instructed to make a daily maintenance repair order listing anything wrong with the equipment (Tr. 22).

The company disagrees with the inspector's statement that the brakes weren't adequate and witness Glancy had no such knowledge (Tr. 22, 23). There was, however, a leaking wheel cylinder in each of the trucks (Tr. 22). Kits were placed in them and the company adjusted the brakes after the citation issued (Tr. 22, 26).

Discussion

The testimony of the MSHA inspector establishes violations of the regulations in these two vehicles. I credit his expertise concerning the condition of the WABCO trucks.

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While respondent's witness Glancy indicated the brakes were adequate, it is virtually uncontroverted that the vehicle barely slowed down when the driver engaged its brakes (Tr. 10). The brakes in fact were not working to the point where they would stop the truck on the grade (Tr. 11).

The citation should be affirmed.

A portion of respondent's evidence addresses the issues concerning a civil penalty. It is asserted the company did not know that the brakes were inadequate (Tr. 23). Further, it is contended that the company was not negligent as initially alleged (Tr. 6, 28). Further, respondent questions the issue of seriousness for this violative condition (Tr. 6, 28).

The statutory criteria for assessing a civil penalty is contained in Section 110(i) of the Act, now 30 U.S.C. 820(i).

In this case the company should have known that the brakes were inadequate. In testing the vehicles, they would not stop on the road. Normal operating procedures require the vehicles to stop under these conditions.

No credible evidence supports the claim that respondent did not know that the brakes were inadequate.

While it is contrary to the judge's initial views concerning the imposition of a penalty (Tr. 29), I now conclude that the facts establish that the imposition of the proposed penalties is warranted.

Order

Based on the facts found to be true in the narrative portion of this decision, and based on the conclusions of law as stated herein, I enter the following order:

1. Citation 2245538 and the proposed civil penalty of \$98.00 are affirmed.

2. Citation 2245539 and the proposed civil penalty of \$98.00 are affirmed.

3. Respondent is ordered to pay the sum of \$196.00 within 40 days of the date of this order.

John J. Morris
Administrative Law Judge