CCASE:

SOL (MSHA) v. PRICE CONSTRUCTION  $% \left( 1\right) =\left( 1\right) \left( 1\right)$ 

DDATE: 19850507 TTEXT: Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. CENT 84-46-M A.C. No. 41-02577-05505

v.

Crusher No. 1

PRICE CONSTRUCTION, INC., RESPONDENT

APPEARANCES: Allen Reid Tilson, Esq., Office of the

Solicitor, U.S. Department of Labor, Dallas,

Texas, for Petitioner;

Robert Price, Vice President, Price Construction Inc., Big Spring, Texas,

for Respondent.

DECISION

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et. seq., the "Act," for a "significant and substantial" violation of the regulatory standard at 30 C.F.R. 56.12-16. The general issues before me are whether Price Construction Inc. (Price Construction) has violated the regulation as alleged and, if so, what is the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act. The special "significant and substantial" findings in the citation are not challenged.

The citation at bar (No. 2235106) as modified on February 1, 1984 alleges as follows:

An employee performing welding on a rolls crusher (Pioneer Model Number 33-R Triplex) was seriously injured when the rolls crusher was inadvertantly energized. The investigation revealed that a lock-out procedure had not been established also a lock-out device was not available on the master switch.

The cited standard provides in part as follows:

Electrically powered equipment shall be deenergized before mechanical work is done on such equipment. Power switches shall be locked-out or other measures taken which shall prevent equipment from being energized without the knowledge of the individuals working on it.

The evidence shows that Alvin Parrish, a welder for Price Construction with 25 years experience at crusher plants lost one of his legs when he was injured by the rollers of a crusher he was working on. The steel crusher rollers, 18 inches in diameter and 30 inches long, had worn down and were to be rebuilt by welding additional steel over the worn out sections. Parrish was setting up to perform this task and called to the plant foreman Roger Junker to start the generator to activate the welder. The same generator powered both the crusher rollers on which Parrish was to work and the welder to be used for the repairs. In order to activate the crusher rollers however, both a master switch and a roller switch had to be engaged. To activate the welder only the master switch had to be engaged. Although Junkers had worked with Parrish in rebuilding rollers on prior occasions he apparently misunderstood Parrish's command to start only the generator and Junkers also engaged the master switch. Since the roller switch had admittedly not been locked-out and had apparently been left in the "on" position, as soon as the master switch was engaged the crusher rollers began rotating and Parrish's leg was caught and crushed.

Respondent's safety director, James Hill, admitted to MSHA Inspector Charles Price that he knew a padlock had to be used on the roller switch to conform with required lock-out procedures. (Footnote.1) Plant superintendent Luther Wright also admitted that at the time of the accident he did not require padlocks to lock-out the roller switches. Under company procedures then in effect a "lock-out" was accomplished by merely turning off the generator and cutting the switches. Within this framework of evidence it is clear that the violation at bar was caused by the gross negligence of management personnel. This negligence is imputed to the mine operator. Secretary v. Ace Drilling Co., 2 FMSHRC 790 (1980).

By way of defense Price Construction contends that Parrish knew that the rollers could rotate once the generator was started and that he therefore had "knowledge" within the framework of the cited standard that the equipment was thereby being energized. The facts do not however support the proffered defense. Parrish testified that he told Junker to start only the generator and did not expect Junker to also engage the master switch. Parrish further stated that he would not have been standing on the rollers had he expected them to become energized. An out-of-court statement given by Junkers indicates his belief that Parrish wanted him to engage the master switch but this does not contravene Parrish's testimony of his own knowledge and belief.

In determining the amount of penalty to be assessed I am also considering that the operator is of modest size, has no serious history of violations, and abated the violation as required. In light of the seriousness of this violation and the negligence involved I would ordinarily impose a significant monetary penalty. I do not however propose in this case to penalize the mine operator for in effect requesting and participating in a hearing before this Commission. Accordingly I will not assess a penalty greater than that proposed herein by the Secretary.

## ORDER

Price Construction Inc. is hereby ordered to pay a civil penalty of \$98 within 30 days of this decision.

Gary Melick Administrative Law Judge

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~Footnote\_one

1 The testimony of Inspector Price is undisputed that it is a generally understood practice in the mining industry that a "lock-out" requires the use of a padlock.