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SOL (MSHA) v. IMCO SERVICES  
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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.

IMCO SERVICES,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. CENT 85-80-M  
A.C. No. 16-00967-05502

Houma Barite Plant

Appearances: Chandra V. Fripp, Esq., Office of the Solicitor,  
U.S. Department of Labor, Dallas, Texas, for  
the Petitioner.

DECISION

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$74, for a violation of mandatory safety standard 30 C.F.R. 55.14-3, as stated in a section 104(a), "significant and substantial" Citation No. 2237173, served on the respondent by MSHA Inspector Joe C. McGregor on March 6, 1985. The citation was issued after the inspector found an inadequately guarded belt tail pulley.

The respondent filed a timely answer and contest, and the case was docketed for hearing in New Orleans, Louisiana, during the term August 6-8, 1985, along with several other cases in which the same inspector issued citations.

Issue

The issue presented in this case is whether or not the respondent violated the cited safety standard, and if so, the appropriate civil penalty which should be assessed taking into account the civil penalty assessment criteria found in section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub.L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Discussion

The citation here charges the respondent with a failure to extend a guard on the primary crusher conveyor belt head and tail pulley for a sufficient distance to prevent someone from reaching behind the guard and becoming caught between the belt and pulley. In a conference call held with the parties prior to the hearing, respondent's representative stated that the respondent had decided to tender payment of the full civil penalty assessment levied by the petitioner for the violation in question, and petitioner's counsel agreed that the matter could be settled as provided for in Commission Rule 30, 29 C.F.R. 2700.30. Since counsel also represented the petitioner in the other docketed cases scheduled for hearings, she was advised that she could make her settlement arguments orally on the record, and with the consent of counsel, respondent's representative was advised that he need not personally appear at the oral argument.

Petitioner's counsel asserted that after discussing the matter further with the respondent's counsel, and after due consideration of the requirements of section 110(i) of the Act, she was of the view that the proposed settlement calling for the respondent to make full payment of the proposed penalty assessment was reasonable and in the public interest.

Inspector Joe McGregor, who was present in the hearing room, confirmed that the respondent operates a barite grinding milling operation which is under MSHA's enforcement jurisdiction. He confirmed that the plant in question employs approximately 20 miners, that its annual production is approximately 36,595 tons, and that the plant worked some 208,508 manhours during the period in question. Petitioner's counsel indicated that the plant has been inspected on 13 prior occasions by MSHA, and that during that time no citations were issued. Mr. McGregor confirmed that the cited conditions were promptly abated in good faith, and he concurred in the proposed settlement disposition of the case.

Conclusion

After careful consideration of the pleadings and the arguments presented in support of the proposed settlement disposition of this case, I conclude and find that the settlement is reasonable and in the public interest. I take particular note of the fact that respondent will pay the full amount of the proposed penalty, its excellent compliance record, the fact that it is a fairly small operation, and the fact that the condition was promptly abated. Accordingly, pursuant to 29 C.F.R. 2700.30, the settlement IS APPROVED.

ORDER

Respondent IS ORDERED to pay a civil penalty in the amount of \$74 in satisfaction of the citation in question within thirty (30) days of the date of this decision and order, and upon receipt of payment by the petitioner, this case is dismissed.

George A. Koutras  
Administrative Law Judge