CCASE:
SOL (MSHA) V. SCHNEIDERS READY MIX
DDATE:
19800513
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 Docket
	DOCKET NO. WEST 79-69-M
	MSHA CASE NO. 05-01027-050051
v.	
	Mine: Schneiders Pit and Plant
SCHNEIDERS READY MIX, INCORPORATED, RESPONDENT	

APPEARANCES:
Phyllis K. Caldwell, Esq., Office of the Regional Solicitor, United States Department of Labor, 1585 Federal Building, 1961 Stout Street, Denver, Colorado 80294
for the Petitioner

Frank J. Woodrow, Esq., 144 South Uncompahgre Avenue, P.O. Box 327, Montrose, Colorado
81401 for the Respondent

BEFORE: Judge Jon D. Boltz

STATEMENT OF THE CASE

The Petitioner seeks to assess a penalty against the Respondent for its alleged violation of 30 CFR 56.14-1(FOOTNOTE 1). The Petitioner attached as an exhibit to the proposal for penalty citation number 328084, issued September 13, 1978, in which it is stated that the troughing rollers on the main feeder conveyor belt were not guarded and an employee was injured when his arm was pulled into the rollers.

By way of answer the Respondent admits that an employee of the Respondent was injured on August 17, 1978, but alleges that the injury involved was caused by the intentional misconduct of the employee and not by a dangerous condition or by unprotected equipment.

Pursuant to notice a hearing was held on the merits on March 19, 1980, at Montrose, Colorado. At the conclusion of the hearing the parties agreed that they would not prepare any post hearing submissions for filing and that written decision would be issued after the transcript of the proceeding was filed. The transcript having been received, I issue the following decision.

ISSUE

Did the conveyor and rollers constitute equipment with exposed moving machine parts which might be contacted by persons and might cause injury and thus constitute a violation of 30 CFR 56.141

FINDINGS OF FACT

The following findings of fact are uncontroverted:

1. At all times relevant to these proceedings and in the course of its business the Respondent conducted a gravel and rock crushing operation.

2. One structure referred to as the feeder house had a hopper next to a loading ramp (Exhibit 2) and the rock and gravel material were fed through the hopper onto a conveyor belt in the feeder house.

3. The conveyor belt unit within the feeder house compartment allowed clearance of a maximum of 2 1/2 to 3 feet (Tr. 12, 13) where an individual could walk around three sides of the conveyor belt and it was approximately 6 feet from the level of the floor to the ceiling.

4. The end of the conveyor belt unit under the feeder or hopper is approximately 3 feet above the level of the floor and after traveling an incline distance of approximately 5 1/2 feet the conveyor is approximately 5 feet 4 inches above the floor level and is approximately at ceiling level 6 feet above the floor at the point that the conveyor leaves the feeder house compartment.

5. On August 17, 1978, an employee of the Respondent was injured when his left hand and arm were pulled into the operating conveyor belt and a supporting roller approximately 5 feet 4 inches above the floor level in the feeder house.

6. After the citation was issued on September 13, 1978, the Respondent installed a guard made of plywood approximately 1/2 inch thick, 2 feet wide, and 6 to 8 feet long, and installed it onto the conveyor belt unit.

DISCUSSION AND CONCLUSIONS OF LAW

There is no evidence to support the allegations of the Respondent that the injury to Lee A. Pinover, the employee of the Respondent, was caused by the intentional misconduct of Mr. Pinover. The only witness to the incident was Mr. Pinover himself since no other personnel were present in the feeder house at the time of the injury. I found the testimony of Mr. Pinover entirely credible.

Mr. Pinover testified that he had spent several minutes in the area of the conveyor belt using a large square shovel to clean up rocks from the concrete floor. When he attempted to scrape off an accumulation from the conveyor frame his shovel became lodged in the framework and when he reached with his left hand to free the shovel, his hand got caught between the roller and the conveyor belt. His hand and arm were pulled through the roller and belt up to his shoulder. Although Mr. Pinover screamed and shouted for help (Tr. 46) no one could see or hear him due to the noise and the fact that the person who could shut off the conveyor belt was not within sight of Mr. Pinover. With his left arm caught, Mr. Pinover reached for a switch box on the wall and started pushing buttons in order to turn off the power. His arm was caught for

a minute or so before the belt finally stopped. It was turned off by the crusher operator after he discovered Mr. Pinover's predicament (Tr. 78).

Even if Mr. Pinover had not gotten caught in the conveyor belt and roller, a dangerous condition was shown to exist for anyone working around the conveyor because of the exposed moving machine parts which might be contacted by persons and might cause injury. Any person working with a shovel cleaning up around the conveyor had only 2 1/2 to 3 feet of room as working space at the side or end of the conveyor. Because of this condition the conveyor belt should have been guarded in order to protect those persons who might get caught in the conveyor or rollers.

The foreman and part owner of the Respondent testified that it did not occur to him to install guard material on the conveyor even after Mr. Pinover was injured because he did not consider the condition a hazard. He testified further that he had been around equipment all his life and "you just don't get into these situations." (Tr. 69.) The injured employee, Mr. Pinover, was 15 years old at the time of the accident and 16 years old at the time of the hearing, although the Respondent may not have known of Mr. Pinover's age when he was hired part-time (Tr. 53). Mr. Pinover stated at the time of the hearing that he was 6 feet 3 inches tall and weighed 230 pounds and that he had grown some since the accident. Whether or not the 15 year old employee was careless and caused his own injury is not relevant. The question is whether or not there were exposed machine parts which might be contacted by persons and which might cause injury. The precise purpose of installing

the guard is to prevent the accidental injury to persons near the machinery such as occurred to this employee. Therefore, I conclude that the Respondent did violate 30 CFR 56.14-1 as set forth in citation number 328084.

PENALTY ASSESSMENT

Stipulation as to size, history and ability to continue.

The parties stipulated to the following: (1) The company size is 11,054 man hours per year, (2) the history is eight assessed violations in the previous 2 years during three inspection days, and (3) the penalty assesed will not effect the operator's ability to continue business. I therefore conclude that the Respondent's gravel and rock crushing business is a small sized operation and that there is a history of a small number of violations.

Gravity

The gravity of a safety violation must be measured by: (1) the likelihood that it will result in injuries, (2) the number of workers potentially exposed to such injuries, and (3) the severity of potential injuries Cleveland Cliffs Iron Company v MSHA, et al, Docket No. VINC 79-68-M, December 3, 1979.

The number of workers exposed is not large in that only one person would be working in the cleanup area. Only seven persons worked in the entire gravel and rock crushing operation. However, the severity of potential injuries likely to result is high. I conclude the violation was moderately severe.

Negligence and Good Faith

I find the operator was negligent. The operator did not consider that there was a hazard present and thus did not install guards until after the citation was issued on September 13, 1978, even though a

~1097
serious injury occurred to a worker on August 17, 1978. The operator demonstrated good faith in attempting to achieve rapid compliance after notification of the violation by promptly installing plywood guards along the conveyor unit.

Based on the testimony and exhibits introduced at the hearing and considering the criteria set forth in Section 110(i) of the Federal Mine Safety and Health Act of 1977, I conclude that a civil penalty of $800 should be imposed for the violation found to have occurred.

ORDER

It is ordered that the Respondent pay a penalty of $800 within 30 days from the date of this decision.

Jon D. Boltz
Administrative Law Judge

~FOOTNOTE
Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded.