

## Judge Vacates Citations for Alleged Slack in Steering Mechanisms of Mine Vehicles

February 9, 2016

Finding evidence presented by a mine inspector to be “too vague and conclusory,” an Administrative Law Judge (ALJ) has vacated two citations against a Tennessee stone producer over allegedly excessive slack in the steering mechanisms on two haul trucks.

An authorized representative of the Mine Safety and Health Administration cited Tri County Stone Co., Inc. (TCS) during an inspection at its quarry in Grundy County in November 2014. The inspector observed what he described as between  $\frac{3}{4}$  inch and one inch of play in seven steering linkage elements on a pair of 35-ton Euclid trucks. Both citations were written under the Mine Safety Act requirements (30 CFR 56.14100(b)) that defects on equipment affecting safety to be corrected in a timely manner. The violations were judged to be serious, *i.e.*, “significant and substantial,” because of a purportedly increased safety hazard attributed to sloping portions of the road upon which the vehicles traveled and because the road crossed a public highway.

The MSHA safety standard does not specify spatial limits. As a result, the inspector referenced a document from the Commercial Vehicle Safety Alliance establishing a slack limit of  $\frac{1}{8}$  inch between a steering linkage member and its point of attachment. However, this limit is merely advisory and not binding on either MSHA or the mine operator. In contrast, TCS relied upon Federal Motor Carrier Safety Administration regulations setting a slack limit of  $\frac{1}{4}$  inch (Part 399).

The inspector's tests of the steering mechanisms involved having a driver turn the steering wheel while he observed the action from the ground. He did not move the linkage elements with his hands. He also used a tape measure to quantify the slack he had allegedly observed, and made photos showing linkage components with the tape measure superimposed.

ALJ L. Zane Gill dismissed the inspector's approach. “[W]ithout testimony to establish a reliable inspection methodology or an identifiable point of comparison, the photos do not show evidence of slack in the linkages,” he wrote in a [decision](#) dated December 10. Gill also questioned whether the inspector had observed the type of motion that indicated wear, as opposed to motion essential for the proper operation of the steering.

TCS introduced ball joints from the vehicles as evidence at the hearing, but Gill was more influenced by specific testimony offered by a TCS witness, whose remarks were largely based on his observing the intact steering linkages on one of the trucks before and after they were removed for replacement. According to Gill, while the parts remained on the truck, the employee felt for play with his hands and inspected them visually. The employee watched as mechanics removed the ball joints and tested the linkages after the parts were replaced and found nothing wrong with the ball joints, no noticeable wear in the tie rods or where the ball cams attached to the ball joint assemblies, or any change in slack in the new steering linkages, Gill said.

Describing the TCS witness's testimony as “key” and holding his evidence and that provided by three other TCS employees was “consistent and convincing enough to cast a significant doubt shadow on all of the Secretary's [MSHA's] evidence,” Gill dismissed MSHA's enforcement action.

The takeaway for mine operators faced with citations for this alleged type of equipment wear is to engage in their defense an individual familiar with the hazards of movement in a ball joint and the use of surface equipment in mining to determine if the alleged defect violates the standard.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments.

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