

Mine Safety Citation for Poor Illumination Not Justified, Judge Rules

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A judge has thrown out a citation against a Tennessee rock producer for inadequate illumination because the mine safety inspector wrote the alleged offense during a daylight inspection and never established what miners were able to see in the dark. *Sec'y of Labor, MSHA v. Buzzi Unicem USA*, FMSHRC No. SE 2015-206-M (Jan. 8, 2016).

This case involves a Tennessee limestone mining company. Product from a Tennessee limestone pit is loaded onto barges located on the lake south of the mine. When docked, the barges are tied together to form a group several barges deep. Employees must walk on the barges before sunrise to check cables.

When an inspector appeared after daylight on March 16, 2015, a miner told him it was impossible to see in the dark beyond the second barge. Based on that assertion and the inspector's belief a miner could trip and fall into the water unnoticed in the dark, he issued a ticket and proposed a \$100 fine for inadequate illumination. The violation was written under the Mine Safety and Health Administration's standard requiring operators to have illumination in working areas sufficient to provide safe working conditions (30 CFR §56.17001).

The operator installed a portable lighting system later that day, and the inspector returned before sunrise the following morning to observe the lights in operation.

MSHA's case rested solely on the inspector's testimony, which Administrative Law Judge Priscilla Rae found unreliable. At the hearing, it was revealed that the miner had never officially complained to management about poor visibility; rather, several workers had complained only among themselves. The inspector also had been influenced by a report of an earlier trip-and-fall incident on a deck. But the company's internal report showed that illumination had played no role in the episode: the worker had stumbled over rigging while walking backward into an area he had not previously inspected for tripping hazards and, accordingly, had been disciplined.

Barge workers were equipped with bright cap lamps. In addition, the barge docking area was provided with diffuse east-and-west pointed lighting from a tower. There was an empty socket for a light facing south, the direction in which the barges were docked. The inspector called attention to the empty socket, but, according to a company official, he previously was informed that the south-facing light had been removed due to glare. According to ALJ Rae, the inspector also was unaware that barge workers maintained radio contact with other employees. By working in pairs, ALJ Rae noted, the miners also used a protective buddy system in the event of an accident.

Most significant, though, ALJ Rae determined the inspector never observed the illumination he had considered insufficient during the hours of darkness. When he returned before sunrise the day after issuing his citation, he did not direct the newly installed lighting to be turned off so he could judge how effective the original lighting had been. He did not measure illumination levels or make any firsthand observations about visibility conditions in that area at night, ALJ Rae noted.

"Judges have uniformly declined to find insufficient illumination in cases such as this one where the inspection occurred during daylight hours and the Secretary has presented no firsthand evidence regarding illumination levels or the nature of the illumination provided," ALJ Rae concluded.

This case is especially interesting because the company was represented by one of its non-lawyer employees who had recently completed the ACRI training offered by Jackson Lewis and Catamount Consulting on handling case citations under MSHA's Alternative Case Resolution Initiative. The case reinforces the need to accompany inspectors and carefully document what they say and do. ACRI

training can help businesses effectively contest low-penalty/high-abatement cost matters without expending significant legal fees.

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

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