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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
APPLICANT

Application for Review

Docket No. PITT 79-161

v.

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

Order No. 231630

January 19, 1979

Westland Mine

UNITED MINE WORKERS OF AMERICA,
RESPONDENT

DECISION

Appearances: Michel Nardi, Esq., and Karl Skrypak, Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania, for Applicant;
of the Solicitor, Department of Labor, Philadelphia, Pennsylvania, for Respondent MSHA;
Joyce Hanula, Esq., and Mary Lu Jordan, Esq., for the United Mine Workers.

Before: Judge Merlin

Statement of the Case

This is a proceeding filed under section 105(d) of the Federal Mine Safety and Health Act of 1977 by Consolidation Coal Company for review of an order of withdrawal issued by an inspector of the Mine Safety and Health Administration (MSHA) under section 104(d)(2) of the Act.

Pursuant to a notice of hearing issued March 5, 1979, this case was set for hearing on April 3, 1979, in Arlington, Virginia. The hearing was held as scheduled. The operator, MSHA, and the United Mine Workers appeared and presented evidence (Tr. 8-132). At the conclusion of the taking of evidence, the parties waived the filing of written briefs, agreed to have a decision rendered from the bench, and set forth their positions in oral argument.

Bench Decision

The decision rendered from the bench is as follows:

The validity of a section 104(d)(2) order is being challenged in this case. The parties agree that the issues are the existence of a violation and unwarrantable failure.

With respect to the existence of a violation the cited section is 75.1002 which provides "Trolley wires and trolley feeder wires, high voltage cables and transformers shall not be located inby the last open crosscut and shall be kept at least 150 feet from pillar workings."

Admittedly, a battery charger was within the area prohibited by the mandatory standard. The question is whether a battery charger is a transformer within the meaning of the mandatory standard. The Government's electrical expert testified that a battery charger has two components, a transformer and a rectifier. With respect to the battery charger in this case, the transformer would reduce voltage, and the rectifier would convert AC voltage to DC voltage. Because a transformer is one of the two integral parts of a battery charger, I hold that where a transformer is present in the battery charger, the citation of a battery charger under section 75.1002 includes a transformer.

In this case the inspector did not actually look in the battery charger to see if the transformer was present. However, batteries on the scoop were changed in the normal manner with the rundown battery being placed on the rack of this battery charger either for storage or to be recharged. Indeed, because the battery charger was in the subject location for 10 days, and because the scoop during that period was being used to haul materials for longwall mining, I conclude that the battery charger must have been used to charge batteries. Of course, in order to charge the scoop's batteries, the battery charger had to have its transformer. Accordingly, I conclude the battery charger, in this instance, contained the transformer, as would be normal practice. If the transformer was not in the battery charger, then it was incumbent upon the operator to prove this deviation from normal practice, which it did not do.

I recognize that another mandatory standard, section 75.1105, specifically refers to transformer

stations and battery charging stations. Section 75.1105 is, of course, a different mandatory standard designed to cover other situations. I do not view it as dispositive here. Rather, I remain persuaded by the fact that in this case the transformer is one of the two indispensable components of the battery charger, a fact which the testimony of MSHA's electrical expert shows is known to all knowledgeable people in the field. All of the operator's employees do not, of course, have to be electricians; but those in charge should be apprised of the components of the equipment they are dealing with so that they may discharge their duties in accordance with the mandatory standards.

Accordingly, I conclude a violation within the purview of section 75.1002 existed and was validly cited. Longwall mining had been going on for 10 days before the subject order was issued. The evidence shows without dispute that for these 10 days this equipment was in a prohibited location. The operator, through its management personnel, knew of this situation during the entire period. This constitutes unwarrantable failure. The subject order is hereby upheld. The application for review is dismissed.

ORDER

The bench decision is hereby affirmed. Accordingly, it is ORDERED that Order No. 231630 is UPHELD and that the operator's application for review is DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge