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UNITED STEEL V. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

UNITED STATES STEEL CORPORATION,  
APPLICANT

Applications for Review

v.

Docket No. BARB 79-276  
Order No. 240507  
January 16, 1979

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

Docket No. BARB 79-277  
Order No. 240508  
January 16, 1979

UNITED MINE WORKERS OF AMERICA,  
RESPONDENT

Concord Mine

DECISION

Appearances: Billy M. Tennant, Esq., Pittsburgh, Pennsylvania,  
for Applicant;  
Terry Price, Esq., U.S. Department of Labor, Office  
of the Solicitor, Birmingham, Alabama, for Respondent

Before: Judge Forrest E. Stewart.

Two applications for review were filed pursuant to section  
105(d) of the Federal Mine Safety and Health Act of 1977, 83  
Stat. 742, 30 U.S.C. 801-960 and applicable regulations.

The orders of withdrawal, dated January 16, 1979, alleged  
that a violation of section 75.316 of Title 30, Code of Federal  
Regulations, (FOOTNOTE 1) existed at the Concord Mine on that date.

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Order No. 240507 alleged that the following condition or practice existed:

The Company's approved Ventilation System and Methane and Dust Control Plan was not being complied with, in that the line brattice was 19 feet and 10 inches from the deepest penetration of the working face of No. 18 room on No. 011 working section. The Company's approved plan states line brattice will be maintained to within 10 feet of the deepest penetration of all working faces.

Order No. 240508 alleged that the following condition or practice existed:

The Company's approved Ventilation System and Methane and Dust Control Plan was not being complied with, in that the line brattice was 20 feet and 6 inches from the deepest penetration of the working face of No. 19 room on No. 011 working section. The Company's approved plan states line brattice will be maintained to within 10 feet of the deepest penetration of all working faces.

It was established at the hearing that, as alleged in Order of Withdrawal No. 240507, the brattice extended only to within 19 feet 10 inches of the deepest penetration of the face in 18 Room. It was also established that the line brattice extended only to within 20 feet 6 inches from the deepest penetration of the face in 19 Room, as alleged in Order No. 240508. The evidence further established that no coal was actually being cut, mined or loaded when the inspector observed these conditions.

In a bench decision rendered at the hearing, the above-captioned applications for review were granted and Order Nos. 240507 and 240508 were vacated.

It was held that under the factual circumstances of this case, line brattice was required to be maintained to within 10 feet of the area of deepest penetration of all working faces (hereinafter 10-foot line brattice) only when coal was actually being cut, mined or loaded.

Although there is a general requirement for continuous use of line brattice to provide adequate ventilation in 30 CFR 75.302, (FOOTNOTE 2) the

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10-foot criteria is set forth in 30 CFR 75.302-1(a) which specifically requires line brattice at that particular distance only while coal is being cut, mined or loaded.

Petitioner has not alleged a violation of 30 CFR 75.302 and the evidence does not establish that the line brattice in place at the time of the inspection fails to meet the requirements of that section. What petitioner alleges is a failure to meet the 10-foot requirement as set forth in Respondent's approved ventilation plan which may contain additional requirements authorized by 30 CFR 75.302-1(a). This section reads in pertinent part as follows:

Line brattice or any other approved device used to provide ventilation to the working face from which coal is being cut, mined or loaded and other working faces so designated by Coal Mine Safety Manager, in the approved ventilation plan, shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced \* \* \* .

This provision clearly designates the working face<sup>3</sup> as that place at which brattice is to be maintained. The modifying phrase "from which coal is being cut mined or loaded" specifies the time at which brattice is to be maintained. All working faces must be provided with line brattice meeting the 10-foot criteria during that time period.

In argument, counsel stated that it was Petitioner's position that the modifying phrase "refers to a location or a place and not the duration." If this were the correct interpretation, and the phrase really referred to a place rather than a period of time, the inspector would have been able to cite a violation of 30 CFR 75.302-1(a), rather than relying on the language of the ventilation plan. The inspector indicated in his testimony that he understood that he would have been able to issue a citation under a regulation if coal were being cut, mined or loaded. In fact, if the location of the line brattice had been in violation of 30 CFR 75.302-1(a), the inspector should have invoked that section in order to be in compliance with MSHA policy that directed the issuance of citations for violations of specific requirements of regulations rather than identical requirements in ventilation plans. (FOOTNOTE 4)

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As to the place where the requirement is effective, section 75.302-1(a) requires 10-foot line brattice at all working faces. The ventilation plan also requires 10-foot line brattice at all working faces. (FOOTNOTE 5)

As to the time when the requirement is effective, section 75.302-1(a) requires 10-foot line brattice when coal is actually being cut, mined or loaded. The ventilation plan is silent as to the time when 10-foot line brattice is required during advance mining. This silence cannot be construed as adding additional requirements to those in the regulation which require 10-foot line brattice only while coal is being cut, mined or loaded. In order for the operator to be penalized for failure to maintain 10-foot line brattice at times other than those specified in the regulation, the approved plans should clearly state the additional requirements in such a way that the operator is informed of his obligations.

It is obvious that the operator did not intend that brattice must be maintained within 10 feet of the working face at all times when it submitted the ventilation plan and the roof control plan and that the district manager did not so intend when he approved those plans. As a practical matter, line brattice is maintained 10 feet from the deepest penetration of the working face in order to prevent the accumulation of methane and dust. The inspector testified that brattice is necessary principally at those times during which the cutting, mining or loading of coal being performed.

To construe the ventilation plan in a manner that would require 10-foot line brattice at all times, even while coal was not being cut, mined or loaded, would create a conflict with the roof control plan which contained a specific exemption. By the inspector's admission, there were times during which line brattice did not have to be maintained to within 10 feet of the face since the approved roof control plan specifically allowed the removal of line brattice during roof bolting operations. The provision for its removal was included because the line brattice presented a hazardous obstruction during bolting. The inspector mentioned one occasion on which this obstruction resulted in severe injury to a miner's arm.

The language "of all working faces" in Respondent's ventilation plan clearly does not mean that brattice be maintained at all times in all working faces. With regards to maintenance of brattice at working faces during advance mining, Respondent's ventilation plan imposes requirements no stricter than those contained in 30 CFR 75.302-1(a).

ORDER

The bench decision is hereby AFFIRMED. Accordingly, it is ORDERED that Order Nos. 240507 and 240508 are VACATED and the operator's applications for review are GRANTED.

Forrest E. Stewart  
Administration Law Judge

AA

~FOOTNOTE\_ONE

1 30 CFR 75.316 provides:

"A ventilation system and methane and dust control plan and revisions thereof suitable to the conditions and the mining system of the coal mine and approved by the Secretary shall be adopted by the operator and set out in printed form on or before June 28, 1970. The plan shall show the type and location of mechanical ventilation equipment installed and operated in the mine, such additional or improved equipment as the Secretary may require, the quantity and velocity of air reaching each working face, and such other information as the Secretary may require. Such plan shall be reviewed by the operator and the Secretary at least every 6 months."

~FOOTNOTE\_TWO

2 30 CFR 75.302 reads, in pertinent part, as follows:

"Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners and to remove flammable, explosive, and noxious gases, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners." (Emphasis added.)

~FOOTNOTE\_ONE

3 "Working face" is specifically defined in 30 CFR 75.2(g)(1) as "[A]ny place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle."

~FOOTNOTE\_FOUR

4 This decision does not hold that the inspector may not cite an operator for violations of additional requirements in ventilation plans and it does not reach the legal issue as to the effect of a failure of an inspector to follow MSHA policy or guidelines.

~FOOTNOTE\_FIVE

5 With regard to advance mining, the ventilation plan reads in pertinent part that "line brattice will be maintained to within 10 feet of the area of deepest penetration of all working faces."