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

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

Civil Penalty Proceeding

Docket No. NORT 78-417-P  
A/O No. 44-00280-02025

v.

Camp Branch No. 1 Mine

CLINCHFIELD COAL COMPANY,  
RESPONDENT

DECISION

Appearances: Inga Watkins, Esq., Trial Attorney, Office of the  
Solicitor, Department of Labor, for Petitioner;  
Gary W. Callahan, Esq., Attorney for Respondent.

Before: Chief Administrative Law Judge Broderick

Statement of the Case

This proceeding was commenced on September 25, 1978, by a  
petition for the assessment of a civil penalty filed under  
section 110(a) of the Federal Mine Safety and Health Act of 1977,  
30 U.S.C. 820(a), seeking a penalty for an alleged violation of  
the provisions of 30 CFR 77.207.

Following discussions between counsel pursuant to a  
prehearing order, the case was called for hearing on the merits  
on January 25, 1979, in Abingdon, Virginia. Clarence A. Goode, a  
Federal mine inspector, testified on behalf of Petitioner; George  
W. Strong, superintendent of the subject mine, testified on  
behalf of Respondent. Both parties have filed posthearing briefs.  
All proposed findings and conclusions contained in the briefs not  
adopted herein are rejected.

Regulation

30 CFR 77.207 provides: "Illumination sufficient to provide  
safe working conditions shall be provided in and on all surface  
structures, paths, walkways, stairways, switch panels, loading  
and dumping sites and working areas."

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## Issues

1. Whether there was any illumination in the areas covered by the citation involved herein in addition to the cap lamps of the miners and inspector.

2. Whether the illumination in the areas covered by the citation was sufficient to provide safe working conditions.

3. If a violation has been established, what is the appropriate penalty?

## Findings of Fact

1. At all times relevant to this proceeding, Respondent, Clinchfield Coal Company, was the operator of a coal mine in Dickenson County, Virginia, known as the Camp Branch No. 1 Mine.

2. Respondent is a large operator and any penalty assessed herein will not affect its ability to continue in business.

3. On September 19, 1977, Federal Mine Inspector Goode made an inspection of the subject mine, including both underground and surface areas.

4. Inspector Goode's inspection of the surface areas was conducted between 9:30 and 11 p.m. on September 19. The night was cloudy.

5. Inspector Goode had previously inspected the mine on September 16, 1977, during daylight hours and did not observe light structures in the area of the head house and stacker belt. He returned on September 19 at night to determine the illumination in the area.

6. On September 19, 1977, at approximately 11 p.m., Inspector Goode issued Notice of Violation No. 4 CAG, charging a violation of 30 CFR 77.207.

7. At the time the citation referred to in Finding No. 6 was issued, there were no functioning outside lights at or near the head house or the conveyors leading from the head house to the stacker transfer point.

## Discussion

There is sharp and total disagreement between Mr. Goode and Mr. Strong as to the existence of functioning lights at the time and place referred to in the notice. I am accepting the testimony of Mr. Goode, because he was present at the time in question, and

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Mr. Strong was not. Mr. Sam Murphy, mine foreman, who accompanied Mr. Goode on his inspection, was not called as a witness by Respondent. Mr. Goode's testimony is corroborated by the notes which he made at the time of his inspection. Mr. Goode is an experienced mine inspector. There is no adequate reason shown in this record to conclude that he was totally mistaken or was fabricating as to the condition he stated that he observed.

8. Because of the absence of functioning lights in the areas described in Finding No. 7, illumination sufficient to provide safe working conditions was not provided in those areas.

#### Discussion

The only illumination in the areas in question was that provided by the cap lamps of the miners and the inspector. The area in question had supplies, railroad tracks, rocks and coal spillage which constituted stumbling hazards. There were moving conveyors and moving parts at the transfer point and the stacker belt which could be hazardous to those working in and around them, if insufficiently illuminated. The cap lamps did not provide sufficient illumination to obviate these hazards since the cap lamp provides only a directed beam of light and does not provide diffuse illumination to allow a person to see to the periphery of his vision. I reject the testimony of Mr. Strong that "the cap light provides adequate illumination for a man working along one of these conveyors" (Tr. 81).

9. At the time the notice of violation was issued, there was one miner working in the area in question. However, the area was traveled by other miners to pick up supplies and to do maintenance and cleanup work along the belt.

10. The condition described in Finding No. 8 was moderately serious.

11. Respondent's history of previous violations does not include any violations of 30 CFR 77.207. Any penalty assessed herein will not be increased because of a history of previous violations.

12. The parties stipulated that Respondent demonstrated good faith in attempting to effect rapid compliance after the notice was issued.

13. The absence of illumination in the areas in question was discussed with Respondent's officials prior to the date the notice was issued. Respondent knew or should have known of the existence of the condition described in Finding No. 8. Respondent was negligent.

Conclusions of Law

1. Respondent was subject to the provisions of the Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq., as of September 19, 1977.

2. The undersigned Administrative Law Judge has jurisdiction over the parties and the subject matter of this proceeding.

3. The condition described in Finding No. 8 constituted a violation of the mandatory safety standard contained in 30 CFR 77.207.

4. A violation of the safety standard in 30 CFR 77.207 can be established without reference to specific illumination measurements such as footcandles of light.

Penalty

Considering the criteria in section 109(a) of the 1969 Act, I conclude that a penalty of \$150 is appropriate for the violation.

Therefore, it is ORDERED that Respondent shall pay a civil penalty in the amount of \$150 for the violation on September 19, 1977, of 30 CFR 77.207. The penalty shall be paid within 30 days of the date of this decision.

James A. Broderick  
Chief Administrative Law Judge