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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 Proceedings

Docket No. PITT 79-12-P
A/O No. 36-00917-03001

v.

Lucerne No. 6 Mine

HELVETIA COAL COMPANY,
RESPONDENT

Docket No. PITT 79-5-P
A/O No. 36-05038-03001

KEYSTONE COAL MINING CORP.,
RESPONDENT

Margaret No. 11 Mine

DECISION

The above-captioned cases are petitions for the assessment of civil penalties. Each petition is for the assessment of an alleged violation of 30 CFR 50.20.

The parties have filed Joint Stipulations of Fact. From the stipulations it appears that in PITT 79-5-P an assistant mine foreman slipped and fell and fractured his arm while chipping ice on a slope outside the mine and that in PITT 79-12-P an assistant mine foreman while building a brattice wall, picked up a concrete block, slipped and injured his back.

The alleged violations are due to the operator's failure to fill in lines 5 thru 12 of Form 7000-1 with respect to the foregoing occurrences. Lines 5 thru 12 of the form deal with information regarding accidents. The operator contends that since these occurrences were not accidents under the regulations it did not have to complete these lines. The Solicitor argues that the receipt of such information is necessary for MSHA to properly discharge its responsibilities.

Part 50 of the regulations sets forth inter alia the reporting requirements for accidents, occupational injuries and occupational illnesses. Section 50.2 sets forth a list of definitions for terms "as used in this Part" including inter alia:

* * *

(e) "Occupational injury" means any injury to a miner which occurs at a mine for which medical treatment is administered, or which results in death or loss of consciousness, inability to perform all job duties on any day after an injury, temporary assignment to other duties, or transfer to another job.

* * *

(h) "Accident" means,

- (1) A death of an individual at a mine;
- (2) An injury to an individual at a mine which has a reasonable potential to cause death;
- (3) An entrapment of an individual for more than thirty minutes;
- (4) An unplanned inundation of a mine by a liquid or gas;
- (5) An unplanned ignition or explosion of gas or dust;
- (6) An unplanned mine fire not extinguished within 30 minutes of discovery;
- (7) An unplanned ignition or explosion of a blasting agent or an explosive;
- (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use; or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage;
- (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour;

(10) An unstable condition at an impoundment, S refuse pile, or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area; or, failure of an impoundment, refuse pile, or culm bank;

(11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes;

(12) An event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

* * *

In his brief the Solicitor admits that what happened in these cases did not constitute an "accident" within the meaning of the quoted definition. Moreover, on Form 7000-1 questions 5 thru 11 are under a heading entitled "Accident information."

It is clear that the term "accident" is a word of art which has a specific meaning and which by the express terms of section 50.2 applies to all of Part 50. Accordingly, the Solicitor's admission that these cases do not involve "accidents" as defined in section 50.2(h) is dispositive. Since no "accidents" were involved, the reporting requirements in section 50.20 for "accidents" do not apply.

I have carefully considered the Solicitor's argument that the definition of "accident" is not for the purpose of completing the forms but for the purpose of identifying what occurrences must be promptly reported to MSHA for possible investigation. I cannot accept this interpretation because it is contrary to the terms of the regulations which as already noted, expressly make the definitions applicable to Part 50 in its entirety. I also have reviewed the Solicitor's representation that it is necessary for MSHA to receive the information in question. If this is so, it would be a simple matter to amend the regulations so that MSHA can obtain this data.

In light of the foregoing, I conclude that no violations existed and that therefore no penalties can be assessed in these cases.

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ORDER

It is hereby ORDERED that the petitions for assessment of civil penalties filed herein be DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge