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SOL (MSHA) V. BILL W. STODDARD
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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. DENV 78-527-P
A.C. No. 42-00081-02014V

v.

Co-op Mine

BILL W. STODDARD, W. J. OWENS,
ELLERY KINGSTON, ELDEN
KINGSTON, GERALD HANSEN, AND
JOHN GUSTAFSON, D/B/A CO-OP
MINING COMPANY,
RESPONDENTS (FOOTNOTE 1)

DECISION

Appearances: James L. Abrams, Esq., Office of the Solicitor, U.S.
Department of Labor, for Petitioner
Carl E. Kingston, Esq., Salt Lake City, Utah, for
Respondents

Before: Administrative Law Judge Michels

The above-captioned civil penalty proceeding was brought pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a). The Mine Safety and Health Administration (MSHA) filed a petition for the assessment of a civil penalty on July 31, 1978, alleging that Respondents committed a violation of 30 CFR 75.400. On January 16, 1979, Respondents filed their answer contesting the violation. A hearing was held in Salt Lake City, Utah, on May 18, 1979, at which the parties were represented by counsel.

Evidence was received regarding Citation No. 7-0045 (December 12, 1977), which alleged a violation of 30 CFR 75.400.(FOOTNOTE 2) This regulation requires that "Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein."

On the basis of the evidence presented, and in light of the statutory criteria, a decision was made from the bench finding a violation and assessing a penalty of \$100. The following is a summary of the findings made regarding the citation:

(a) A violation did occur (Tr. 86). The finding of the existence of the accumulations was based on the uncontradicted testimony of Inspector Lawrence Ganser (Tr. 16-17, 25, 76, 85-86). The inspector's estimate that the accumulations had existed over a shift or two was accepted (Tr. 20, 86).

(b) The operator is small to medium in size (Tr. 8, 87).

(c) There is a history of prior violations. Some of these are of 30 CFR 75.400, although not a significant number. Petitioner's Exhibit No. 1 shows that there have been three violations of this standard assessed for \$106, \$375, and \$125. They were settled for \$106, \$110, and \$67, respectively (Tr. 7, 90). This was not a bad history (Tr. 87).

(d) The penalty assessed will not affect the ability of the operators to continue in business (Tr. 87).

(e) Good faith efforts were made to achieve rapid compliance (Tr. 88).

(f) The violation was serious (Tr. 88).

(g) There was some negligence on the operators' part (Tr. 88).

Consideration has been given to the fact that the belt in this case was new and problems had occurred with its use (Tr. 40-42, 52-54, 87).

(h) Based on the circumstances which failed to show any exceptional factor requiring a more than normal penalty, the operator should be assessed \$100 (Tr. 90-91).

the future. In any event, the Solicitor was notified by certified mail by an order issued May 11, 1979, and received on May 15, 1979. This was a full three days prior to the hearing and a day prior to the previously scheduled date. Counsel has given no facts showing he was in any way prejudiced by the change in dates.