

CCASE:
ITMANN COAL CO. V. SOL (MSHA)
DDATE:
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TTEXT:

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Wyoming County, West Virginia, which produced coal for sales in or affecting interstate commerce.

2. At about 8:20 on the morning of April 6, 1978, Jack Bailey, a miner's helper, arrived at his working section, the Guyan No. 2 panel section. During his preshift examination, he observed a crack in the roof which he immediately reported to the section foreman, Levi Holly. He also noticed that the roadway into the face was abnormally wide and required additional supports.

3. Foreman Holly and another miner's helper, Dean Simmons, walked up to the face and Mr. Holly sounded the roof for vibrations by means of a hammer check on both sides of the crack. A hammer check is considered to be a reasonable method, although not fool-proof, for detecting cracks within 5 or 6 feet of the roof's surface. The approved roof-control plan for the Itmann No. 1 Mine states that roof examinations shall consist of visual examinations as well as the sound and vibration (hammer) method.

4. The foreman ordered additional timbers, and Simmons set about 20-25 posts to narrow the width where the roof was cracked, but leaving enough room to operate the mining machine. Production was started, but after two shuttle cars were loaded, the roof began to creak and warp.

5. Federal mine inspector Steven Kowalski arrived at the Guyan No. 2 panel section at about 9:30 that morning, accompanied by the shift foreman, Mr. Green, and the miners' representative, Mr. Naylor. Inspector Kowalski observed two fractures in the roof that extended about 40 feet from the face and were about one-eighth to one-quarter inch in width. Inspector Kowalski pointed out both cracks to the shift foreman, Mr. Green.

6. I find that when Inspector Kowalski checked the roof, there were two cracks, as he described. In reaching this finding I have considered the fact that after the additional posts were installed, the miner operator did not observe the roof; that the superintendent's testimony with respect to the number of cracks was not firsthand; that the foreman, Mr. Holly, who observed the roof during the preshift did not testify (he is deceased); and that the inspector both kept notes of his observations and was able to identify two cracks in reasonable detail.

7. No one was directly under the cracks, but the machine operator's position was near the right side of the cracks (facing inby), and the cracks extended outby his position.

8. At the instruction of Mr. Green, the continuous miner was pulled back, at which point the roof began to warp--it started cracking and popping, and fine particles began to fall--which I find indicated further deterioration in the condition of the roof.

9. Inspector Kowalski issued a section 104(d) citation charging a violation of 30 CFR 75.200 (roof-control plan), indicating that approved Roof-Control Plan No. 4-RC-12-70-1154-4 was not being followed in the Guyan No. 2 panel section in the No. 1 pillar split on the final lift near spad No. 6996, No. 2 entry because additional support, such as cross-sections or roof bolts, should have been used. Under section 104(d)(1) of the Act, Inspector Kowalski included in the citation findings that: (1) the violation could significantly and substantially contribute to the cause and effect of a mine safety hazard, and (2) it was caused by an unwarrantable failure of the operator to comply with the cited standard.

10. The roof-control plan then in effect was formulated by the superintendent, Richard Harris, and submitted to both MSHA and the State Department of Mines for their approval. The approved plan states at page 6:

1. This plan stipulates the minimum requirements for roof supports and where conditions indicate, additional supports are to be installed.

* * * * *

4. Where miners are exposed to danger of falls of roof, face, and ribs, the workman shall examine and test the roof, face, and ribs before any work or machine is started, and as frequently thereafter as may be necessary to insure safety * * *. Roof and rib examinations shall consist of visual examination and the sound-and-vibration method.

11. At the site involved, pillar lift No. 11, Applicant was engaged in retreat mining, which called for compliance with drawing No. 9 of the plan. This drawing, entitled "Pillar Recovery Continuous Mining," reads:

1. This plan is to be used when conditions make it necessary to advance through the pillars and mine the wings on the retreat from the same opening.

* * * * *

5. Pillar split is supported, as shown in Drawings Nos. 1, 2, 4, or 5.

12. At the option of the Applicant, drawing No. 5 was selected. It provided:

Entries, Rooms, Crosscuts, Barriers, Pillar Splits, and Places Being Reactivated for Roadways.

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1. Plan shown is minimum support for normal conditions. Additional posts, crossbars, or cribs shall be installed where needed.

13. In retreat mining, cracks in the roof are not an unusual occurrence. Roof falls are planned after the final pushout of a pillar split. A hole is first cut through the middle of a block of coal, which is about 6 or 7 feet high and about 20 feet wide. After the initial cut, which is called a split, two wings remain on either side. When the final lift is mined, very little of the split remains, and there is no reason for the miner, equipment, or anyone to remain in the split area. The term "lift" refers to the process of cutting off the ends of the block. In this type of mining, roof support is no longer needed after the coal is removed.

14. The cited roof condition was abated the same day, about 2-1/2 hours later, by inserting 15 to 20 4-foot roof bolts at 4-foot centers. The miner was removed and a roof-bolting machine was brought in. Temporary supports were installed while the bolts were put in the roof. As the roof bolts were being installed, two wide roof cracks were discovered, about 18 and 24 inches wide, even though the section foreman had earlier sounded the roof for vibrations.

15. I find that the roof condition could have significantly and substantially contributed to the cause and effect of a mine safety hazard. Falls of the roof, face, and ribs are the No. 1 killer in coal mining, and can happen in any mine. In geological terms, the roof was shale and is considered to be unpredictable. By the time the inspector arrived, the roof was worsening, indicating that the additional posts were not providing adequate support. In the event of a roof fall, the left side of the mining machine probably would have been covered, and the machine operator may have been struck. Headlight cables were located on the left side of the miner, so that a roof fall might have caused a mine fire or electrical hazard. Additional findings as to the roof condition are included in the Discussion.

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16. On April 11, 1978, Inspector Kowalski returned to the Itmann No. 1 Mine and inspected the Nos. 1 and 2 conveyor entries in the pinnacle section, which was an active working section. He was accompanied by the shift foreman, Mr. Green.

17. Before going underground, Inspector Kowalski checked the belt examiner's books, which are kept in the office on a table where the section foreman makes out the reports. All management personnel are supposed to read these books.

18. The conveyor belts, which are used for carrying coal, are supposed to be examined after each production shift has begun, but not necessarily at the beginning of the shift.

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19. Inspector Kowalski and Mr. Green came into the area where the belt and track meet. The No. 1 and No. 2 belts converge at right angles. As they walked toward the crossbelt area, the inspector observed behind the door an accumulation of float coal dust.

20. At the time of the inspection, the belts were running and float coal dust was apparent in the air. Float coal dust did not remain suspended in the air when the belts were not running.

21. The belt system was shut off and they crossed over to the other side. The inspector pointed out a pile of float coal dust which appeared to be about 9 inches deep. He found different measurements of dust at different locations, ranging from one-sixteenth of an inch to 9 inches deep. At some points, there was rock dust underneath the float coal dust, and at others, there were just accumulations of coal dust. The largest accumulations were near the No. 2 head area, or at the crossbelt. Dust ran back down the No. 1 belt about 80 feet, toward the mine cars at the No. 1 head. The belt head is the beginning of the belt, where the belt drive, the motor, and belt pulleys are located. The tail pulley is the end of the belt where the back roller is located. Coal is loaded on the tailpiece.

22. On April 11, 1978, Inspector Kowalski issued a withdrawal order under section 104(d)(1) charging an unwarrantable violation of the dust safety standard in 30 CFR 75.400. He recorded that float coal dust deposited on rock-dusted surfaces was permitted to accumulate on the entry and connecting crosscuts of pinnacle Nos. 1 and 2 belt conveyor, beginning about 100 feet outby the pinnacle No. 1 belt conveyor tail roller, and extending about 350 feet inby the permanent stoppings of the No. 4 entry, a distance of about 70 feet to another permanent stopping, also beginning at the No. 2 pinnacle belt conveyor head and extending inby to a stopping about 250 feet. Float coal dust ranged in depth from about one-sixteenth of an inch to 9 inches.

23. The accumulation problem was reported on the belt examiner's books for five different shifts. The only corrective action taken was on April 10, when the belt examiner's book indicated that the area was partly rock dusted. The inspector estimated that the accumulations had been there for at least 1 week.

24. The shift foreman had indicated to the inspector that he was not pleased with the condition, and had he known of the accumulations, it would have been cleaned up.

25. Reports made in the belt examiner's books were summary comments and not explicitly detailed.

26. The Itmann No. 1 Mine is not a particularly gassy mine. In the 12 years that Mr. Green had been there, there had never been a gas ignition.

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27. There is always a potential ignition hazard around electrical equipment near float coal dust. Float coal dust will burn, and it will explode. At the time of the inspection, both belts were running. They have electric motors and there is other electrical equipment in the area, including belt control lines, power cables to the belt boxes, and belt motors. These were all covered with float coal dust.

28. Samples of dust taken in the belt conveyor entries were sent to the laboratory for combustible content analysis. The No. 1 sample, taken off the floor of the belt conveyor entry pinnacle section, about 5 feet in the pinnacle No. 1 belt tail, came back 29 percent incombustible content. The No. 2 sample, from about 10 feet inside the No. 1 belt, came back 17 percent incombustible. Section 75.403 requires that the incombustible content of the intake entries be maintained at at least 65 percent. The samples indicated that the float coal dust was almost pure coal. It was powdery and dry.

29. In the No. 2 belt entry, air was coursing from the stopping on the No. 2 tail, so in the event of a fire at any place along that section of the belt, it would tend to move toward the tailpiece.

30. The condition was abated in about 8 hours.

31. I find that the dust conditions reported in the withdrawal order were proved by a preponderance of the evidence and that such conditions were the result of an unwarrantable failure by the operator to comply with the safety standard in 30 CFR 75.400.

DISCUSSION

This case concerns the validity of a citation and a subsequent order issued to Applicant under section 104(d)(1) of the Act. With respect to the citation, the inspector found that Applicant had unwarrantably violated 30 CFR 75.200 and that the violation could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard. Subsequently, within 90 days of the issuance of the citation, the inspector found that Applicant had unwarrantably violated 30 CFR 75.400 (accumulation of float coal dust) and, therefore, issued a withdrawal order under section 104(d)(1) of the Act.

Under section 104(d)(1) of the Act, if an inspector issues a citation finding (1) a violation of a mandatory health or safety standard that could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard and (2) that the violation was caused by an unwarrantable failure to comply with such standard, the operator is subject to a withdrawal order if:

* * * during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such

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citation [an inspector] finds another violation of any mandatory health or safety standard and finds such violation to be also caused by an unwarrantable failure of such operator to so comply * * *.

With respect to the citation (roof-control violation), I conclude that the Applicant violated a mandatory safety standard and that the violation was of such a nature as could significantly and substantially contribute to the cause and effect of a coal mine safety hazard.

The roof-control plan in effect was formulated in accordance with 30 CFR 75.200, which provides in pertinent part:

Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form on or before May 29, 1970. The plan shall show the type of support and spacing approved by the Secretary * * *.

The applicable part of Applicant's approved plan reads: "Plan shown is minimum support for normal conditions. Additional posts, crossbars, or cribs shall be installed where needed." In normal conditions, two parallel rows of posts can be used as minimum support in pillar splits.

The controlling issue with respect to the validity of the citation depends on whether or not the cracked roof condition in the No. 1 pillar split area of the Guyan No. 2 panel section was an abnormal condition. If this condition were "abnormal," the validity of the citation would then depend on whether the roof control plan required the use of additional supports, such as crossbars or roof bolts, rather than the posts added by the foreman.

The federal mine inspector was of the opinion that: (1) the cracks in the roof indicated an abnormal condition requiring the company to exceed the minimum standards of its roof-control plan, and (2) that prior to mining, cross-sectional supports or roof bolts should have been installed. He stated that the posts added by the foreman were insufficient.

In the inspector's opinion, a normal roof is one that is firm and unbroken. He stated that cracks in a roof typically indicate an abnormal condition, but went on to say that when mining a pillar split

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cracks are not an unusual occurrence. He believed that under the circumstances present at the Guyan No. 2 panel section, however, the roof was unpredictable, and could have fallen at any time after the miner was removed from the face. When the foreman ordered the miner to back out, material started falling from the cracks, which indicated that additional support was needed.

Applicant argues that cracks in a roof during retreat mining are not unusual, and if checked by an approved method, there is nothing inherently dangerous about them. Because the roof ultimately is designed to collapse during this method, Applicant contends that the roof condition indicated in the citation was normal.

Applicant argues that even if the condition were considered abnormal, the plan was followed because it gave the operator the option of using additional posts, crossbars, or cribs where needed, and Applicant chose to use additional posts. Applicant inspected the roof during the preshift before sending the mining machine into the face area, and recognized that additional support was needed. The foreman chose to set an additional 20-25 timbers rather than use the other options under the plan.

A decision as to whether or not there was a violation of the roof-control plan depends on whether the inspector's on-the-site determination should prevail over the judgment of the mine foreman that additional posts complied with the plan's requirements. I conclude that MSHA proved by a preponderance of the evidence that abnormal conditions prevailed and the roof was in need of additional support. The evidence adduced at the hearing leads me to conclude that the failure to use cross-sectional support (or roof bolts) under the circumstances was a violation of the plan. First, the roadway was initially in need of additional support because it was too wide. Second, the additional post plan was evidently inadequate because it was limited by a determination to leave room to mine coal, which meant there was no more room to add posts (after the additional 20-25) and still have room for the mining machine to operate. The fact that the roof exhibited signs of instability after the posts were installed indicated that satisfactory support was not provided, and that the option chosen by Applicant proved ineffective. On the other hand, cross-sectional support, or roof bolts, would have provided adequate support and still permit room for mining.

Having found that Applicant violated a mandatory health or safety standard, I also conclude that the violation could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard. A violation may significantly and substantially contribute to the cause of a hazard regardless of whether or not it creates a risk of serious harm or death. Alabama By-Products Corporation, 7 IBMA 85, 94 (1977), approved in S. Rpt. No. 95-181, 95th Cong., 1st. Sess. 31 (1977), reprinted in LEGISLATIVE HISTORY OF THE FEDERAL MINE SAFETY AND HEALTH ACT OF 1977 at 619 (1978). On the

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other hand, no citation would be warranted if there were no risk of injury at all, i.e., where the violation is technical in nature, or if the risk of injury were very remote or minimal. Id.

The roof was shale and unpredictable in nature. In the opinion of the inspector, it was difficult to tell what type of fall might occur from just looking at the cracks, and whether or not it would strike the machine operator. The edge or left side of the miner probably would have been covered. During the abatement of the citation, two cracks were discovered in the roof strata indicating that the conditions were even more dangerous than they may have originally appeared. The additional cracks were discovered in spite of the roof test conducted by the foreman during the preshift examination. A roof fall could have injured or killed a miner or have caused a mine fire or electrical hazard.

The controlling issue with respect to "unwarrantable failure" as used in section 104(d)(1) is whether the operator failed to abate a violation which it knew or should have known existed, or failed to abate a violation due to indifference or lack of reasonable care. Zeigler Coal Company, 7 IBMA 280-296 (1977) (interpreting section 104(c)(1) of the Federal Coal Mine Health and Safety Act of 1969), approved in S. Rpt. No. 85-181, supra at 31-32.

I conclude that the Secretary proved that the roof-control violation was unwarrantable. The operator knew about the cracked roof condition before mining commenced. Instead of choosing cross-sectional support, or roof bolts, it chose to add posts, but this approach was self-limiting because the operator chose to leave room for the mining machine, so that posts would not directly support the area of the cracked roof. On the other hand, cross-sectional supports or roof bolts could have supported the area of the cracked roof while still allowing room for the mining machine to operate.

The evidence overwhelmingly shows the post-support method chosen by the operator was inadequate to give necessary support to the cracked area of the roof. I conclude that a reasonably prudent operator would have used cross-sectional support or roof bolts, and would not have relied solely upon additional posts while allowing room for passage of the continuous miner.

CONCLUSIONS OF LAW

1. The undersigned Judge has jurisdiction over the parties and the subject matter of the above proceeding.

2. Applicant's Itmann No. 1 Mine, at all pertinent times, was subject to the provisions of the Act.

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3. The Secretary proved by a preponderance of the evidence that the additional 20-25 posts installed by Applicant provided inadequate support for the roof and that Applicant therefore violated the approved roof-control plan, and hence 30 CFR 75.200, as charged in the citation issued on April 6, 1978.

4. The Secretary proved by a preponderance of the evidence that the violation of the roof-control plan was of such a nature as could significantly and substantially contribute to the cause and effect of a coal mine safety hazard.

5. The Secretary proved by a preponderance of the evidence that the roof-control violation was the result of an unwarrantable failure by the operator to comply with the roof-control plan, as required by the mandatory safety standards in 30 CFR 75.200.

6. The Secretary proved by a preponderance of the evidence that the operator violated the dust safety standard in 30 CFR 75.400 as charged in the withdrawal order issued on April 11, 1978, and that such violation resulted from an unwarrantable failure of the operator to comply with such standard.

All proposed findings and conclusions inconsistent with the above are hereby rejected.

ORDER

WHEREFORE IT IS ORDERED that the citation on April 6, 1978, and the order issued on April 11, 1978, are hereby AFFIRMED and the application for review thereof is DISMISSED.

WILLIAM FAUVER, JUDGE