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

CONSOLIDATION COAL COMPANY,
APPLICANT

Contest of Order

v.

Docket No. WEVA 79-54-R

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

Order No. 0810947
March 26, 1979

Shoemaker Mine

AND

UNITED MINE WORKERS OF AMERICA
(UMWA),
REPRESENTATIVE
OF MINERS

DECISION

Appearances: Michel Nardi, Esq., Pittsburgh, Pennsylvania, for
Applicant
James H. Swain, Esq., Office of the Solicitor, U.S.
Department of Labor, Philadelphia, Pennsylvania, for
Respondent Secretary of Labor
Richard L. Trumka, Esq., Washington, D.C., for the
Representative of the Miners, the United Mine Workers
of America

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASE

The case arose upon the filing by Applicant of an application for review of an order (now called a notice of contest of an order in Commission Rule of Procedure, 29 CFR 2700.20) issued on March 26, 1979, under section 104(d)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 814(d)(2). Applicant challenged the order on the grounds that the violation of the mandatory safety standard alleged in the order did not occur; that there was no unwarrantable failure to comply with the mandatory safety standard; and that no condition or practice existed which could significantly and substantially contribute to the cause and effect of a mine safety or health hazard. Respondents Secretary of Labor and United Mine Workers of America contended that the order was properly issued.

Pursuant to notice, the case was called for hearing on the merits in Wheeling, West Virginia, on September 4, 1979. Kenneth R. Williams, a Federal coal mine inspector, testified for Respondent Secretary of Labor; Rayburn Fraley, William Barack, Joseph Domenick, Dale Goudy, and Bruce Armstrong testified for Applicant. No witnesses were called by the Representative of the miners. At the close of the hearing, the parties waived the filing of written proposed findings and conclusions.

ISSUES

1. Whether there was on March 26, 1979, an accumulation of coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal and other combustible materials in the No. 1 and No. 2 belt entries of the 2 left off 4 north section of the subject mine.

2. If issue No. 1 is answered in the affirmative, whether the condition or practice was caused by the Applicant's unwarrantable failure to comply with the mandatory safety standard in question.

3. If issue No. 1 is answered in the affirmative, whether the condition cited could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

FINDINGS OF FACT

1. On March 26, 1979, Applicant was the operator of a coal mine in West Virginia known as the Shoemaker Mine.

2. The preshift examiner's report book (the "fireboss book") covering the 3 left, 4 north section of the subject mine reported the following conditions between March 19, 1979 and March 26, 1979: loose coal on the No. 2 belt on the third shift, March 19, 1979; loose coal on the No. 2 belt line and the No. 2 tailpiece on the third shift, March 22, 1979; (the latter condition [No. 2 tailpiece] was shown as corrected), loose coal on the No. 2 belt line, the spotter and the transfer point on the first shift, March 23; the report indicated that the section was idle during that shift; loose coal on the No. 2 belt line on the second shift, March 23; loose coal was also reported at the transfer point, the spotter and the tailpiece which were corrected; loose coal on the belt line on the third shift, March 23; the report stated that it "has been worked on, but belt is still spilling off on right side;" loose coal on the No. 2 belt line was reported on the first shift, and again on the second and third shifts on March 24. The section was reported as idle that day. The same condition was reported on each shift on March 25 (a Sunday) when the section was idle. Loose coal was reported on the first shift, March 26 on the No. 2 belt line, "tailpiece to 7á32," partially corrected; the report for the second shift on March 26 indicated the loose coal condition on the left side of the No. 2 belt line was corrected (Tr. 156-21; Applicant's Exh. 3).

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3. Federal mine inspector Kenneth R. Williams, a duly authorized representative of the Secretary of Labor, inspected the subject mine on March 26, 1979. He reviewed the fireboss book above referred to before going into the mine. Inspector Williams was accompanied during his inspection by Nick Renzella, company safety escort, and Mike Veronis, union representative.

4. At approximately 6 or 7 p.m. on March 26, Inspector Williams arrived at the 3 left off 4 north section and walked the No. 1 and No. 2 belt lines. At about 8:30 p.m., he issued a 104(d)(2) order of withdrawal.

VIOLATION

5. On March 26, 1979, there was an accumulation of coal dust and float coal dust on the floor, the belt, on equipment and power cables along the No. 1 belt entry and in crosscuts in the 3 left off 4 north section of the subject mine. The condition was general throughout the entry for a distance of approximately 950 feet. Coal dust accumulated under the rollers from 2 to 14 inches in depth. The area generally was dry but was damp at the tailpiece. Some of the rollers were stuck at or near the tailpiece. The belt was not running at the time.

DISCUSSION

The above finding substantially accepts the testimony of Inspector Williams which was disputed by Applicant's witnesses. William Barack, chief inspector for Applicant, entered the mine shortly after the order was issued. He testified that there was some float dust on the belt structures, the hardware, the ribs, the roof planks, the belt drives, the power junction boxes, and the power lines, but that there were no "unusual accumulations" and that the condition was not dangerous. Peter Domenick, supervisor of safety at the subject mine, did not go to the section until September 28. There is substantial dispute as to whether the condition was the same on the 28th as it had been on the 26th. Dale Goudy, section foreman, worked on the first shift (midnight to 8 a.m.) on September 26. He stated that the No. 1 belt was "very clean." He saw a small amount of float dust on the belt structure and the ribs. He did not know whether any float dust was on the electrical boxes or power drives. Bruce Armstrong, section foreman on the 8 a.m. to 4 p.m. shift testified that on March 26, his crew worked the entire shift on the belt line (No. 2). He testified that when he examined the belt on March 23, he did not see anything wrong with the No. 1 belt line. He did not walk the No.1 belt line on the 26th and does not know its condition on that day.

Inspector Williams testimony was complete and unequivocal. His was the only testimony of an eye witness to the conditions he observed and reported. Neither Nick Renzella, the company safety escort, or Mike Veronis, the union representative, both of whom accompanied Inspector Williams, were called as witnesses. I find Inspector Williams testimony credible and I accept it.

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6. On March 26, 1979, there was an accumulation of loose coal along the right side of the No. 2 belt extending approximately two-thirds of the length of the belt or 1,000 feet. Beyond that point, the area had been cleaned and the loose coal was shoveled onto the belt. The belt was not running at this time.

DISCUSSION

Mr. Barack testified that there was some spillage along the No. 2 belt but that it was "not excessive." He stated that cleanup had begun. Dale Goudy testified that he reported loose coal spillage for 700 or 800 feet from the No. 2 tailpiece outby toward the dumping point when he made his onshift inspection on March 26. He directed men to shovel it onto the belt. They worked to the end of the shift and cleaned all but 100 to 150 feet of the area. Bruce Armstrong testified that during his shift his crew shoveled approximately 500 feet and corrected the condition which he had previously noted in the fireboss book for March 23. However, he did not examine the entire belt line.

It is clear that applicant had started to clean up the accumulations along the No. 2 belt line. It is also clear that it had not completed the task and that accumulations of many days duration remained.

I have accepted Inspector William's testimony as to the condition of the No. 2 belt as I did with respect to the condition of the No. 1 belt.

UNWARRANTABLE FAILURE

7. The condition found along the No. 2 belt line had been reported in the preshift and onshift mine examiner's book since March 19 and was not corrected as of March 26.

8. The condition found along the No. 1 belt line was of such magnitude that it must have been present for some days.

9. Applicant was aware of the conditions described in Findings of Fact No. 5 and No. 6. It had ample opportunity to correct these conditions before March 26, 1979, but failed to do so.

SIGNIFICANT AND SUBSTANTIAL

10. The conditions found to exist in Findings No. 5 and No. 6 were such as could significantly and substantially contribute to the cause of a mine safety or health hazard.

DISCUSSION

Float coal dust if put in suspension is potentially explosive, and can propagate an ignition. There were many possible sources

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of ignition in the area. Loose coal and coal dust can, of course, serve as fuel for a mine fire. The extent of the accumulations found herein could have contributed to a mine safety or health hazard. If the belts had been in operation, a dangerous situation would have been presented.

CONCLUSIONS OF LAW

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

2. The conditions found to exist on March 26, 1979, in Findings of Fact No. 5 and No. 6 constituted a violation of the safety standard contained in 30 CFR 75.400.

3. The conditions found to exist in Findings of Fact No. 5 and No. 6 resulted from Applicant's unwarrantable failure to comply with the safety standard in question.

4. The conditions found to exist in Findings of Fact No. 5 and No. 6 were such as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

ORDER

Order of Withdrawal No. 0810947 issued March 26, 1979, is AFFIRMED, and the contest of said order is REJECTED.

James A. Broderick
Chief Administrative Law Judge