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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	Application for Review
v.	Docket No. PENN 79-75
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Citation No. 0618570 April 18, 1979 Renton Mine
UNITED MINE WORKERS OF AMERICA, RESPONDENT	

DECISION

Appearances: Michel Nardi, Esq., Consolidation Coal Company,
Pittsburgh, Pennsylvania, for Applicant
Barbara K. Kaufmann, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for Respondent MSHA

Before: Judge Merlin

Statement of the Case

This is a proceeding filed under section 105(d) of the Federal Mine Safety and Health Act of 1977 by Consolidation Coal Company for review of a citation issued by an inspector of the Mine Safety and Health Administration (MSHA) under section 104(d)(1) of the Act.

By an amended notice of hearing, this case was set for hearing on October 10, 1979, in Pittsburgh, Pennsylvania. The notice of hearing required the filing of preliminary statements. The applicant and MSHA filed preliminary statements, and the case was heard as scheduled. The applicant and MSHA appeared and presented evidence.

Bench Decision

At the conclusion of the taking of evidence, the parties waived the filing of written briefs, proposed findings of fact, and conclusions of law. Instead, they agreed to make oral argument and have a

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decision rendered from the bench. Upon consideration of all documentary evidence and testimony, and after listening to oral argument, I rendered the following decision from the bench (Tr. 145-148):

This case is an application for review of a citation issued under section 104(d)(1) of the Act for a violation of 30 CFR 75.400.

Section 75.400 prohibits accumulations of coal dust, float coal dust and loose coal, and other combustible materials in active workings. Section 75.2(d)(4) defines "active workings" as any place in a coal mine where miners are normally required to work or travel. The subject citation cites accumulations of fine dry coal dust, loose coal, and float coal dust in several locations.

I will consider the loading ramp first. The inspector testified that accumulations at the ramp were 4 feet wide, 60 feet long, and 7 inches deep. The operator's shift foreman admitted accumulations at the ramp were 4 feet wide, 40 to 50 feet long, and 5-1/2 inches deep. The inspector further testified that the coal at the ramp was dry, packed tight and not rock dusted. Because the coal was packed so tight, the inspector believed it had been there 2 weeks. I accept the inspector's description of the coal accumulations at the ramp which was the most detailed description given with respect to the nature of these accumulations.

Based upon the inspector's testimony, I conclude the coal had been there for a number of days in violation of section 75.400, and, most particularly, in violation of the clean-up plan which requires that the ramp be shoveled as spillage occurs and that rock dust be applied at the end of each shift or more frequently if needed. Moreover, even the operator's shift foreman believed the coal at the ramp was left from the prior shift, and the operator's section foreman specifically admitted the ramp area should have been checked and cleaned up. Accordingly, even under the testimony of the operator's own witnesses, there was a failure to comply with the clean-up plan and meet the requirements of section 75.400.

In light of the foregoing, I find the accumulations at the ramp constituted a violation.

I further conclude this violation was significant and substantial. I accept the inspector's testimony that there were energized trailing cables in the area and that the nip station was nearby. Also, there was

unwarrantable failure. The operator is charged with knowledge of its clean-up plan. Moreover, through preshift and onshift examinations, the operator should have known about the accumulations at the ramp and taken care of them.

Based upon the accumulations at the ramp, the citation must be upheld.

The inspector also cited the operator for accumulations at five pillar splits. The determination whether a violation existed at those locations depends upon whether they were active workings, that is, places where miners are normally required to work or travel. This, in turn, requires a determination regarding credibility, because a clear conflict exists between the inspector and the operator's witnesses over the nature and character of the pillar splits. The inspector placed a continuous miner machine in the area in question. He said that when he arrived on the scene, men were ready to go to work there, and that the area had not been blocked off by posts. On the other hand, the operator's witnesses asserted that the area of the five pillar splits had been abandoned, that the continuous miner machine was not where the inspector placed it, and that the pillar area had been blocked off by posts and dangered off by a sign and wire.

After careful consideration of the testimony and the demeanor of all the witnesses, I have concluded that the inspector's version should be accepted. I note the operator's witnesses contradicted each other over how deep the water was in the splits and how well the coal had been cleaned up in the splits. I further accept the inspector's testimony that the coal in the splits was left over from mining and was not from sloughing and that this coal was dry.

In light of the foregoing, I find a violation of section 75.400 existed in the five pillar splits as active workings in the manner testified to by the inspector. I further accept the inspector's testimony that there were trailing cables in the area which constituted potential ignition sources. On this basis, I conclude that the violation in the pillar splits was significant and substantial. Clearly, the operator should have known of these conditions through preshift and onshift examinations. Therefore, unwarrantable failure on the part of the operator was present.

Accordingly, the citation in all its respects is upheld.

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ORDER

The bench decision is hereby AFFIRMED. Accordingly, it is ORDERED that Citation No. 0618570 be UPHELD and that the operator's application for review be DISMISSED.

Paul Merlin
Assistant Chief Administrative Law Judge