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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. PITT 78-412-P A.C. No. 36-00958-02027 V
v.	Somerset No. 60 Mine
BETHLEHEM MINES CORPORATION, RESPONDENT	

DECISION

Appearances: Leo J. McGinn, Esq., Trial Attorney, Office of the Solicitor, Division of Mine Safety and Health, U.S. Department of Labor, 4015 Wilson Boulevard, Arlington, Virginia 22203, for Petitioner
T. W. Ehrke, Esq., Room 1871 Martin Tower, Bethlehem, Pennsylvania 18016, for Respondent

Before: Judge Fauver

This case was brought by the Secretary of Labor under section 109 of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq., (Footnote 1) for assessment of civil penalties for alleged violations of mandatory safety or health standards. The case was heard at Pittsburgh, Pennsylvania, on January 29, 1979. Both sides were represented by counsel, who have submitted their proposed findings, conclusions and briefs following receipt of the transcript.

Having considered the evidence and contentions of the parties, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, Respondent, Bethlehem Mines Corporation, operated an underground coal mine known as the Somerset No. 60 Mine, in Washington County, Pennsylvania, which produced coal for

sales in or affecting interstate commerce. The mine produces about 4,000 tons of coal per day and employs about 500 people. The annual production of Bethlehem Mines Corporation is about 10 million tons of coal.

2. About 7:45 on the morning of August 30, 1977, a federal mine inspector, John N. Poyle, began a regular inspection of the Somerset No. 60 Mine, accompanied by Robert Swarrow, an inspector-trainee, Clinton Cantini, a federal mine inspector, and George Kupar, a company inspector.

3. The group began its course along the belt haulage system at the point where coal was discharged from the conveyor belt into 7-ton mine cars. They walked up two crosscuts, at which point Inspector Cantini went through isolating doors into the intake escapeway while the others continued along the belt system.

4. Although production had not yet begun on the day shift, they noticed that the belt ran intermittently. At the first belt-to-belt transfer point, about 800 feet inby the discharge point, walking toward the stage loader, Inspector Poyle began to find loose coal and dust. When he reached the stage loader, another 1000 feet from the first transfer point, he noticed that the bottom rollers, which were about 12 inches off the ground, were submerged in fine, dry coal dust for a distance of about 25 feet and that loose coal was accumulated underneath the stage loader at the point where it dumped unto the No. 3 belt.

5. Inspector Poyle tested the coal for thickness and moisture content with his hand and determined it was dry. The company inspector took no measurements and made no tests of the coal and coal dust.

6. The accumulation of loose coal and coal dust ranged in depth from 4 inches to 2-1/2 feet. Inspector Poyle measured the depth and length of the accumulations using a 6-foot rule and a 25-foot tape.

7. Inspector Poyle indicated in his underground notes, but not in his order, that the "belt rollers" were stuck. The ends of the belt were frayed and the strands of the belt were getting caught in the rollers.

8. At the point where the stage loader joined the face conveyor, about 20 feet from the first accumulation, Inspector Poyle observed another accumulation of loose coal and coal dust--ranging in depth from 6 inches to 3 feet for a distance of about 20 feet, with a maximum height of about 3 feet. The coal was rather damp at this location, probably because of the water sprays on the shearing equipment, and it was somewhat larger in size. There was also coal dust on the stage loader.

9. Inspector Cantini rejoined the group at this point where Kupar, Swarrow, Poyle, and six men were standing on the opposite side of the belt. He observed both of the accumulations described by Inspector Poyle.

10. Inspector Poyle issued a section 104(c)(1) order of withdrawal, which stated:

> There was an accumulation of loose coal and coal dust on the belt haulage for 53 D face (longwall) section (023) at the face conveyor ranging in depth from 6 inches to 3 feet for approximately 20 feet and accumulations of loose coal and coal dust at the stage loader ranging in depth from 4 inches to 2-1/2 feet for a distance of approximately 25 feet. The bottom belt was running in loose coal and coal dust. Electrical components and power wires a source of ignition were near the accumulations.

11. On November 4, 1977, this order was modified to a notice of violation under section 104(c)(1) of the Act because the inspector's supervisor determined that the necessary antecedent to a 104(c)(1) order, a notice of violation, had not first been issued.

12. The longwall machine at the time of the inspection had 160 chock-type roof supports, each one capable of supporting 400 tons of force against the roof. The longwall machine had a 20-ton shearing mechanism with cutter bits, which rip the coal from from the face. As the cutter moved back and forth along the face, a path of about 30 inches of coal was mined off. At the completion of each sequence, the conveyor with the shearing machine would "jump" 30 inches to be in place for the next pass. The 160 roof supports advanced one at a time until the panel was mined down about 600 square feet. When sufficient pressure and stress on the roof were reached, the roof would cave in, leaving a gob area.

13. As the coal was sheared off (at a rate of about 14 tons per minute), it landed on the face conveyor, which transported it across the face and dumped it at a 90-degree angle onto the stage loader, which was another chain conveyor (about 70 feet long). The face conveyor was attached to the tail end of the stage loader by a sliding bracket, allowing it to move and slide along the tailpiece. Ideally, they were to be in direct line with each other but there was no piece of equipment designed to keep them aligned.

14. Sideboards were often placed on the stage loader to prevent spillage of the coal received from the face conveyor, however, neither mine safety standards nor company rules required sideboards at this location.

15. The stage loader was in a direct line with the No. 3 belt conveyor, which carried coal successively to the No. 2 belt and the No. 1 belt, which finally discharged it into 7-ton mine cars for rail haulage out of the mine.

16. Behind the cutting drum of the longwall machine there was a mechanism called a "cowl," which scraped all but a small percentage of the coal onto the face conveyor. Part of the longwall apparatus itself was also designed to pick up coal spillage as the machine advanced.

17. Around the stage loader, where the roof was supported, miners shoveled up the loose coal, but because the roof ahead of the chock canopy was unsupported, they did not, as a practice, go out into that area to clean up what the machine had missed.

18. At times, due to pressures and stresses in the rock, the roof would break and fall before the supports were advanced. When this occurred, pieces of rock would often be very large, sometimes several feet long, 25 to 30 inches wide, and 6 to 8 inches thick. The rocks would move down the face conveyor, and at the intersection with the stage loader a bridging action would occur with large pieces of rock bridging over the top of the stage loader and preventing the material from being carried away. When rocks started spilling out into the entry on both sides of the face conveyor and on both sides of the stage loader, the condition would worsen until it was noticed and the machinery was shut down. At this point the large pieces of rock would be broken up with sledge hammers, and the spillage would be cleaned up.

19. Before the inspection Respondent had designed a special cleanup program, in addition to its MSHA approved program, specifically for the Somerset No. 60 Mine.

20. This cleanup plan was part of a standard book developed as a guideline for the foremen, and was used in the level "one" training program. The subject of cleaning up combustible materials was part of weekly employee safety meetings, and part of the monthly management safety meetings.

21. At the time of the inspection, there were 10 people on the longwall face, all of whom at sometime during the working day were involved in some cleanup activity. In the stage loader area, there were two "headgate" operators, one of whom had a primary responsibility to be at the control panel at all times. The other did utility-type work, including breaking rocks, shoveling, and rock dusting, and was generally responsible for cleaning the stage loader area.

22. There were also four "utility men" on the longwall, who worked only on the day shift, whose primary responsibility was to clean around the belt conveyors of the longwall and to keep that area rock dusted.

23. One of the duties of the section foreman was to keep the headgate operator alert, so that the very moment he saw a piece of rock large enough to cause a bridging effect he would shut down the conveyor.

24. Routine cleanup was normally done at the end of a production shift, before the next shift began production.

25. Before the inspector's arrival, the day foreman, Bob Jacobson, had arrived on the section and observed that there were accumulations along the belt haulage system and that no one was cleaning them up. He immediately instructed his men to clean up this condition.

26. These accumulations should not have gone unnoticed by the previous shift foreman (who failed to report the condition in the books).

27. After Bob Jacobson gave instructions to his men, he began his daily run through the mine while they went to their breakfast. By the time he returned, the inspector had arrived and issued the withdrawal order. Inspector Poyle was unaware that a cleanup assignment had been given, and that the men were on a breakfast break, when he arrived and when he later issued the order.

28. When Inspector Poyle arrived on the section, the six men were standing around the stage loader, none of them was shoveling, and they complained to him about the previous shift's failure to clean up accumulations.

29. Inspector Poyle observed the men just standing around talking, and no one appeared to be eating.

30. Where there are accumulations of fine, dry coal and coal dust, friction caused by stuck rollers could ignite the fine coal and propagate a mine fire. If a methane ignition occurred, the dust could be lifted up into the air, dried out by the heat and travel through the mine in a ball of fire. At the longwall, there were about 10 or 12 people who could have been affected immediately by an explosion or mine fire.

31. Power wires, electrical components, and stuck rollers were possible sources of ignition or fire.

DISCUSSION

The conditions cited in the notice of violation were observed by Inspector Poyle at about 9:30 a.m., shortly after the day shift had arrived on the section. The belt was being run intermittently, in an apparent effort to correct a problem. The inspectors testified that the accumulations described in the notice had existed at least from the previous shift, and possibly had been allowed to build up over a longer period.

Respondent's defense that friction between the section crews resulted in the refusal by the day shift to clean up accumulations left by the previous shift must be rejected. It is the responsibility of the Respondent to prevent the accumulation of substantial quantities of loose coal and coal dust, and to oversee its employees to see that this is done whether or not there is friction between crews. Moreover, there is no solid evidence supporting Respondent's speculation that the failure to clean up the accumulations was the result of friction between the crews.

Respondent's explanation that the accumulation at the face conveyor-stage loader juncture was caused by unusual rock conditions encountered during the longwall operations is also rejected. Both inspectors testified that they observed no large pieces or rock. This observation supports the inspectors' expert opinion that this accumulation was due to the failure to control spillage as the coal came off the pan line onto the stage loader. Inspector Poyle testified that no side boards were provided and that the stage loader was not lined up properly to catch the coal as it came off the pan line. Even if were assumed that large rock pieces might have caused the accumulations, the evidence plainly shows that Respondent allowed sizeable accumulations as described in the notice to build up over a period of time and not to be cleaned up from one shift to another. In addition, the explanation concerning unusual rock conditions is not relevant to the unwarranted accumulation found along the stage loader-belt No. 3 site.

CONCLUSIONS OF LAW

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

2. Respondent violated 30 CFR 75.400 by allowing accumulations of loose coal and coal dust as alleged in the Notice of Violation.

3. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of $1,000 for the above violation.

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     WHEREFORE IT IS ORDERED that Bethlehem Mines Corporation shall pay the Secretary of Labor the assessed civil penalty, in the amount of $1,000, within 40 days from the date of this decision.

William Fauver, Judge

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     1 In 1977, Congress passed the Federal Mine Safety and Health Act of 1977, 30 U.S.C.   801 et seq., which superseded the 1969 Act. This proceeding arose under the original statute. The "Act" for the purpose of this decision, therefore, refers to the 1969 Act before amendment.