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

REPUBLIC STEEL CORPORATION, APPLICANT	Application for Review
v.	Docket No. PITT 78-459
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Order No. 236422 September 5, 1978 Banning Mine
UNITED MINE WORKERS OF AMERICA, RESPONDENT	

DECISION

Appearances: Bronius K. Taoras, Esq., Republic Steel Corporation, Uniontown, Pennsylvania, for Applicant
John H. O'Donnell, Esq., U.S. Department of Labor, Arlington, Virginia, for Respondent

Before: Judge Forrest E. Stewart

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Republic Steel Corporation (Applicant) filed a timely application for review pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977 (hereinafter, the Act), 30 U.S.C. 801 et seq., requesting review of Order No. 236422, issued September 5, 1978. A hearing on the merits was conducted on April 19 and 20, 1979, in Pittsburgh, Pennsylvania. Applicant called two witnesses and introduced two exhibits. Respondent called three witnesses and introduced nine exhibits. The United Mine Workers of America failed to make an appearance. At the conclusion of the hearing, the parties elected not to submit posthearing briefs.

On August 18, 1978, inspector James Caffrey conducted a regular inspection of the Banning Mine, 6 North Working Section. At that time, he observed what he believed to be a violation of 30 CFR 75.1707. The inspector discussed the matter with his supervisor and thereafter, on August 22, 1978, he issued 104(a) Citation No. 236119. He described the condition or practice at issue as follows:

> The escapeway ventilated with intake air was not separated from the belt and trolley haulage entries of the mine for the entire length of the entries developed since March 30, 1970 to the beginning of the 6 North (009) working section. The Secretary or his authorized representative has not permitted such separation to be extended for a greater or lesser distance in the 6 North working section. Coal mined at the face by the continuous miner, immediately dumps onto mine floor and loaded into #22 shuttle car by conventional loading machine was transported about 230 feet by #22 shuttle car, transferred (piggy-back) from #22 shuttle car into #17 shuttle car and transported about 240 feet by No. 17 shuttle car, transferred (discharged) from #17 shuttle car into #18 shuttle car, then transported about 430 feet by #18 shuttle car and transferred (discharged) onto belt conveyor tail piece (about 900 feet total travel distance with 2 intermediate loading (transfer) (discharge points). The escapeway entry ventilated with intake air, belt conveyor entry and trolley haulage entry were not separated by any ventilation control inby the belt tail piece or inby the end of energized trolley wire. An energized trolley feeder-wire (á1 MCM, 600 volts) was extended about 600 feet from end of bare trolley wire & terminated about 230 feet from pillar being mined. Insulation was stripped from the feeder wire at 14 or more locations to provide nipping stations for DC electrically operated gathering pumps, shuttle cars, loading machines, continuous miners and other equipment.

The inspector originally specified that the condition was to be abated by 9 a.m., on August 29, 1978, but thereafter extended the termination due date to 4 p.m., September 5, 1978. At that time, four of the five necessary stoppings had been constructed. Approximately 75 percent of the fifth stopping had been completed. Because of the operator's failure to correct the condition within the time set for abatement, the inspector issued 104(b) Order of Withdrawal No. 236422 on September 5, 1978. The inspector described the pertinent condition or practice as follows:

> Insufficient efforts were made by operator to assure that escapeway required to be ventilated with intake air was separated from belt and trolley haulage entries of the mine for entire length of such entries developed since March 30, 1970 to the beginning of the 6 North (009) working section. About 40 concrete blocks are needed to be installed to complete permanent-type stoppings to provide separation to a point inby (ss 0á89.53), most inby surge (piggy-back) point where #17 shuttle car which hauled coal loaded by conventional loading machine dumped the cargo into #18 surge car which then hauled the coal to the belt tail.

The parties are in essential agreement as to the facts herein. The 6 North Section up to the 6 North belt tail was developed on a six-entry system. Entry No. 2 contained the trolley haulage. The conveyor belt was on entry No. 3. The intake escapeway was located in entry No. 4. This escapeway was separated from the belt and trolley haulage entries up to the belt tailpiece.

The operator was retreat mining on the 6 North Working Section. As noted by the inspector in Citation No. 236119, the coal was cut with a continuous miner, dumped onto the floor, and then transferred to a shuttle car. The coal was transferred to the belt by a "piggy-backing" procedure. The first shuttle car transported the coal a distance of 230 feet to a surge point where the coal was transferred to a second shuttle car. This car then transported the coal a distance of 240 feet to a second surge point and a third shuttle car. The third shuttle car then transported the coal 430 feet to the belt tailpiece. Applicant asserted that the working section began at the belt tailpiece. Respondent contended that the section began at the first surge point outby the face.

Inspector Caffrey testified that the belt air was separated as well as could be reasonably expected from the working section. The air movement within the entry could not be measured with an anemometer. The air which ventilated the face areas in the 6 North Working Section came predominantly from the trolley haulage entry. Approximately 25 percent of the air which ventilated the face came from the intake escapeway. The air from these two intake entries mixed and became common at the first crosscut to the left inby the belt tailpiece. The inspector issued Citation No. 236119 because of his concern that the intake escapeway did not extend in separated air up to the first surge point outby the working face. If a fire were to occur on the trolley haulageway, miners would be forced to travel a greater distance in air contaminated with the by-products of that fire.

Section 75.1707 (Footnote 1) requires that the intake escapeway be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of the working section.

The term "working section" has been defined in 30 CFR 75.2(g)(3) to mean "all areas of the coal mine from the loading point of the section to and including the working faces." The regulations, however, do not contain a definition of the term "loading point." Alex O'Rourke, an MSHA supervisory engineer, testified that the loading point has traditionally been considered to be the point at which shuttle cars dump coal into a conveyor or mine cars. "Loading point" is similarly defined in A Dictionary of Mining, Mineral, and Related Terms (Footnote 2) as that point where coal is loaded into cars or conveyors. Inspector Caffrey testified that industry usage of the term "car" included mine cars or wagons, but that he did not recall ever having heard the term applied to a shuttle car. Both of Applicant's witnesses also testified that a shuttle car would not be considered a "car" within the meaning of this definition. On the 6 North Section, therefore, the belt tailpiece was the first point outby the face at which coal was loaded into cars or a conveyor. If this definition were to be applied, the 6 North Working Section would extend from the tailpiece inby.

Respondent asserted that the appropriate definition of "loading point" was "the place where coal is first dumped after being transported from the face area." Mr. O'Rourke testified that this had been accepted as policy at MSHA since 1972 or 1973. Both Mr. O'Rourke and Inspector Caffrey testified that MSHA had not placed this definition in writing--memo or otherwise--and that they did not know if it had been made available to operators.

Coal is transported out of the Banning Mine by dumping it in the belt conveyor. Since trolley or truck haulage is not used for the conveyance of coal, the pertinent question is whether the term "loading point" is defined as one of the places where coal is loaded on a shuttle car or the place where coal is loaded on the conveyor from the shuttle car. The first definition is a relatively new concept used by the inspector which has not been published or even promulgated in writing to the inspector. The second definition is both the dictionary definition and the traditional definition. It is accepted as the definition to be used in determining the location of the loading point. It corresponds with the term's common usage in the industry and is accorded more weight than the unwritten, uncommunicated "policy" which the inspector attempted to apply.

It is clear that the shuttle car is not the type of mine car or conveyor to which the definition refers in establishing the location of the loading point. A definition based on the place where a shuttle car might be loaded is too imprecise. The electrically permissible shuttle car might be used any place in the mine, including the face. In the instant case, shuttle cars were loaded at the face and at two other places outby the face. The inspector selected the most inby of those surge points and attempted to define it as the loading point. The locations of these surge points were temporary and subject to frequent change. The location of each surge point would ordinarily depend upon the length of the trailing cable, the number of shuttle cars used, the progress in mining at the face, and the location of the belt tailpiece. In addition, the size of the working sections would be appreciably reduced if it were limited to the area inby one of the surge points. This reduction could have a significant negative impact on the affect of other safety standards applicable within the working section and could possibly increase the overall hazard to the miners. Under the circumstances of the case, something more than unpublished "policy" should be required to change the traditional definition of cars or conveyors commonly used to determine the loading point.

An examination of the mine map graphically illustrates that the belt tailpiece should be designated as the loading point. The shuttle car roadway does not follow No. 3 entry, in which the belt conveyor is located, beyond the belt tailpiece. The shuttle cars use a roadway perpendicular to the belt and to No. 3 entry. For all practical purposes, the haulage system in No. 3 entry stops at the belt tailpiece and does not intend inby beyond that point. The trolly haulageway in No. 2 entry extends inby only a short distance beyond the belt tailpiece which is located in No. 3 entry. The intake escapeway ran parallel to the belt and trolley haulage entries only to a point one crosscut inby the belt tailpiece. There it changed direction and ran parallel to the shuttle car roadway, that is, perpendicular to the belt.

Section 75.1707 requires that the intake escapeway be separated from the belt and trolley haulage entries for the entire length of such entries to the beginning of the working section. It does not require that the intake escapeway be separated from an entirely different haulageway used by permissible shuttle cars. Both the belt entry and the trolley haulage entry were separated from the intake escapeway outby the belt tailpiece. Since the belt tailpiece was the beginning of the working section, the condition cited in Order No. 236422 did not constitute a violation of 30 CFR 75.1707 as alleged. Order No. 236422 was, therefore, improperly issued.

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ORDER

The application for review is GRANTED and Order No. 236422, issued on September 5, 1978, is VACATED.

Forrest E. Stewart
Administrative Law Judge

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~Footnote_one

1 30 CFR 75.1707 reads as follows:

"In the case of all coal mines opened on or after March 30, 1970, and in the case of all new working sections opened on or after such date in mines opened prior to such date, the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners."

~Footnote_two

2 The definition of "loading point" contained in the Bureau of Mine's A Dictionary of Mining, Mineral, and Related Terms, page 652, (1968), and introduced at the hearing as Applicant's Exhibit No. 2, is as follows:

"a. The point where coal or ore is loaded into cars or conveyors; where a conveyor discharges into mine cars; where a wagon or ferry is loaded. See also transfer point. Nelson b. N. of Eng. Where coal is transferred from a mother gate or trunk belt conveyor into tubs. Trise."