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SOL (MSHA) V. SEWELL COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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| SECRETARY OF LABOR,<br>MINE SAFETY AND HEALTH<br>ADMINISTRATION (MSHA), | | Civil Penalty Proceeding<br><br>Docket No. WEVA 79-293 |
| | PETITIONER | A.O. No. 46-03859-03029 |
| v. | | Sewell No. 1A Mine |
| SEWELL COAL COMPANY, | | |
| | RESPONDENT | |

DECISION

Pursuant to Section 110(a) of the Federal Mine Safety and Health Act of 1977 (the Act), the Secretary of Labor petitioned for the assessment of a civil penalty. Petitioner alleged that Respondent violated the mandatory safety standard at 30 CFR 75.1403-6(b)(3). That standard provides that: "[E]ach track-mounted self-propelled personnel carrrier should: * * * [b]e equipped with properly installed and well-maintained sanding devices, except that personnel carriers (jitneys), which transport not more than 5 men, need not be equipped with such sanding device * * *."

A hearing was held on December 17, 1979, in Charleston, West Virginia. The issues are whether Respondent violated the standard and, if so, the appropriate civil penalty to be assessed, based upon the six criteria in Section 110(i) of the Act. At the hearing, Homer S. Grose, the MSHA inspector who issued the citation, testified for Petitioner and Paul E. Given, Respondent's safety director, testified for Respondent.

The parties stipulated, and I find, that:

1. I have jurisdiction over this proceeding, and Respondent is within the jurisdiction of the Act.

2. Respondent is a large operator and payment of an appropriate civil penalty will not affect its ability to continue in business.

3. Respondent was duly served with the citation and its termination notice.

4. Respondent exercised ordinary good faith in abating the conditions giving rise to the citation.

5. In the 24-month period immediately preceding the issuance of the citation, 452 alleged violations were assessed against Respondent, covering a total of 242 inspection days. This information was derived from an MSHA computer history printout.

6. Between 30 and 40 of these alleged violations involved 30 CFR 75.1403-6(b)(3), the standard involved in this case. By entering into this stipulation, Respondent does not concede that these citations actually represent violations of the cited standard.

7. All exhibits are authentic and may be admitted into evidence on that basis, subject to possible objections as to their relevancy.

Mr. Grose was the only witness present at the time of the alleged violation. His testimony was uncontradicted. He stated that at approximately 8 a.m. on January 18, 1979, he observed a self-propelled, track-mounted personnel carrier emerge from Respondent's No. 1A Mine and discharge miners who had worked the night shift. The vehicle, which was capable of carrying approximately eight men, was equipped with devices which apply sand onto the tracks in front of the vehicle's metal wheels. The purpose of the sand is to increase traction and allow for better control of the vehicle. There is one sand tube in front of each of the four wheels.

At about 8 a.m., Mr. Grose observed Respondent's representative, Robert Neal, check the personnel carrier. After Mr. Neal had completed his inspection, Mr. Grose inspected the carrier. He found that two of the four sand hoses were clogged and therefore inoperative. Based upon this, he issued the citation. The hoses were cleared within 15 minutes of the issuance of the citation.

The sand hoses are approximately an inch and a half in diameter and can become clogged if the sand becomes damp or moist. They can be unclogged by inserting a rod or similar object into them and removing the damp sand. On January 18, 1979, there was no moisture on the mine's surface but there was dampness in the low-lying areas within the mine. Mr. Grose stated, and I find, that the mine contained steep grades and narrow areas which had little clearance and no shelter holes. Therefore, if a personnel carrier lost control, it could cause a dangerous accident.

The Secretary of Labor issued a safeguard notice with regard to this type of violation to Respondent in January 1978. During January 1979, there were nine other citations issued to Respondent for violations of this standard. Mr. Grose testified that violations of 30 CFR 75.1403-6(b)(3) occurred quite frequently at this mine.

Mr. Given did not know the facts surrounding the alleged violation. He was not present at the site on January 18, 1979, but he testified that the mine had a policy of attempting to

comply with all personnel carrier standards and had issued instructions and posted notices to encourage compliance. He stated that there had never been an accident in this mine or any other Sewell mine as a result of a violation of this standard.

The parties waived submission of briefs. Based upon the evidence, I make the following conclusions of law and order:

Occurrence of Violation: The evidence is undisputed that on the date, time, and at the place alleged in the citation, the vehicle in question had only two of its four sanding devices in operating condition. The vehicle transported more than five men. Therefore, Respondent violated the standard at 30 CFR 75.1403-6(b)(3).

Gravity of Violation: I agree with Petitioner that this is a serious violation. Despite Respondent's arguments that the vehicle was equipped with brakes to impede its descent, the sanding devices were designed to prevent the vehicle from losing control and to increase traction between the vehicle's wheels and the tracks. I find that the devices were necessary for the vehicle's safe operation. At the time that the citation was issued, the vehicle in question was about to carry seven men down into the mine. The grades in the No. 1A Mine were fairly steep and areas near the vehicle's track had narrow clearances and no shelter holes. Therefore, if the vehicle lost control it is quite likely that serious injury or death would result.

Negligence: The parties stipulated that the operator was cited for between 30 and 40 violations of this safety standard during the 24-month period preceding this incident. During January 1979, the operator was served with nine citations for violation of this standard. The inspection of the vehicle made by Mr. Neal was inadequate, as he did not notice the inoperative sanding devices. This indicates negligence on the part of the Respondent.

Good Faith Efforts to Achieve Rapid Compliance: As stipulated, the operator acted in good faith in correcting this violation. The evidence showed that this was done within about 15 minutes.

Size of Operator's Business and Effect of Penalty on Operator's Ability to Continue in Business: The parties stipulated, and I find, that Respondent is a large operator and that the proposed penalty would have no effect upon its ability to continue in business.

History of Previous Violations: There were 452 previous violations by the operator during the 24-month period preceding this incident, covering 242 man-days of inspections.

Assessment of Penalty: The Assessment Office recommended a penalty of $295. Counsel for the Secretary contended that that amount is too small in view of the gravity of the violation and Respondent's high degree of negligence. I agree. I am impressed with the large number of violations of this safety standard committed by this operator. I think the recommended penalty is insufficient to motivate the operator to comply with this standard. A larger penalty is required to impress upon Respondent the seriousness of this type of violation and encourage future

voluntary compliance.  Therefore, I assess a penalty of $1,000.

ORDER

Respondent is ORDERED to pay $1,000 in penalties within 30 days of the date of this Order.

Edwin S. Bernstein
Administrative Law Judge