

CCASE:  
RIO ALGOM V. SOL (MSHA)  
DDATE:  
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cap. The plates on 25 split bolts in this area were stripped. The 13 north & 19th west, a length of 37 feet, had 5-8 x 8 sets of timber which had broken caps. The 13 north and 7th West intersection had caved above the anchorage. This was the full width of the drift and extended 25 feet in 13 north. The mechanical bolts were pulled and several split bolts broken. The plates on the split bolts from 7th west to 4 west along the 13th north haulage were stripped and the area taking excessive weight.

The order of withdrawal encompassed the following areas: 13th North, 90 feet from 4th East pillar; 13 North 19 West for 37 feet; 13 North and 7th West; 13 North from 7th West to 4th East.

The unintentional roof fall which gave rise to Inspector Beason's investigation occurred on January 24, 1979, at 12:30 p.m. in the 18th North, 8th West drift. Approximately 40 feet of roof collapsed after breaking above the anchorage point of its roof bolts. The fall had occurred near a shop area in which a number of employees were eating lunch, but it did not result in injury or death. Mr. Pearson, Applicant's Safety Supervisor, testified that the main haulage and travelway to the area was blocked because of the fall. Only the emergency access, designated as the 8C manway, remained open.

Mervyn Lawton, the manager and president of Rio Algom Corporation as well as the supervisor of the Libson Mine, was in the area of the fall at the time of its occurrence. He instructed one crew of miners to remove equipment from the area. A second crew was instructed to continue driving an entryway in an effort to open a new entrance into that working area. It was estimated by Mr. Lawton that two additional blasts would be necessary to complete the entryway. All miners were withdrawn from the area on the following day, January 25, 1979, at 10 a.m., when it became evident that more than two blasts were needed to accomplish the breakthrough.

All supervisory personnel were instructed to keep people out of the area and a sign reading "No admittance, keep out" was placed on the haulage level entering the 8C manway. This finding was based on the testimony of both Mr. Pearson and Mr. Lawton, notwithstanding the inspector's testimony that he did not recall seeing a sign posting the area as closed.

The fall which occurred on January 24 was not reported to MSHA until January 28. On the following day, Inspector Beason conducted his inspection of the area. He examined the first roof fall and discovered a second fall at 13th North, 7th West. This second fall extended 25 feet for the entire width of the entryway. As with the first fall, this break occurred above the anchorage point of the roof bolts. The inspector observed both mechanical roof bolts and split sets in the debris. Prior to the inspector's investigation, mine management had been unaware of the second roof fall. It had occurred after the company had removed its miners from the area.

In the 13th North, 4th East drift, the inspector observed timbers taking an inordinate amount of weight. These timbers measured 8 inches by 8 inches and had been placed 6 feet apart for a distance of 60 feet. Caps on approximately 10 of these timbers had been smashed by the weight of the roof. Some of these caps had stress cracks and had been deflected downward. The inspector estimated that 25 split sets in the area had been stripped of their plates.

The inspector observed compression of caps and stripped plates in the 13th North, 6th West drift. He noted that there were five sets of affected timbers. These timbers also measured 8 inches by 8 inches and had been placed at 6-foot intervals. One post had split and stress cracks were observed in some of the caps. Plates had been stripped from some split sets and some of the mechanical bolts had been pulled.

The inspector also observed a number of split sets from which plates had been stripped in the 13th North, 7th West to 4th West drifts.

Witnesses for Applicant generally corroborated the inspector's testimony relating to the conditions in those areas included in the order. Their testimony established that, for the most part, the conditions observed on January 29 did not exist on January 25 when the mining crew had been removed from the area. In particular, the roof fall had not yet occurred in the 13th North, 7th West drift. Mr. Pearson, Applicant's safety supervisor, was in the affected areas on Thursday morning. He stated that fewer plates had been stripped from split sets than Inspector Beason noted later and that he he did not observe signs of unusual compression of timber or caps.

All of the witnesses agreed that the roof falls, the stripped plates and the compression of caps were evidence of ground movement in the area. This movement occurred while the 13th North drift was being driven because the area had been developed on an incline. The inspector believed that retreat mining in the general area created additional pressure on the roof in the affected area. Retreat mining was ongoing approximately 100 feet straight through a pillar on the uphill side of the original roof fall.

"Imminent danger" has been defined in section 3(j) of the Act to mean the "existence of any condition or practice in a coal mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." The Interior Board of Mine Operations Appeals, with the affirmance of the Fourth and Seventh Circuits, has stated that "an imminent danger exists when the condition or practice observed could reasonably be expected to cause death or serious physical harm to a miner if normal mining operations were permitted to proceed in the area before the dangerous condition is eliminated." *Old Ben Coal Corp. v. Interior Board of Mine Operations Appeals*, 523 F.2d 25, 32-33 (7th Cir. 1975), *aff'g*, 3 IBMA 252 (1974), *Freeman Coal Mining Co. v. Interior Board of*

Mine Operations Appeals, 504 F.2d 741, 745 (7th Cir. 1974),  
aff'g, 2 IBMA 197, 212 (1973); Eastern Associated Coal Co. v.  
Interior Board of Mine Operations Appeals,

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491 F.2d 277, 278 (4th Cir. 1974), aff'g, 2 IBMA 128, 136 (1973). In that case the Board enumerated the following test to be used in determining whether an imminent danger existed:

Would a reasonable man, given a qualified inspector's education and experience, conclude that the facts indicate an impending accident or disaster, threatening to kill or to cause serious physical harm, likely to occur at any moment but not necessarily immediately? Freeman Coal Mining Co. v. Interior Board of Mine Operations Appeals, 504 F.2d 741, 743-4, (7th Cir. 1974), 2 IBMA 197, 212 (1973).

The conditions in the Lisbon Mine constituted an imminent danger under all of the criteria that should be considered in making the determination. Inspector Beason's finding was reasonable and proper. The conditions which he observed clearly indicated that ground movement had occurred recently in the area. There was nothing to suggest that this movement had ceased or that the extant roof support was sufficient. In a period of 5 to 6 days two unintentional roof falls had occurred and increased strain on the roof support system was pervasively evident. During this time, roof conditions had changed markedly. Moreover, only one route existed which allowed exit from the area. Finally, the areas encompassed by the order were ones in which miners would have worked regularly. If normal mining operations were permitted to proceed, the conditions could reasonably have been expected to cause death or serious harm. The order was properly issued under section 107(a) of the Act.

The issuance of a 107(a) order of withdrawal was appropriate, notwithstanding the Applicant's prior voluntary removal of miners from the areas covered by the order. The purpose of such an order is not only to cause the withdrawal of miners, but to ensure that they remain out of the affected areas until the condition is corrected. The Valley Coal Company, 1 IBMA 243, 248 (1972).

In issuing Order No. 336661 which alleged that an imminent danger existed, the inspector also noted that there was a violation of 30 CFR 57.3-22. He testified that he believed the fourth sentence of the standard had been violated. This sentence reads as follows: Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary." Toby Pearson, the safety supervisor at Rio Algom Mine, testified that he conducted such inspections along the haulageways and travelways in the affected area prior to the time that men were withdrawn. He also stated that at that time there was no need to scale or support in the areas encompassed by the order. The Interior Board of Mine Operations Appeals, however, has noted "whether a condition or practice constitutes a violation which was not intended to be and is not a controlling issue in a proceeding to review an imminent danger withdrawal order." Freeman Coal Mining Corporation, 2 IBMA 197, 207-208 (1973). A finding need not be made, therefore, as to whether a violation of section 57.3-22 existed. Such a finding would not

be determinative of the issues in this case.

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ORDER

Accordingly, it is ORDERED that the operator's application for review is DISMISSED.

Forrest E. Stewart  
Administrative Law Judge