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

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

PETITIONER

Civil Penalty Proceeding

Docket No. KENT 79-39
A.O. No. 15-11014-03002

v.

Mine: Freedom No. 1 Surface

H & H 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. A hearing was held on January 9, 1980 in Louisville, Kentucky.

The parties stipulated and I find:

1. Respondent, H & H Coal Company, is subject to the Act's jurisdiction, is a small operator, and operates Freedom No. 1 Surface.

2. I have jurisdiction over this case.

3. On November 20, 1978, Earl T. Leisure, a duly authorized MSHA representative, inspected Freedom No. 1 Surface and properly issued the citation in question.

4. Exhibit P-1 accurately reflects Respondent's history of previous violations.

5. Any penalty that I assess will not adversely affect Respondent's ability to continue in business.

6. Respondent acted in good faith in connection with this matter.

At the conclusion of the hearing, the parties waived the filing of written briefs, proposed findings of fact, and conclusions of law and I rendered the following decision from the bench:

Petitioner alleged that pursuant to Section 110 of the Act a civil penalty should be assessed against Respondent for violating the Safety Standard at 30 CFR 77.404(a).

That Standard reads "mobile and stationary machinery and equipment shall be maintained in safe operating condition, and machinery or equipment in unsafe condition shall be removed from service immediately."

Petitioner contends that in permitting a vehicle, which was used for drilling to be operated with its front, rear and side windows removed, Respondent did not maintain that vehicle in a safe condition in that the vehicle's driver could have been injured by the sharp edges of the window frames and by dust or the debris flying back from the drill to the front window opening. I agree.

I find that the operation of this vehicle without windows constituted an unsafe operating condition, and this violated the Standard at 30 CFR 77.404.

I find that there was some danger of the driver being struck by dust and/or debris that might come into the front of the vehicle through the front window opening. A window would have protected the driver against this danger.

To a lesser extent, there was possible danger from the windows' edges.

There is some dispute as to the sharpness of the edges in and about the window frames, and in view of the fact that the vehicle moved slowly and the driver generally kept his hands on the controls, this danger was slight. There was little negligence involved since the violation was based upon an interpretation of the regulation, which the operator legitimately disagreed with and of which the operator had no advance notice. In consideration of the above, as well as the other criteria under Section 110(i), including H & H's rapid compliance and good faith and its efforts to prevent repetition of this violation, I assess a penalty of \$15 against the operator for this violation.

Accordingly, it is ordered that H & H Coal Company pay a penalty of \$15 on or before 30 days after it receives a copy of my signed decision and Order in this matter.

The bench decision is AFFIRMED.

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ORDER

Respondent is ORDERED to pay \$15.00 in penalties within 30 days after receipt of this Order.

Edwin S. Bernstein
Administrative Law Judge