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SOL (MSHA) V. GOLDEN R 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

v.

GOLDEN R COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. KENT 79-124
A.O. No. 15-10364-03003

Mine: Prep Plant

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 77.1707(b), which reads:

> The first aid equipment required to be maintained under the provisions of paragraph (a) of this section shall include at least the following:
>
> (1) One stretcher;
>
> (2) One broken-back board (if a splint-stretcher combination is used it will satisfy the requirements of both subparagraph (1) of this paragraph and this subparagraph (2));
>
> (3) Twenty-four triangular bandages (15 if a splint-stretcher combination is used);
>
> (4) Eight 4-inch bandage compresses;
>
> (5) Eight 2-inch bandage compresses;
>
> (6) Twelve 1-inch adhesive compresses;
>
> (7) An approved burn remedy;
>
> (8) Two cloth blankets;
>
> (9) One rubber blanket or equivalent substitute;
>
> (10) Two tourniquets;

(11) One 1-ounce bottle of aromatic spirits of ammonia or 1 dozen ammonia ampules; and,

(12) The necessary complements of arm and leg splints or two each inflatable plastic arm and leg splints.

Paragraph (a) reads:

Each operator of a surface coal mine shall maintain a supply of the first aid equipment set forth in paragraph (b) of this section at or near each working place where coal is being mined, at each preparation plant and at shops and other surface installation where ten or more persons are regularly employed.

A hearing was held on January 9, 1980, in Louisville, Kentucky. 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, Earl T. Leisure, the MSHA inspector who issued the citation, testified for Petitioner and Byron W. Terry, Respondent's safety director, testified for Respondent.

The parties stipulated, and I find:

1. Respondent, Golden R Coal Company, is subject to the jurisdiction of the Act.

2. Respondent operates a coal preparation plant called the "Prep Plant."

3. Earl T. Leisure is a duly authorized representative of the Mine Safety and Health Administration, and in his official capacity inspected the "Prep Plant" on September 18, 1978.

4. Respondent was properly issued the citation in question.

5. Respondent is a small operator.

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

7. The certified computer printout marked as Exhibit P-1 reflected an accurate history of previous violations.

Mr. Leisure testified that on September 18, 1978, he inspected the Prep Plant, accompanied by Respondent's plant manager, Larry Gwinn. During this inspection, Mr. Leisure discovered that the plant's first-aid kit was missing certain items which are required by the standard. The missing items included one broken back board, 21 triangular bandages, three 4-inch bandage compresses, 12 1-inch adhesive compresses, an approved burn remedy, two cloth blankets, and one tourniquet. Mr. Leisure stated that the missing

items represented more than half of the required contents of the kit, and that in his opinion, they were "major items as opposed to small items." Although Mr. Leisure felt that Mr. Gwinn should have known of these shortages, he also felt that Respondent exercised good faith in rapidly abating the condition. The abatement notice, which was issued by another inspector, stated that the Prep Plant later procured a complete first-aid kit.

Mr. Terry testified that the operator read Section 77.1707(a) as requiring a full first-aid kit (i.e., one meeting all the requirements of Section 77.1707(b)) only at preparation plants where 10 or more persons are regularly employed. He stated that only three people were working at the Prep Plant at the time of the alleged violation. With respect to specific shortages in the Prep Plant's equipment on the day in question, Mr. Terry stated that additional blankets were available at the owner's house, which was 120 yards from the plant. The absence of a stretcher or broken back board was explained by the close proximity of ambulance service in Morgantown, Kentucky, which was apparently 5 to 10 minutes from the plant. On cross-examination, however, Mr. Terry admitted that if the standard applied to the Prep Plant, the availability of ambulance service did not provide the type of protection that compliance with the standard would. Finally, Mr. Terry stated that after the citation was issued, plant employees drove 89 miles to obtain a full first-aid kit, and that the kit was in the plant office the morning after the citation was issued.

The parties filed posthearing submissions directed to Respondent's argument that the requirements of Section 77.1707(b) do not apply to preparation plants employing less than 10 persons. Petitioner argues that Section 77.1707(a) designates working places and preparation plants specifically with the use of the word "each," while "shops and other surface installation(s)" are only generally designated. Thus, in Petitioner's view, the "10 or more persons" requirement relates back only to shops and other surface installations.

Respondent argued that the comma after the word "mined" in Section 77.1707(a) was intended to divide the sentence into those installations where a first-aid kit would be required regardless of the number of employees at the facility, and those installations where a kit would be required only if 10 or more persons were regularly employed.

I commend both parties on their arguments concerning the interpretation of a standard which is, admittedly, drafted in an ambiguous and confusing manner. However, on balance, I believe that Petitioner's interpretation is more persuasive. In reaching this conclusion, I am guided not only by the wording of the regulation, but by the Act's underlying remedial purposes.

As a general proposition, rules of statutory construction can be employed in the interpretation of administrative regulations. See C. D. Sands, 1A Sutherland Statutory Construction, 31.06, p. 362 (1972). According to 2 Am. Jur.

2d, Administrative Law, 307 (1962), "rules made in the exercise of a power delegated by statute should be construed together

~449
with the statute to make, if possible, an effectual piece of legislation in harmony with common sense and sound reason."

Section 2 of the 1977 Mine Act attests to the statute's remedial purpose as follows:

SEC. 2 Congress declares that--

(a) the first priority and concern of all in the coal or other mining industry must be the health and safety of its most precious resource--the miner;

(b) deaths and serious injuries from unsafe and unhealthful conditions and practices in the coal or other mines cause grief and suffering to the miners and to their families;

(c) there is an urgent need to provide more effective means and measures for improving the working conditions and practices in the Nation's coal or other mines in order to prevent death and serious physical harm, and in order to prevent occupational diseases originating in such mines;

(d) the existence of unsafe and unhealthful conditions and practices in the Nation's coal or other mines is a serious impediment to the future growth of the coal or other mining industry and cannot be tolerated;

(e) the operators of such mines with the assistance of the miners have the primary responsibility to prevent the existence of such conditions and practices in such mines;

(f) the disruption of production and the loss of income to operators and miners as a result of coal or other mine accidents or occupationally caused diseases unduly impedes and burdens commerce; and

(g) it is the purpose of this Act (1) to establish interim mandatory health and safety standards and to direct the Secretary of Health, Education, and Welfare and the Secretary of Labor to develop and promulgate improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners; (2) to require that each operator of a coal or other mine and every miner in such mine comply with such standards; (3) to cooperate with, and provide assistance to, the States in the development and enforcement of effective State coal or other mine health and safety programs; and (4) to improve and expand, in cooperation with the States and the coal or other mining industry, research and development and training programs

aimed at preventing coal or other mine accidents and occupationally caused diseases in the industry.

Remedial legislation such as the 1977 Mine Act must be interpreted in light of the express Congressional purpose of providing a safe work environment, and the regulations promulgated pursuant to such legislation must be construed to effectuate Congress' goal of accident prevention. Brennen v. Occupational Safety and Health Review Commission, 491 F.2d 1340, 1343 (2d Cir. 1974). "Should a conflict develop between a statutory interpretation that would promote safety and an interpretation that would serve another purpose at a possible compromise of safety, the first should be preferred." District 6, UMWA v. Department of the Interior Board of Mine Operations Appeals, 562 F.2d 1260, 1265 (D.C. Cir. 1972).

Turning to the regulation itself, I do not agree with Respondent's contention that the comma after the word "mined" was intended to substantively separate the sentence so as to include preparation plants in the "10-person" limit. If such a meaning had been intended, I believe that the word "and" would have been placed after the word "mined", rather than after "preparation plant." I find Petitioner's argument concerning the use of the word "each" before "working place" and "preparation plant," but not before "shops and other surface installation(s)" to be more convincing. Accordingly, I find that Respondent violated 30 CFR 77.1707(b)

However, I do not agree with the Assessment Office's proposed penalty of $98. The language of this regulation is so unclear that it did not provide this operator with adequate notice of its meaning. Therefore, I assess a penalty of $10.

ORDER

Respondent is ORDERED to pay $10 in penalties within 30 days of the date of its receipt of this Order.

Edwin S. Bernstein
Administrative Law Judge