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

WINDSOR POWER HOUSE COAL COMPANY,
CONTESTANT

Contest of Citation and Order

Docket No. WEVA 79-193-R

v.

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

Order No. 811576

May 11, 1979

RESPONDENT

Beach Bottom Mine

UNITED MINE WORKERS OF AMERICA,
RESPONDENT

DECISION

Appearances: David M. Cohen, Esq., American Electric Power Service Corporation, Lancaster, Ohio, for Contestant Michael Bolden, Assistant Solicitor, Mine Safety and Health Administration, U.S. Department of Labor, Arlington, Virginia, for MSHA

Before: Judge Melick

This case is before me upon the application by the Windsor Power House Coal Company (Windsor) under section 105(d) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq., hereinafter the "Act") to contest a citation and subsequent order of withdrawal issued by the Mine Safety and Health Administration (MSHA) under sections 104(a) and (b) of the Act, respectively. An evidentiary hearing was held on December 12, 1979, in Wheeling, West Virginia.

Section 104(a) of the Act provides for the issuance of citations by MSHA for violations by mine operators. Section 104(b) of the Act provides that an order of withdrawal may be issued when the operator fails to timely abate a violation described in a citation issued under section 104(a). The citation at bar was issued by MSHA inspector Charles B. Coffield on May 11, 1979, at 3:45 p.m., charging a violation under 30 C.F.R. 75.316, for inadequate ventilation. The order of withdrawal, under section 104(b) of the Act, was issued by inspector Coffield at 5:40 p.m. on the same date for Windsor's alleged failure to abate the violation. Windsor takes issue in this case only with the underlying violation and concedes that if the violation existed, the order of withdrawal was properly issued.

While 30 C.F.R. 75.316 provides essentially only for the approval by the Secretary and for the adoption by the mine operator of a ventilation system and methane and dust-control plan, violations of this regulation have been found where an operator has failed to adhere to its approved ventilation plan. Zeigler Coal Company, IBMA 30, January 28, 1975, aff'd, 536 F.2d 398 (D.C. Cir. 1976). Windsor's ventilation plan required an air quantity of not less than 3,600 cubic feet per minute and a mean air velocity of not less than 35 feet per minute at the working faces. Windsor concedes that the air readings taken by Inspector Coffield and reported in his citation and order were less than specified but argues that the readings were not taken at "working faces" because Windsor was not then actually engaged in "work of extracting coal."

It is apparent however, that Windsor has reached an erroneous conclusion because of its misplaced reliance upon only a small segment of the definition of "working face" lifted out of context. "Working face" is defined in 30 C.F.R. 75.2(g)(1) as "any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle." The issue to be resolved then is not whether the inspector's air readings were taken while coal was being extracted, but rather whether the readings were taken at places "in which work of extracting coal from its natural deposit in the earth [was] performed during the mining cycle."

The term "cycle" is defined in the Dictionary of Mining, Mineral and Related Terms, U.S. Department of the Interior (1968), as the complete sequence of face operations required to get coal. In conventional mining, as followed in the Beach Bottom Mine, the sequence consists of supporting the roof, cutting the face, drilling the face, shooting the face, and loading and hauling the coal. In order for the face to be a "working face," it is not therefore necessary that work of extracting coal be performed at all times. Cf. Peggs Run Coal Company, Inc., PITT 73-6-P, March 29, 1974, aff'd, 3 IBMA 421, December 6, 1974. The definition clearly contemplates that the mining cycle is a continuing process in spite of temporary delays caused by shifting equipment or mechanical break down.

The air readings cited herein were taken in the Nos. 1, 4, 5, and 6 entries of the 6 West section of the mine by Inspector Coffield beginning around 3:45 p.m., on May 11, 1979. At that time there was no active cutting or loading of coal in any of the face areas although mining equipment was being moved about. The operator concedes that the full sequence of conventional mining operations continued in the cited entries until 2:45 p.m. It appears that at that time the feeder had broken down and, as a result of that and an anticipated shift change at 3:45 p.m., the various operations were being phased out. Even after 2:45 p.m., however, the evidence shows that further work was performed with the admitted purpose of setting up the entries for production to resume as soon as the feeder was repaired. The uncontradicted evidence shows that various equipment used in the mining cycle was energized at least until 3:45 p.m., that a roof-bolting

machine continued to spot roof bolts (the process of replacing bolts) at the inby corner of the No. 1 entry until at least 3:15 or 3:20 p.m., that the cutting machine which

~673

had completed cutting the No. 5 entry at around 2:45 p.m., was on its way to cut the No. 4 entry and that the loading machine was waiting to operate in the No. 6 entry.

Within this framework, I have no difficulty concluding that when Inspector Coffield took his air readings each of the cited entries was a place in which work of extracting coal from its natural deposit in the earth was performed during the mining cycle. Thus, the readings were taken at "working faces." 30 C.F.R. 75.2(g)(1). Under the circumstances, the underlying citation in this case was properly issued and the subsequent order of withdrawal was therefore valid.

Gary Melick
Administrative Law Judge