

CCASE:
SOL (MSHA) V. ASARCO INC.
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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 ACTION

DOCKET NO. DENV 79-473-PM

ASSESSMENT CONTROL NO. 05-00516-05006 V

v.

ASARCO INCORPORATED,
RESPONDENT

MINE: LEADVILLE UNIT

DECISION

APPEARANCES: Phyllis K. Caldwell, Esq., Ann M. Noble, Esq.,
and James H. Barkley, Esq., Office of Henry
C. Mahlman, Associate Regional Solicitor,
United States Department of Labor, Denver,
Colorado, for Petitioner Earl K. Madsen,
Esq., Bradley, Campbell and Carney, Golden,
Colorado, for Respondent

Before: Judge John J. Morris

STATEMENT OF THE CASE

Petitioner charges that respondent exposed its miners to unstable rock conditions. It is asserted that the conditions in the ASARCO underground mine violated a standard promulgated under the authority of the Federal Mine Safety and Health Amendments Act of 1977, amending 30 U.S.C. 801 et seq. (1969) (amended 1977).

ISSUES

The issues are whether there were unstable rock conditions in the 12-6-3 stope on March 30, 1978, and whether abatement would require the miners to climb on the muck pile to bar or bolt down the back. (FOOTNOTE 1)

The cited standard provides as follows:

57.3-22 Mandatory. Miners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

FINDINGS OF FACT

Based on the record I find the following credible facts:

1. A stope is an underground cavity from which ore is extracted (Tr 10-11).
2. The mining cycle in stope 12-6-3 was to bar, drill, blast, bar, and muck (Tr 68).
3. The barring process is accomplished with the use of a scaling bar to knock down any loose materials from the back and sides (ribs) of the stope. In the drilling process 16 to 18 holes are drilled in a 10 to 12 foot face. The dynamite blast that follows creates a muck pile approximately 15 to 20 feet along its base. A mechanical machine, called a mucker, removes the debris (muck) after blasting (Tr 110, 162, Exhibits P2, R4).
4. Roof bolting may occur, after barring down, if warranted by the conditions (Tr 68, 68).
5. On March 30, 1978, in close proximity to the face being mined, the roof was highly fractured; it consisted of loose ground described as being mud-like(FOOTNOTE 2) in texture.
6. When the mucker pulled back, the inspector, with a 6 to 8 foot bar, caved in a portion of the back. It was dribbling. The pieces he barred down were from a foot to sandlike pieces in size (Tr 17).

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7. To abate this condition, the miners would have had to climb on the muck pile to bar down the loose material from the back; the miners should not follow such an unsafe practice (Tr 85-86, 181).

DISCUSSION

The initial pivotal issue in this case is whether the ground was loose and unconsolidated.

ASARCO contends(FOOTNOTE 3) that the ground in the North 3 Heading of 12-6-3 stope was neither loose nor unconsolidated. In support of its view ASARCO points to the testimony of witnesses Hustrulid, Traft, Howard, Mosher, and to the cross examination of witness King. Inasmuch as this issue focuses on a central credibility determination it will be necessary to review the above evidence in detail.

Expert witness Hustrulid was not present on the day of the inspection. The closest rock he was able to inspect was 60 to 70 feet laterally and 67 feet vertically from the point of the citation (Tr 272). The thrust of witness Hustrulid's testimony was directed at the condition of the rock throughout stope 12-6-3 but the citation related to a very limited area within 15 to 20 feet of the blasting face.

During the mining cycle this area had been blasted and the muck pile debris was being removed. Witnesses Hustrulid and the ASARCO miners agree that blasting will fracture rock. They also agree that roof bolts can be torn out as a result of a blast (Tr 73-74, 165, 271-272).

Miner Traft did not contradict petitioner's evidence. He stated the "ground seemed pretty good" (Tr 163). Furthermore, he didn't "believe" the rock was "mud" but it "seemed" like solid rock (Tr 165). I don't consider the foregoing

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testimony to be contradictory to MSHA's evidence. Furthermore, the fact that the inspector barred down two to three wheelbarrows full is not refuted by ASARCO. Two to three wheelbarrows full is persuasive evidence indicating an unstable roof condition, as compared to merely some loose rock, existed.

The testimony of witness Howard does not address the issue of the rock condition at the place of the citation, but it generally centers on the lack of karst, a white unstable rock in the area. Superintendant Mosher follows this same track.

ASARCO's review of the testimony of the inspector consists of its reargument that there was not loose and unconsolidated ground in the North 3 Heading of the 12-6-3 stope.

For the reasons stated I reject ASARCO's proposed findings of fact No. 1.(FOOTNOTE 4)

The second pivotal issue concerns the exposure of the miners to the unstable back conditions. Otherwise stated, this issue centers on the location of the muck pile in relation to the unstable back and whether the miners would have to stand on the muck pile to abate the condition.(FOOTNOTE 5)

MSHA's evidence could support a finding that there was loose material over the heads of the miners.(FOOTNOTE 6) However, such a finding would ignore the evidence that the unstable condition could only be abated by having the miners stand on the muck pile (Tr 86 - 87, 91). If the miners would be required to do so then they were not exposed to the loose and unconsolidated ground.

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In cross examination the inspector indicated that the miners would have to climb on the muck pile to bar down the back (Tr 85). Further support for the lack of exposure to the miners was the method of abatement agreed to between the inspector and the miners. They abated the condition by mucking out two feet and inserting roof bolts and repeating this process until completion (Tr 181).

CONCLUSION OF LAW

Under the circumstances here ASARCO did not violate 30 CFR 57.3-22. The miners had not reached that portion of the mining cycle requiring them to bar down or otherwise support the back. In short, miners are not required to bar down while standing on a muck pile.

Based on the foregoing finding of fact and conclusions of law I enter the following:

ORDER

Citation 331584 and the proposed penalty are VACATED.

John J. Morris
Administrative Law Judge

~FOOTNOTE 1

Back - The roof or upper part of any underground mining cavity. A Dictionary of Mining, Mineral, and Related Terms, United States Department of Interior (1968).

~FOOTNOTE 2

"Mud" is a mining term meaning softer rock (Tr 16).

~FOOTNOTE 3

Brief, Page 5-19

~FOOTNOTE 4

Brief, Page 5.

~FOOTNOTE 5

ASARCO Brief, Pages 39 - 42.

~FOOTNOTE 6

MSHA's evidence and the mathematical calculations that can be made in the case are at best confusing. I give Exhibit P-2 zero weight since the exhibit, an illustration, is not supported by the testimony.