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SOL (MSHA) V. PEABODY 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 Proceedings Docket Nos. BARB 78-689-P A.C. No. 15-05046-02039S
v.		Docket No. BARB 78-697-P A.C. No. 15-05120-02013V
PEABODY COAL COMPANY,	RESPONDENT	Alston Mine

DECISION

Appearances: Leo J. McGinn, Esq., Office of the Solicitor,  
U.S. Department of Labor, for Petitioner  
Thomas R. Gallagher, Esq., Attorney for Respondent

Before: Judge Fauver

These cases were brought by the Secretary of Labor under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The cases were heard at Louisville, Kentucky, in August 1979. Both sides were represented by counsel.

Having considered the arguments of counsel and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, Respondent, Peabody Coal Company, operated two coal mines known as the Alston No. 3 Mine, and the Ken No. 4 North Mine, in Ohio County, Kentucky, which produced coal for sales in or affecting interstate commerce. Both mines used conventional mining equipment. Alston No. 3 produced about 6,000 tons of coal per day, and employed about 450 people. Ken No. 4 North produced about 500 tons of coal per day and employed about 50 people.

2. On December 9, 1976, a federal inspector, Darryl Winkleman, conducted a regular inspection of Respondent's Alston No. 3 Mine, accompanied by Don Jackson, the second shift foreman. When they entered the motor barn

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they were informed that the scoop operator, Charles Matheny, had been injured by falling roof in the No. 6 room of the last old crosscut on the righthand side of the No. 2 unit.

3. Before the accident, the "pinner" (roof-bolter), Karl Kaylor, had been checking the roof supports. He found some loose roof and told the foreman, Ricky Roberts, that it should be pulled down. The pinner apparently believed that pulling down bad roof was preferable to propping it up because it would be difficult to predict whether or not the roof would fall when the props were removed. Two temporary supports and some pins were installed before the pinner pulled down a section of roof with a 6-foot bar. Roberts then instructed the scoop operator to go in and remove the rock from the ground so pinning could resume. Two timbers in the entry and the temporary supports were removed before the scoop went in.

4. Normally, before the pinner entered an area to install pins, the scoop would be sent in to remove any loose rock from the mine floor. After the area was cleaned, the pinner would go in and bolt the roof and then back out to allow more cleaning before the sequence continued. The scoop was about 25 feet from front to back and about 12 feet from the front of the shovel to the front of operator's deck. As a matter of practice under the roof control plan, it was recognized as safe to allow the front portion of the scoop to go under unsupported roof so long as the operator remained under supported roof. No violation is charged as to this practice.

5. The scoop had removed one load when the belt feeder broke down in another area of the mine. Before leaving to attend to this problem, the foreman instructed the crew to load the rock in cycle, to pin the roof back in, and not to go out under unsupported roof. Before Roberts left, the pins appeared to support the roof well and the scoop operator had not proceeded past supported roof.

6. As the scoop was backing out with a full bucket, a piece of rock, about 200 pounds and 3 to 4 feet in size, fell on the scoop about 4 feet in front of the operator's deck. A piece of this rock, between 30 and 50 pounds, splintered off and struck the operator's legs.

7. When the inspector arrived, the injured scoop operator had already been removed, but the scoop had not been moved. The inspector observed what is depicted in Government Exhibit No. 5. He observed pieces of rock on the mine floor on both sides of the scoop, a large piece on the forward section of the scoop and a smaller piece in the operator's compartment. He observed 12 to 18 inches of roof that had fallen out between two of the pins.

8. Some of the pins in the roof appeared to be supporting roof; however, other pins were not. In the area of the scoop shovel, there were four pins that were not supporting any roof and one of them was hanging down with a piece of rock suspended from it. To the rear of the scoop and behind the operator's deck

were two good pins. Closer to the operator's deck, three

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pins formed a triangle. One leg of the triangle was 7 feet, one leg was 6 feet, 6 inches, and the third was 3 feet. All three pins forming the triangle appeared to be supporting roof; however, two pins, in the vicinity of the longer legs of the triangle, did not appear to support any roof. The inspector determined the roof had fallen in the area of one of the loose pins.

9. After a brief investigation, which included measuring distances between some of the pins, the inspector concluded that the scoop operator had proceeded past the last row of properly supported roof. He issued a notice of violation, which read in part:

The approved roof control plan was not being followed on No. 2 unit (I.D. 014) supervised by Ricky Roberts in 1 South Submain entries in that a scoop operator, Charles Matheny, was injured by falling rock while operating a scoop under unsupported roof where roof material had been taken down in the right crosscut in No. 6 working place.

10. The inspector determined that Respondent had violated paragraph 24(C) of its approved roof-control plan. Paragraph 24 provides:

The roof where falls had occurred shall be considered unsupported, and no person shall enter such areas, either to travel over the fall or clean it up unless the roof is supported. Where falls or blasted roof materials are cleaned up, management shall devise and have in writing at the scene of the fall a plan incorporating the following procedures: (A) such work shall be under the direct, and unless the workmen are specially trained to do such work, constant supervision of a properly trained company official. (B) Adequate support shall be set under the brow of the fall before any work is done in the area. A minimum of four posts or jacks on a maximum of 5' centers or at least two crossbars shall be used to support such brow. (C) Roof supports shall be advanced as cleanup work progresses, and when it is necessary to load material before support can be set, such loading shall be done from areas of permanent support with the operator and other persons in the area under supported roof at all times.

11. The inspector concluded that the poor physical condition of the roof was obvious before the accident and that loose roof bolts (pins) were a contributing cause of the roof fall. He testified that his investigation did not indicate that the roof fall had loosened the bolts.

12. The inspector also said that he would have issued a citation even if the bolts were supporting roof because they were not spaced on 5-foot centers as required by the roof plan.

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13. The roof on the left side of the run consisted of draw slate running from 12 to 18 inches. It was fractured, without strata, and tended to break off in chunks. Respondent's roof control plan called for B-type bolts on 5-foot centers, but because the roof in this area appeared to be getting worse (and was worse than in other parts of the mine), Respondent went to stronger roof supports, metal straps with 6-foot pins on 4-foot centers.

14. In the area in question, the roof appeared smooth until Karl Kaylor noticed the loose roof that he subsequently pulled down.

15. The pinning sequence in this area was unusual in that the pins were not aligned in a straight row. Holes could be drilled only in the thickest part of the roof and the roof thickness was not uniform. When the roof bolter, Karl Kaylor, arrived on the shift, he noticed some spot pins that had probably been set during an earlier shift.

16. Roof bolts would normally be torqued every night and would be checked again at the start of a shift. Karl Kaylor checked every fifth bolt with a sounding device when he came on the shift that day.

17. A roof bolter would be required, at least every 6 months, to read the roof control plan thoroughly to be sure he understood what it required. There were also training sessions at the mine, and bolters would spend several hours training and retraining for a particular job because the roof varied in each section of the mine. The supervisor would also receive 16 hours of specialized training in roof bolting each year.

18. On October 19, 1977, a federal inspector, Thomas Lyle, inspected Respondent's Ken No. 4 North Mine, accompanied by the mine manager, Alton Fulton. About 11:30 a.m., they entered the mine and proceeded to the ratio feeder.

19. The ratio feeder had been installed about 1 week earlier. Coal dumped on the front end of the ratio feeder would move along the conveyor and pass through the pick breaker (which breaks large lumps of coal into smaller pieces) before being dumped off the back end onto the tailpiece of the conveyor belt. When the inspector (and Fulton) arrived at the ratio feeder, the machinery was operating and a shuttle car had just pulled away after dumping a load of coal. The inspector approached the left side of the equipment and observed that a guard over the clutch coupling was improperly secured. One corner of the guard was secured with a bolt and the other side was secured with a thin piece of wire, about 18-1/2 inches long (with a tensile strength of 160 pounds), in place of a bolt. The side secured by the wire was hanging down, leaving the coupling and shaft exposed. The coupling was about 3 feet off the ground and spinning very fast.

20. The inspector found that the guard over the clutch coupling, secured only with a thin piece of wire, could not withstand the pressure of a fall against it and that this

condition exposed persons traveling in the area to a high risk of danger. The area was frequently traveled by shuttle car operators, the belt examiner, and cleaning personnel.

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21. On the right side of the ratio feeder, a guard for the clutch coupling was missing altogether. It was lying on the mine floor just below the coupling.

22. The inspector also observed that a 4-foot section of a guard to protect persons from contacting the moving rollers on the tailpiece was missing. There was no self-activated shut-off. The tailpiece was about 10 feet long, 5 feet wide, and 2 feet high.

23. Respondent's foreman, Charles Ford, had inspected the area earlier in the morning.

24. The inspector issued an order of withdrawal, which read in part:

Guards adequately secured and fastened were not provided for the clutch coupling on the left side of the ratio feeder in that it was only tied on with small wire, and no guard was provided for the right side of the ratio feeder clutch coupling while in motion. Also a guard was not provided for approximately four feet of the right side of the tailpiece and rollers while in motion to prevent persons from coming in contact with the moving belt and rollers. On No. 1 unit (I.D. 004) Responsibility of Charles Ford foreman. The operator or his agent knew or should of known this violation existed.

25. The order was abated promptly by providing a bolt on the guard on the left side of the ratio feeder and by installing guards on the tailpiece and over the clutch coupling on the right side.

#### DISCUSSION

Docket No. BARB 78-689-P

On December 6, 1976, Inspector Winkleman charged Respondent with a violation of 30 C.F.R. 75.200, which requires a mine operator to adopt an approved roof control plan. In addition, section 75.200 provides: "No person shall proceed beyond the last permanent support unless temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners." The inspector determined that Respondent's approved roof control plan was not being followed in that a scoop operator was operating under unsupported roof.

The Secretary argues that the inspector was the only hearing witness who had conducted an investigation of the accident and made a detailed sketch (Exhibit G-5) of the area including the location of the scoop and a schematic diagram of the roof bolt pattern. The sketch indicates the distances between some of the bolts and whether or not bolts were supporting roof.



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The inspector testified that in his opinion the roof fall that injured the scoop operator did not loosen the roof bolts. If the roof fall had dislodged the bolts, he said, a much larger section of rock would have fallen out and would have probably killed the operator. He therefore concluded the operator was under roof that was not properly supported.

The Secretary argues that Respondent's first witness, the foreman, was not an eyewitness to the accident and the report he subsequently filed with the company was based on statements of others that supported his conclusion that the operator had not been operating beneath unsupported roof.

He also contends that none of Respondent's witnesses either conducted an investigation or was in a position to observe whether or not the operator proceeded past the last row of supports.

The Secretary recommends a penalty of \$2,000.

Respondent argues that the inspector was not an eyewitness to the accident and was therefore unable to determine if the roof bolts over the operator's compartment were loose before the fall or became loose as a result of the fall. Respondent contends that the inspector's testimony, including Government Exhibit No. 5 (the diagram) and his measurements, was conclusory as he arrived at the cited area after the accident occurred. Respondent contends that the inspector's conclusion that the good roof bolts were spaced too far apart, based on three measurements he took, incorrectly assumed that the other roof bolts were loose before the accident.

Respondent argues that the inspector's diagram contains measurements of only three bolts although there were about 14 bolts pictured. The diagram contains no measurements for the scoop or the piece of rock that fell and the inspector could provide their measurements only by estimates from memory. The essential measurements, Respondent contends, were not made or recorded when the event was fresh in his mind.

The foreman, Ricky Roberts, testified that the inspector's diagram accurately reflected the area from where the rock had fallen but he disagreed with it insofar as it pictured loose bolts behind the scoop. He testified that the bolts above the scoop were checked by the operator at the start of the shift. He also testified that when he left to go to the belt feeder he gave instructions to the operator to load rock in cycle, pin the roof back in, and not to go beneath unsupported roof.

The pinner, Karl Kaylor, testified that when the scoop was sent in to remove rock that he had pulled down, he was standing toward the face, 20 to 40 feet behind the scoop. He testified that as the scoop was backing out a piece of rock fell and landed on the scoop about 4 feet in front of the operator.

Kaylor testified that the inspector's diagram appeared to be

accurate in reflecting the cited area but he said the two bolts  
on either side of the

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cavity from which the rock fell were tight before the accident. He testified that when he came on the shift he probably checked every fifth bolt but did not recall precisely which ones. Finally, he testified that the bolts did not become loose as a result of his prying down the bad roof. His testimony would indicate that any loose bolts over the scoop became loose as a result of the roof fall.

The shooter, Ruben Williams, testified that he was standing a few feet from the scoop on the same side as the operator and slightly to his rear when the roof fell. He testified that the operator was beneath supported roof when the roof fell but he was unable to say whether or not the inspector's diagram accurately pictured which bolts were loose and which bolts supported roof. He was able to recall very little else.

The scoop operator, Charles Metheny, testified that he did not go beneath unsupported roof. He said that, before the roof fall, no pins were missing and none were loose apart from a pin in front of the bucket.

Respondent also argues that the occurrence of a roof fall is not prima facie evidence of the operator's failure to follow the roof control plan.

I find that the Secretary failed to prove by a preponderance of the evidence that the scoop operator went beneath unsupported roof in violation of Respondent's roof control plan. The inspector did not observe the roof fall and the only basis for his conclusion that the roof fall did not loosen the roof bolts was his unsubstantiated opinion that a much larger rock fall would have been required to loosen the bolts. Four witnesses (including three who were present at the time of the fall) testified that the roof bolts above the operator were tight before the roof fall. The evidence does not preponderate in showing any violation of the roof control plan.

Docket No. BARB 78-397-P

On October 19, 1977, Inspector Lyle charged Respondent with a violation of 30 C.F.R. 75.1722, which provides:

Gears, sprockets, chains, drives, head and tail, take up pulleys, drive wheels, coupling shafts, sawblades, fan inlets, and considerable exposed moving machine parts which may be contacted by persons, and which may cause injury to persons, shall be guarded. Guards, conveyor drives, conveyor heads, and conveyor tail pulleys shall extend a distance sufficient to prevent persons from reaching behind the guard and becoming caught between the belt and the pulley. Except when testing the machinery, guards shall be securely placed while the machinery is being operated.

The inspector observed that one guard was inadequately secured on the left side and two guards were missing from the right side of

the ratio feeder.

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The Secretary argues, with respect to the insecurely fastened guard over the clutch coupling, that one side of the guard was bolted in place but the other side was tied on with a thin piece of wire, allowing the inspector to see into the machine and observe its moving parts. The Secretary contends that even if the wire were of sufficient tensile strength, the guard was still not secured adequately to withstand the pressure of a fall against it.

The Secretary also argues that the other two guards on the right side of the ratio feeder were not in place. With regard to the guard over the clutch coupling on that side, the Respondent admits that it was lying on the ground.

The Secretary proposes a penalty of \$4,000.

The main thrust of Respondent's argument is that the Secretary's proposed penalty is excessive. Respondent contends that one of the guards over the clutch coupling was lying on the ground and one was partially secured with a wire. Respondent argues that the latter guard was adequately secured with a wire of substantial strength and that it would be difficult for anyone to fall through the guard into the moving parts.

Respondent also argues that the tailpiece guard on the right side of the ratio feeder was not missing, as alleged by the inspector. Fulton testified that a J-bolt had broken off on one side of the tailpiece and was secured instead with a wire. He stated:

The back one was bolted on, and the back part of the front one was bolted on with a J-Bolt which is welded onto the tailpiece with a nut on it. And, the front of the guard was dropped down--it was wired--wire running through tied to a rope--belt rope--to the tailpiece and it was dropped down to about two and a half to three inches from the top.

Fulton also disagreed with the inspector's testimony that a man could have become caught in the tail rollers. Respondent contends that a person would have had to force his hand through a 2-1/2-inch opening, which was highly unlikely, to become caught in the moving rollers.

I find that the Secretary proved, by a preponderance of the evidence, three violations of 30 C.F.R. 75.1722 as alleged in Order No. 7-59. Although the inspector did not actually apply pressure to the guard he determined to be inadequately secured, he was able to see into the machinery and did observe the guard vibrating.

The inspector provided a contemporaneous, detailed diagram of the ratio feeder showing which guards were not in place. I credit the inspector's testimony with more accuracy as he took notes and made a diagram at the time.

I also credit his testimony as to the gravity of the violations.

Respondent knew or should have known of the cited conditions before the inspection, and is therefore found to be negligent.

Conclusions of Law

1. The undersigned Judge has jurisdiction over the parties and subject matter of the above proceedings.

2. Petitioner did not meet its burden of proving a violation as alleged in Notice No. 6-2927.

3. Respondent violated 30 C.F.R. 75.1722 by failing to guard exposed moving machine parts as alleged in Order No. 7-59. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory standard, Respondent is assessed a penalty of \$2,500.00 for the above violation.

ORDER

WHEREFORE IT IS ORDERED that (1) the charge based on No. 6-2927 is DISMISSED, and (2) Peabody Coal Company shall pay the Secretary of Labor the above-assessed civil penalty, in the amount of \$2,500.00, within 30 days from the date of this decision.

WILLIAM FAUVER  
JUDGE