

CCASE:
SOL (MSHA) V. PARAMOUNT MINING
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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 No. NORT 79-81-P
Docket No. NORT 79-92-P
Docket No. VA 79-51

v.

PARAMOUNT MINING CORPORATION,
RESPONDENT

Deep Mine No. 5

Docket No. VA 79-1
Docket No. NORT 79-80-P

Deep Mine No. 2

DECISION

Appearances: Barbara Krause Kaufmann, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for Petitioner Galen C. Thomas, Esq., Barber Oil
Corporation, New York, New York, for Respondent

Before: Chief Administrative Law Judge Broderick

STATEMENT OF THE CASES

These cases were initiated by petitions seeking civil penalties for alleged violations of mandatory safety standards promulgated under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. By order issued August 31, 1979, the above dockets were consolidated for the purposes of hearing and decision. Pursuant to notice, the cases were called for hearing on the merits on November 15, 1979, in Big Stone Gap, Virginia. Allan Garrett Howell, a Federal coal mine inspector, testified on behalf of Petitioner. Melvyn Eads testified on behalf of Respondent. Both parties waived the filing of written proposed findings of fact and conclusions of law.

MOTION TO PRECLUDE

With respect to Docket No. VA 79-51, Respondent filed prior to the hearing a motion to preclude Petitioner from offering evidence on any

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matter concerning which interrogatories, admissions, or production of documents were requested. The grounds for the motion were that the responses were inadequate and not timely filed. I denied the motion on the record and hereby confirm that ruling.

DOCKET NO. NORT 79-92-P

Citation No. 35619, issued November 15, 1978, charged a violation of 30 CFR 75.200. Following the testimony regarding this citation, I issued a decision from the bench as follows:

JUDGE BRODERICK: Very well.

With respect to the violations charged in Citation Number 035625 -- I've got the number wrong. This is 035619. I find and this finding will apply to all alleged violations in these docket numbers -- that the respondent, on the basis of the stipulation that between six hundred twenty-one thousand and seven hundred twenty-one thousand tons of coal were produced in the year 1978, is a large operator. There is no evidence in the record that penalties would affect the operator's ability to continue in business, and, therefore, I find any penalties assessed herein would not affect its ability to continue in business.

The petitioner does not contend that the respondent has such a history of prior violations that penalties otherwise appropriate should be increased because of the history and, therefore, I will not increase any penalty I might assess in this case because of respondent's history.

The violation charged in the citation at issue is a violation of 30 CFR 75.200, and the citation charges the respondent violated certain provisions of its approved roof control plan, in that there were areas of unsupported roof, five separate areas of unsupported roof in the section of the mine involved, namely the main section.

I find on the basis of the evidence presented that there were areas of unsupported roof and there were violations of the approved roof control plan as follows: In the crosscut between the belt entry and the Number Three heading -- the belt heading in the Number Three heading, there was an area approximately twenty by fifteen feet of unsupported roof; I find that in the Number Two heading, there was an area in excess of twenty feet from the face to the last roof supports, and that the heading was approximately twenty feet wide; I find, also, that the continuous miner used in this heading was approximately twenty feet from the extreme bit to the pull [control]

area in the miner, therefore, if the miner was cutting in that area, the operator of the continuous miner was under unsupported roof; I find that in the Number One heading, there was an area of unsupported roof approximately eleven feet back of the face in the heading, and that heading was approximately twenty feet wide; I find that there was an area in by the Number One heading where the miner apparently had slabbed to the left while cutting the Number One heading, and this area was approximately four feet in depth; there were permanent supports between the crosscuts, which were approximately eight feet from the face area of the slabbing; I find there was an area -- another area in the Number One heading to the left approximately fifteen feet by eleven feet where there was unsupported roof; I find, also, there were danger boards on each rib in the crosscut between the belt heading and the Number three heading; I find there had been a prior rock fall in the area between the belt heading and the Number three heading, and that the rock had been cleaned up; there also had been rock falls in the area of the Number Two heading, and that the rock fall in this area was in an irregular pattern and varied from one to three and a half feet; I find that the bottom in the crosscut between the belt heading in Number Three heading was relatively dry and was on an angle; there were areas of water in both the Number One and Number Two heading, and the bottom was very soft; the Number One heading was extremely high because of a rock fall, and it was from twelve to thirteen feet in height; in the Number Two heading, rock had been taken down by the miner with the coal; there was no danger sign in the Number Two heading; the continuous miner was present in the Number Two heading outby the crosscut; there was a danger sign in the Number One entry.

Respondent had taken over this mine from another mining company and inspected the mine in September of 1978. Mining was not begun until mid-October, 1978. Problems were encountered because of an area of old works which was partly crossed in this section.

Based on these findings of fact, I conclude that the violation charged in Citation Number 035619 of 30 CFR 75.200 occurred.

Because of the number of areas involved and because of the extreme seriousness in the mining industry of roof falls, and because of the general poor condition of the roof in this area, I find that the violation was serious.

The conditions found by the inspector had apparently not existed for a long time. There were danger signs in

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certain of the areas involved. For these reasons, I find that although respondent was aware of these conditions, there were difficulties in immediately taking care of the conditions because of the extreme height of some of the areas of rock fall and because of the difficult mining conditions. These tend to mitigate the negligence of the operator.

For that reason, the penalty will not be as large as it might have been in the event of a finding of negligence.

On the basis of all the testimony submitted, I will assess a penalty for this violation which I have found to have occurred of seven hundred fifty dollars (\$750).

I hereby affirm that decision.

DOCKET NO. VA 79-51

Order No. 36857, issued December 21, 1978, charged a violation of 30 CFR 75.313. Following the testimony concerning this violation, I issued a decision from the bench as follows:

JUDGE BRODERICK: All right. I will find, on basis of all evidence which was introduced this afternoon, that the Government has failed to sustain its burden of proving the occurrence of the violation charged in the order.

I hold that for a violation of 30 CFR 75.313, the Government must establish that the methane monitor is inoperative and that coal was mined, cut or loaded while it was inoperative.

The evidence in this case does not establish that coal was being produced, that it was mined, cut or loaded during the time the methane monitor was inoperative.

The monitor became inoperative, according to the evidence, on December 15, 1978. The order was placed for a replacement after the existing substitute monitor was also found to be inoperative. The order was placed on December 15.

The inference which could be drawn from the testimony of the inspector that coal was being cut on December 15 is contradicted by direct testimony of the operator's and the company records.

And I conclude, on the basis of all the testimony and the records, that coal was not being produced on December 21, 1978, and there was no evidence it was produced after the monitor became inoperative on December 15.

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For these reasons, I conclude that the violation charged in Order Number 36857 did not occur, and, therefore, no penalty is assessed.

I assume, because of my findings, that the legal issues raised by counsel for respondent are moot at this time.

I should say, however, that I would rule that the challenge to the order which was raised prior to the evidence in this case is not properly before me in a civil penalty proceeding, and my ruling would be that this matter has to be decided on the merits and not on the motion to dismiss which was submitted at the beginning of the hearing.

I hereby affirm that decision.

Order No. 36858, issued December 21, 1978, charged a violation of 30 CFR 75.316 because of the failure of the operator to maintain line curtains as required by its ventilation plan. On the record, the parties moved for the approval of a settlement of this violation for a payment of \$475. The violation was originally assessed at \$750. The parties stated that at certain locations the operator had removed line curtains because of water problems, intending to replace them with a different kind of curtain. The fan was shut down shortly thereafter and the miners were removed from the section. This reduced the gravity of the violation. I approved the settlement agreement.

DOCKET NO. NORT 79-92-P

Order No. 35625, issued November 20, 1978, charged a violation of 30 CFR 75.200 because of a violation of the approved roof control plan. The parties moved for the approval of a settlement of this violation for a payment of \$350. The original assessment was \$500. The parties stated that the operator had encountered unexpected roof conditions and that he had set more temporary supports than the plan required. The operator was experiencing problems with the mine floor which made the setting of permanent supports more difficult. I approved the settlement agreement.

DOCKET NO. NORT 79-81-P

Citation No. 34338, issued October 31, 1978, charged a violation of 30 CFR 75.200 because a heading was advanced 25 feet from the last row of permanent supports. The parties moved for the approval of a settlement of this violation for a payment of \$55. The original assessment was \$78. The parties stated that the roof conditions were good and that there was a factual dispute concerning the measurements. I approved the settlement agreement.

Citation No. 34339, issued October 31, 1978, charged a violation of 30 CFR 75.200 because of an inadequate reflectorized warning device at the

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last permanent support. The parties moved for the approval of a settlement of this violation for the payment of \$26, which was the amount of the original assessment. I approved the settlement agreement.

Citation No. 35620, issued November 15, 1978, charged a violation of 30 CFR 75.503 because of a permissibility violation on a scoop. The parties moved for the approval of a settlement of this violation for the payment of \$38, which was the amount of the original assessment. No methane had been found in the mine. I approved the settlement agreement.

Citation No. 35621, issued November 15, 1978, charged a violation of 30 CFR 75.605 because of an inadequate strain clamp on a shuttle car cable. The parties moved for the approval of a settlement of this violation for the payment of \$15. The violation was originally assessed at \$30. The clamp had apparently given way just prior to the inspection, and the operator's negligence was minimal. I approved the settlement agreement.

DOCKET NO. VA 79-1

Citation No. 36161, issued November 8, 1978, charged a violation of 30 CFR 75.200 because two rows of permanent supports had been dislodged and not replaced. The parties moved for the approval of a settlement of this violation for the payment of \$1,250. The violation was originally assessed at \$1,500. The parties stated that there was a factual dispute as to the length of time the supports had been dislodged. The roof conditions were good. I approved this settlement agreement.

Order No. 35705, issued November 8, 1978, charged a violation of 30 CFR 75.200 because of the operator's failure to roof bolt a 20-foot area. The parties moved for the approval of a settlement of this violation for the payment of \$650. The original assessment was \$1,500. The parties stated that the roof bolter was not operating at this time, that there was a factual dispute as to whether the area involved was a traveled area and that the roof conditions were exceptionally good. I approved the settlement agreement.

DOCKET NO. NORT 79-80-P

Citation No. 356706, issued November 8, 1978, charged a violation of 30 CFR 75.200 because of the failure to make a torque check on the first roof bolt installed. The parties moved for the approval of a settlement of this violation for the payment of \$32, the amount of the original assessment. I approved the settlement agreement.

Citation No. 35707, issued November 8, 1978, charged a violation of 30 CFR 75.200 because of the operator's failure to have an approved torque wrench on the roof bolting machine. The parties moved for the approval of a settlement of this violation for the payment of \$32, the amount of the original assessment. I

approved the settlement agreement.

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Citation No. 35708, issued November 8, 1978, charged a violation of 30 CFR 75.200 because of the operator's failure to have a slate bar on the roof bolting machine. The parties moved for the approval of a settlement of this violation for the payment of \$30, the amount of the original assessment. Both the torque wrench and slate bar were present on the section. I approved the settlement agreement.

Citation No. 35709, issued November 8, 1978, charged a violation of 30 CFR 75.200 because of an inadequate number of test holes being drilled on the roof. The parties moved to settle this violation for the payment of \$40, the amount of the original assessment. There was a factual dispute as to the number of holes present. I approved the settlement agreement.

Citation No. 35710, issued November 8, 1978, charged a violation of 30 CFR 75.1704 because of the accumulation of water in the designated escapeway. The parties moved to settle this violation for the payment of \$12. The original assessment was \$24. The water was not of such height as to prevent miners from using the escapeway. I approved the settlement agreement.

Citation No. 35711, issued November 8, 1978, charged a violation of 30 CFR 75.1720 because two miners were observed not wearing eye protection when driving metal spikes. The parties moved for the settlement of the violation on the payment of \$20. The original assessment was \$34. All miners were provided with eye protection and no supervisory personnel were in the area. I approved the settlement agreement.

ORDER

Within 30 days of the date of this decision, Respondent is ORDERED to pay the following penalties:

Citation or Order No.	Date	30 CFR Section	Penalty Amount
35619	11/15/78	75.200	\$ 750
36857	12/21/78	75.313	0
36858	12/21/78	75.316	475
35625	11/20/78	75.200	350
34338	10/31/78	75.200	55
34339	10/31/78	75.200	26
35620	11/15/78	75.503	38
35621	11/15/78	75.605	15
36161	11/08/78	75.200	1,250
35705	11/08/78	75.200	650
35706	11/08/78	75.200	32
35707	11/08/78	75.200	32
35708	11/08/78	75.200	30
35709	11/08/78	75.200	40
35710	11/08/78	75.1704	12
35711	11/08/78	75.1720	20
		TOTAL	\$3,775

James A. Broderick
Chief Administrative Law Judge