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SOL (MSHA) V. U.S. STEEL
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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 Proceeding Docket No. WEVA 80-466 Assessment Control No. 46-01419-03031V
v.	
UNITED STATES STEEL CORPORATION, RESPONDENT	Gary District No. 2 Mine

DECISION

Counsel for the Secretary of Labor filed on July 31, 1980, in Docket No. WEVA 80-466 a Petition for Assessment of Civil Penalty seeking to have a civil penalty assessed for a violation of 30 C.F.R. 75.202 alleged in Withdrawal Order No. 655316 dated October 2, 1979. The civil penalty issues raised by the violation cited in Order No. 655316 were consolidated for hearing and decision with the proceedings in Docket Nos. WEVA 79-343-R, et al. My decision in United States Steel Corp. v. Secretary of Labor, Docket Nos. WEVA 79-343-R, et al., was issued on June 25, 1980. Paragraph (D) of the order accompanying my decision stated:

> (D) The civil penalty issues consolidated in this proceeding with respect to Order No. 655316 are severed from this decision and will be decided in a separate decision when I receive the file in which the Secretary seeks assessment of a penalty for the violation of section 75.202 alleged in Order No. 655316.

The case in which United States Steel sought review of Order No. 655316 was assigned Docket No. WEVA 80-81-R. In my decision issued June 25, 1980, I found that Order No. 655316 was improperly written under the unwarrantable failure provisions of section 104(d)(1) of the Federal Mine Safety and Health Act of 1977 and the order was vacated by paragraph (C) of the order accompanying the decision.

Finding No. 8 on page 9 of my decision in Docket No. WEVA 80-81-R stated:

> 8. Section 75.202, to the extent here pertinent, provides "[l]oose roof and overhanging or loose faces and ribs shall be taken down or supported." A violation of section 75.202 was

> proven by both the contestant's evidence and MSHA's evidence because some of the coal was loose on the right side and was taken down, even though the quantity only amounted to from one-half to three-quarters of a ton.

Since a violation of section 75.202 has been found to have occurred, it is necessary to consider the six criteria set forth in section 110(i) of the Act for the purpose of assessing a civil penalty (Eastern Associated Coal Corp., 1 IBMA 233 (1972); Zeigler Coal Co., 2 IBMA 216 (1973); Zeigler Coal Co., 3 IBMA 64 (1974); Island Creek Coal Co., 2 FMSHRC 279 (1980); and Van Mulvehill Coal Co., Inc., 2 FMSHRC 283 (1980)).

On page 9 of my decision in Docket No. WEVA 80-81-R, I found that United States Steel is a large operator, that it is subject to the jurisdiction of the Commission and to the provisions of the Act, and that payment of penalties will not affect U.S. Steel's ability to continue in business.

On page 8 of my decision in Docket No. WEVA 80-81-R, I found that U.S. Steel demonstrated very good faith in achieving rapid compliance by having abated the violation within a period of only 30 to 45 minutes after the violation was cited.

On page 10 of my decision in Docket No. WEVA 80-81-R, I stated that the following finding was made for the purpose of evaluating the criterion of gravity in a civil penalty proceeding:

> * * * There was very little rib surface which was loose enough to require it to be taken down and there was little likelihood that any of these ribs would have fallen with sufficient force to cause any serious injury. So I would find that the violation was moderately serious.

At page 11 of my decision in Docket No. WEVA 80-81-R, I stated:

> After listening to the testimony of the company's witnesses and that of Inspector Robbins, I am of the opinion that these particular loose ribs were simply not so obvious and dangerous that a preshift examiner would have picked them out as something requiring special attention, or that a section foreman would have done so either.

On the basis of the foregoing conclusion and other findings given in my decision in Docket No. WEVA 80-81-R, I conclude that respondent was non-negligent with respect to the occurrence of the violation.

In my decision in Docket No. WEVA 80-290, which was a part of the decision issued in the consolidated proceedings in Docket Nos. WEVA 79-343-R, et al., supra, I stated that "[t]here is nothing in the record to show that

respondent has such a significant history of previous violations as to warrant an increase in the penalty under the criterion of history of previous violations." That statement is correct with respect to the instant violation.

Considering that the violation was only moderately serious, that respondent was not negligent, and that immediate action to abate the violation was taken, I find that a nominal penalty of $75.00 is warranted.

WHEREFORE, it is ordered:

United States Steel Corporation, within 30 days from the date of this decision, shall pay a civil penalty of $75.00 for the violation of section 75.202 cited in Order No. 655316 dated October 2, 1979.

Richard C. Steffey
Administrative Law Judge
(Phone: 703-756-6225)