

CCASE:

U.S. STEEL V. SOL (MSHA)

DDATE:

19801017

TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

UNITED STATES STEEL CORPORATION,  
GENEVA MINE,

CONTESTANT

v.

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

NOTICE OF CONTEST

DOCKET NO. WEST 80-312-R

CITATION NO. 0790979

MINE: GENEVA MINE

DECISION

APPEARANCES:

Louise Q. Symons Esq.  
United States Steel Corporation  
600 Grant Street  
Pittsburgh, Pennsylvania 15230,  
for the Contestant

James H. Barkley Esq. and Eliehue Brunson Esq.  
Office of the Solicitor  
U. S. Department of Labor  
1585 Federal Building  
1961 Stout Street  
Denver, Colorado 80294,  
for the Respondent

BEFORE: Jon D. Boltz, Administrative Law Judge

STATEMENT OF THE CASE

Pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1978), the Contestant filed its Notice of Contest to the issuance of Citation No. 0790979, dated May 13, 1980. The citation alleged that the Contestant failed to follow its approved roof control plan in violation of 30 CFR 75.200. Specifically, it alleged that the spacing from the last roof bolt to the rib exceeded five feet in several areas of Contestant's coal mine.(FOOTNOTE 1)

FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS

During the hearing in Denver, Colorado, on June 10 and 11, 1980, there was no evidence presented by Contestant challenging the measurements from the last roof bolt to the rib, and I therefore find that the distance did exceed 5 feet in the areas as alleged in the citation.

The question of whether or not there was a violation of 30 CFR 75.200 centers around the interpretation of several provisions of the roof control plan.

The MSHA inspector testified that the Contestant failed to comply with paragraph 22 of the roof control plan. (Tr. 26). The applicable part of paragraph 22 states as follows: "When heavy sloughing or heaving conditions require the roadway to be cleaned and/or brushed to a width greater than twenty feet, a supplementary row of timbers will be set on eight-foot centers leaving a minimum of sixteen feet of roadway for travel."

It is undisputed that entries were not initially driven wider than 20 feet. However, after a period of time sloughage occurs on the rib at the roof line and, as a result, the entry exceeds 20 feet when measured at the roof line. In all areas where violations were alleged to have occurred, the spacing from the last roof bolt to the rib exceeded 5 feet due to sloughage of the rib at the roof line.

The MSHA inspector testified that he considered the entire entry to be the roadway (Tr. 27), and that the distance between the ribs as measured at the roof exceeded 20 feet. Thus, supplementary rows of timber should have been set as required by paragraph 22.

The Contestant contends that the roadway must be measured at roadway level and that the width did not exceed 20 feet. The gist of the testimony is that neither Contestant nor Respondent agree as to how the width of a roadway is to be measured; on the surface between the sloughage from the rib lines, rib to rib half way up, or on the roof.

The roof control plan contains no definition of roadway or of how a roadway is measured. If the roadway is measured at the bottom of the entry, it did not exceed 20 feet in any area cited and there would be no violation of paragraph 22. However, if the roadway is measured the same as an entry, it might be measured at its widest span which would be at the roof line. Since that measurement exceeded 20 feet, paragraph 22 would not have been complied with. Neither side agrees as to what is "common accepted mining practice" when measuring a roadway.

"Since provisions of the roof control plan are not regulations of the Secretary, but are adopted by the operator and approved by the Secretary, there is no written legislative history to look to for clarification." Secretary of Labor v. Penn Allegh Coal Company, Inc. (Docket No. PITT 79-390-P, February 28, 1979). Much of the trial time was taken up with each party explaining through its engineers and inspectors the accepted method of measuring the roadway. The testimony convinced me that there was no meeting of the minds in regard to measuring a roadway, nor had there been when the roof control plan was entered into and approved. Both parties agreed that it is not the function of the Judge to "re-engineer" the roof control plan, but merely to interpret it as contained within the four corners of the instrument. I agree. I find that the applicable part of paragraph 22 is unclear and ambiguous. Therefore, it is inapplicable in determining whether or not there was a violation of Contestant's roof control plan.

The MSHA inspector also stated that Contestant was in violation of that part of the plan which states: "On initial installation, bolts will not be installed more than 5 feet from the face or ribs." (Tr. 32). However, the witness subsequently testified that he did not know if the bolts as initially set were within 5 feet of the rib. Therefore, this evidence does not show a violation of the roof control plan.

The inspector testified that the Roof Bolting Plan as shown on the document designated as A3-1198-1, which is part of the roof control plan (Exhibit R-2), requires bolting on 5 foot centers throughout the mine (Tr. 35). The Contestant argues that the drawing showing the bolts as spaced 5 feet apart applies only to an intersection (Tr. 289; Contestant's post hearing brief, pg. 2). I agree that the words "centers - 5 feet" are written in the middle of the intersection. However, I also find that the entire diagram, including the entry, two cross-cuts and the intersection, are shown as being roof bolted on 5 foot centers. In addition, the drawing also shows the edge of a roadway commencing from the entry and turning into a cross-cut along with the proper placement of the roof bolt in the turn.

The roof control plan does not state that additional roof bolts must be installed if sloughage from the rib at the roof line causes the distance to exceed 5 feet from the last roof bolt to the rib. But the drawing previously referred to as A3-1198-1 shows no exceptions from bolting on 5 foot centers. If the distance from the last roof bolt to the rib exceeds 5 feet because of sloughage, or for that matter any other reason, roof bolts must be installed in order to comply with that part of the plan. To conclude otherwise would require me to ignore what is plainly drawn on the Roof Bolting Plan.

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There was evidence that putting in additional roof bolts after sloughage might require a miner to be momentarily under unsupported roof. (Tr 92). There was also evidence concerning the difficulty encountered in roof bolting over the area of sloughage. (Tr. 92, 93). These problems may or may not cause an unsafe condition to exist in connection with requiring additional roof bolts to be installed after the distance from the last bolt to the rib exceeds 5 feet. However it is unequivocal in the roof bolting plan that bolting on 5 foot centers is a requirement as it now exists. Since the plan, by regulation, (FOOTNOTE 2) is periodically reviewed at least every six months by the Secretary, these are matters which may suggest that changes be made in the roof control plan.

I find that there was a violation of 30 CFR 75.200 as alleged in Citation No. 0790979 in that the distance from the last roof bolt to the rib exceeded 5 feet in the areas alleged in the citation, all of which was contrary to the provisions of the approved roof control plan.

ORDER

Citation No. 0790979 is hereby AFFIRMED.

Jon D. Boltz  
Administrative Law Judge

~FOOTNOTE\_ONE

1 Citation No. 0790979 alleges the following: "The approved roof control plan was not being follow[ed] in the 3 dip section in that the spacing from the Last roof bolt to the rib was in excess of 5' at the following Location, (1) in the no[.] 1 entry at 14 Location the spacing ranged from 6' 3" to 10' 6" (2) in the no[.] 2 entry at 6 Location the spacing ranged from 6' to 10 foot (3) in the no[.] 3 entry at 6 Location the spacing ranged from 6' 4" to 8' 7" (4) the no[.] 1 room along the Lower rib at 6 Location the spacing ranged from 6' 3" to 8' 5" ."

~FOOTNOTE\_TWO

2 30 CFR 75.200.