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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
v.

Civil Penalty Proceeding
Docket No. PITT 78-430-P
A.C. No. 36-03425-02015 V

UNITED STATES STEEL CORPORATION,
RESPONDENT

Maple Creek No. 2 Mine

DECISION

Appearances: Stephen Kramer, Esq., Office of the Solicitor, U.S. Department
of Labor, for Petitioner
Louise Symons, Esq., for Respondent

Before: Judge William Fauver

This proceeding was brought by the Secretary of Labor under section 109(a) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The case was heard at Pittsburgh, Pennsylvania. Both parties were represented by counsel, who have submitted their proposed findings, conclusions, and briefs following receipt of the transcript.

Having considered the contentions of the parties 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 United States Steel Corporation operated a coal mine known as the Maple Creek No. 2 Mine in Washington County, Pennsylvania, which produced coal for sales in or substantially affecting interstate commerce.

2. Respondent used a continuous-mining method in the Maple Creek No. 2 Mine. The continuous miner was powered electrically from a power source that was located about seven blocks from the section. Each block was driven on an 85-foot center. Power to the machine could be cut off at the power source or by using the breaker switch, which was located on the side of the machine.

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3. On August 30, 1977, at about 8:30 a.m., federal mine inspector David E. McCusker arrived at the 2 main, 7 flat, 35 room section of the mine. The day-shift crew was mining and loading coal with the continuous miner. The inspector observed the miner in operation for a short while before the operator was forced to stop the machine because of a rupture in the hydraulic system. Paul Gaydos, the assistant mine foreman, and the mechanic, William Huddock, were immediately notified of the problem.

4. The mechanic activated the pump motor to force hydraulic fluid through the system so that he could locate the rupture. The inspector could hear the sound of dripping oil immediately in front of the operator's compartment but he was unable to see the leaking hose.

5. Directly in front of the operator's compartment was a valve chest, which housed numerous hoses that fed hydraulic fluid to various parts of the machine. The valve chest was protected by a side guard, which was secured by four bolts, and a top guard or lid. Two bolts were on top of the machine and secured the top and side guards together. The side guard was about 30 inches by 40 inches.

6. When the foreman arrived, the operator was backing the miner out from the working face to provide more room to locate and repair the leak. The mechanic had just left the area to get his tools. To find the leak, the foreman had the pump motor turned off and removed the tram cover or cat motor cover, which protected the cat motor hoses near the bottom of the machine. However, he was unable to find the leak under the tram cover.

7. The mechanic returned with his tools and spare parts and the inspector observed him holding a crescent wrench and reaching through a small opening behind the valve chest guard. The inspector believed he was trying to uncouple the oil line, but he could not actually see the mechanic's hand behind the guard. Also, the mechanic's back was towards the inspector and blocked visibility of the mechanic's hands. At this time, power to the miner had not been deenergized and locked out at the power source.

8. The inspector stopped the mechanic because the machine had not been deenergized and locked out at the power source. The inspector believed that the mechanic was in danger of injuring himself, possibly on metal braids of a ruptured hose and possibly from hot oil if the pump motor were turned on while he was working on the machine. He did not consider it safe to cut off the machine power only by using the breaker switch, because he believed there was a danger that someone might activate the power before the repairs were completed.

9. The inspector then issued Notice of Violation No. 1-DEM, which read in part: "Repairs were observed being made on the Lee Norse continuous miner (Serial No. 4057) in 2 main, 7 flat, 35 room section while the power was on the machine, and the section

foreman was at the machine watching the mechanic make repairs."

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10. The cited condition was abated immediately by deenergizing and locking out the power source to the continuous miner. The mechanic and foreman removed the guards, located the leak, and replaced the hose.

11. After the ruptured hose was replaced, power was returned and the motor was turned on to make sure there were no other leaks. The motor was then turned off at the breaker switch, to replace the guards. The inspector did not require that the machine circuit be deenergized at the power source in order to replace the guards. He remained in the section until the machine was put back in service.

12. Under normal practice, to locate the source of a leak the pump motor was activated so that pressure would force fluid through the rupture. The sound and sight of dripping oil would often be enough to lead the mechanic to the rupture. However, if the source of the leak could still not be located, the top guard and side guard over the valve chest would be removed so that the mechanic could look for the rupture. The pump motor would often need to be reactivated because the build-up of oil and grease on the hoses was so great that a visual search of the rupture was difficult. The normal sequence of repairing oil leaks on the continuous miner was to locate the leak, deenergize the machine by locking out the power source, make the repairs, and reenergize the machine.

13. Respondent had a practice of removing the guard before the machine was deenergized at the power source if the source of the leak could not be found after the motor was turned on. Once the leak was located, the power source would be deenergized at the power source before repairs were begun. Only when the exact source of the leak was known would Respondent first lock out the power source. Sometimes, power would be returned to the machine before the guard was replaced so that the repairs could be tested. It was standard practice for Respondent to use the breaker switch while performing these tests.

14. It was contrary to company policy and considered unsafe to reach behind the guard to search for a ruptured hose. Even with the pump motor off, there would be a danger of injury from protruding metal braids of a ruptured hose. However, there was no real danger from metal braids in reaching behind the upper part of the guard with a wrench to remove the guard bolts.

15. To remove the guard over the valve chest, the mechanic would reach behind the guard with a wrench or pliers and secure the nut while loosening the bolt on the outside with a wrench in his other hand. Finger pressure on the nut was not sufficient. It was possible to reach behind the guard to feel some of the hoses; however, both guards had to be removed to reach most of the hoses and to repair a ruptured hose, depending on where the leak was located. Only two hoses were visible without removing the top guard.

DISCUSSION WITH FURTHER FINDINGS

On August 30, 1977, Inspector McCusker charged Respondent with a violation of 30 C.F.R. 75.509, which provides: "All power circuits and electric

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equipment shall be deenergized before work is done on such circuits and equipment, except when necessary for troubleshooting or testing."

Inspector McCusker initially charged Respondent with a violation of 30 C.F.R. 75.1725(c), which provides: "Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments." However, the notice of violation was modified to charge Respondent with a violation of section 75.509, which is a statutory provision. In Consolidation Coal Company, WEVA 79-440-R, 2 FMSHRC 965 (April 28, 1980), which involved an allegation that the mechanic was changing an oil hose without deenergizing power, Judge Lasher held that section 75.1725(c) was an implementing regulation of a statutory provision (section 75.509) and that "electric equipment," as used in the statutory provision, had the same meaning as "machinery" in the implementing regulation.

I find that section 75.1725(c) is an implementing regulation for section 75.509 and that the same basic rationale governs the two standards.

The basic issue as to the notice of violation is whether Respondent's mechanic was "troubleshooting or testing" or whether he was "working on" the machine when the citation was issued.

The Secretary contends that at the time the notice of violation was issued, the mechanic was working on the continuous miner without first locking out the power source. The Secretary argues that it was reasonable for the inspector to assume that the mechanic had already located the leak, because he turned the pump motor off after checking for a leak, and to assume that when the mechanic reached behind the valve chest he did so to "work on" the miner by uncoupling the hose fitting.

The inspector testified that the mechanic turned on the pump motor to locate the source of the leak. He stated that when the motor was turned on, dripping oil could be observed and heard in front of the operator's compartment so that when the motor was turned off, he assumed that the leak had been found. The inspector also testified that he observed the mechanic take a crescent wrench and reach through a small opening behind the valve chest, and that the wrench that the mechanic used would not fit the bolts that held the guards in place.

Respondent argues that the mechanic reached behind the guard to loosen the top bolt near the operator's compartment and that the inspector's conclusion that he was removing a hose coupling is unfounded because the inspector could not see whether the mechanic was loosening a bolt or making a repair. The inspector testified that he could not see the mechanic's hand behind the guard and that the mechanic's back was towards him. He testified that he assumed the mechanic was uncoupling a hose fitting. Respondent argues that the mechanic's action in reaching behind the guard to remove a bolt constituted "troubleshooting" because

he was removing the guard to search for the source of the leak.

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I find that the Secretary failed to prove by a preponderance of the evidence that the mechanic was uncoupling, or in the process of uncoupling, an oil hose fitting. The evidence showed that the proper procedure for repairing a ruptured hose on the continuous miner was to locate the source of the leak, deenergize the power by locking out the power source, make the necessary repairs and restore power to the machine. However, the activity of locating a leak often involved activating the pump motor so that pressure would force fluid through the hoses. If the leak could still not be located, the motor was turned off and the guards over the valve chest were removed so that the mechanic could visually observe the hoses. If the build-up of oil and grease still prevented the mechanic from locating the rupture, the pump motor would have to be reactivated.

The inspector was unable to see precisely what the mechanic was doing with his hand behind the valve chest guard. I credit the testimony of the assistant mine foreman, who helped the mechanic repair the rupture, that the leak had not been located before the mechanic reached behind the guard and that the mechanic was loosening a bolt that secured the guard over the valve chest to locate the rupture. I find that under these circumstances, it was reasonable to use the breaker switch to turn off the power rather than locking out power at the power source. I find that the mechanic was "troubleshooting" when the Notice of Violation was issued.

CONCLUSIONS OF LAW

1. The undersigned judge has jurisdiction over the parties and the subject matter of this proceeding.

2. Petitioner did not meet its burden of proving a violation as alleged in Notice of Violation No. 1-DEM.

ORDER

WHEREFORE IT IS ORDERED that the subject proceeding is DISMISSED.

WILLIAM FAUVER JUDGE