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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. CENT 80-92-M

v.

HOMESTAKE MINING COMPANY,
RESPONDENT

MSHA CASE NO. 39-00055-05021 H

MINE: Homestake Mine

DECISION

Appearances:

James Barkley Esq., Office of the Solicitor
U. S. Department of Labor
1585 Federal Building, 1961 Stout Street
Denver, Colorado 80294,
for the Petitioner

Robert A. Amundson Esq.
215 West Main
Lead, South Dakota 57754,
for the Respondent

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Petitioner seeks an order assessing a civil monetary penalty against the respondent for its alleged violation on July 12, 1979, of 30 C.F.R. 57.3-20 (FOOTNOTE 1). The cited regulation was issued under authority of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1978). In connection with the citation, the MSHA inspector issued a withdrawal order and alleged on the citation, inter alia, that in the 4400 foot main ledge header area there were fresh signs that the back and ribs were taking pressure, including fresh cracks. The citation and order attached to the petition show that they were terminated July 17, 1979.

The respondent denies in its answer that the condition alleged violated the standards cited and if there was any ground support problem, the normal mining sequence would have corrected it.

FINDINGS OF FACT

1. The area of the mine which was inspected by an MSHA inspector and which gave rise to the issuance of the citation in question is referred to as the 4400 foot main ledge and 3 winze corner (Tr. 5, Exh. P-1).

2. The 3 winze is a shaft that runs from the 4100 foot level to the 5000 foot level and is used as a secondary escape way (Tr. 5).

3. Tracks for the main haulage way on the main ledge at the 4400 foot level lead to a "Y": the fork to the left leading to the chute and manway to which ore is hauled; the fork to the right leading to the waste dump area where rock which is too low in grade to be processed is taken; and continuing directly through the middle of the "Y", the track leads to the 3 winze. (Tr. 6, Exh. P-1).

4. There had been no mining done in the area described for approximately 15 years (Tr. 181).

5. The ground support used in the described area subject to the citation included timber, rail sets, shot crete, rock bolt and a cement pillar (Exh. P-1 through P-9).

ISSUE

The issue is whether or not the support was consistent with the nature of the ground and the mining method used.

DISCUSSION AND CONCLUSIONS

The MSHA inspector testified that the second sentence of 30 C.F.R. 57.3-20 was violated by the respondent. That sentence states as follows: "If it is required, support, including timbering, rock bolting, or other methods shall be consistent with the nature of the ground and the mining method used."

In the opinion of the inspector, the area in question was not being adequately supported for the amount of stress it was taking. He based this conclusion on his observations, including the following: a vertical support post which was split vertically at the top and an adjoining horizontal cross member which was loose on one end (Tr. 11); rail sets which were sinking into a supporting wooden slab (Tr. 17); a rock weighing between one and two tons which was protruding from the roof of a six-foot drift and was supported by rock bolts attached to a plate at the bottom of the rock (Tr. 19, 224); some cracks in the roof which "appeared" to be fresh (Tr. 27); and some shot crete which had peeled off the ribs. (FOOTNOTE 2) (Tr. 30).

The observations of the inspector were supported by the testimony of three employees of the respondent.

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In regard to the shot crete, the inspector stated that he "surmised" that it was pressure on the rocks that caused the shot crete to peel, but he also stated that it might not have been properly applied. The inspector further testified on cross-examination that blasting in the area could cause the shot crete to peel.

A witness for the petitioner stated on cross-examination that the protruding rock had ground support and had to be blasted down. He further testified that since the rock was located low in the drift, the plate on the bottom could be "pulled off by hitting". Thus, the problem with the protruding rock was the hazard presented by its location and not that the method used for its support was inconsistent with the nature of the ground in the area.

The respondent's evidence shows that the post which was split and the loose horizontal timber observed by the inspector was a "tie". The witness defined a tie as timber used to spread other timber apart and not used to support any weight. Thus, the respondent contends that it was not used for purposes of ground support.

An employee of the respondent who had worked in the area in question for several years testified that after the citation was issued, the rail sets were removed, new posts were set, and the rails were then put in horizontal to the cap in the timber line. By raising the rail sets an additional three to four inches clearance was gained, but no additional ground support was provided by the procedure.

The evidence is also in dispute as to whether or not there were any fresh cracks in the area. The petitioner's witnesses testified that there were fresh cracks and old cracks in the area. The respondent's witnesses testified that they saw no fresh cracks and this included a witness who accompanied the inspector at the time of the inspection. These witnesses testified that there were some cracks in the area, but they were of long duration and unchanged. I find the evidence inconclusive on this point.

Out of approximately 100 stopes at the respondent's mine, only three or four were "timber stopes", including the area covered by the citation at issue. A witness for the respondent testified that more care had to be taken with a timbered stope because of the problem of "taking weight". However, the evidence did not show that the support used by the respondent was inconsistent with the nature of the ground.

I conclude that the evidence presented by the petitioner falls short of proving the violation of the cited regulation by a preponderance of the evidence.

The petitioner's evidence does not show that support consistent with the nature of the ground and mining method was not being used by the respondent. On the contrary, the evidence

showed that in the normal sequence of operations in the area in question, the respondent replaces timbers that deteriorate, installs additional timbers and rock bolts, and utilizes shot crete. In fact, several days before the inspection, a work order had been submitted to perform ground support work in the area, including rock bolting (Tr. 300, 301, 302).

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In the normal sequence of its mining operations the respondent has taken steps to provide adequate support consistent with the nature of the ground in compliance with the cited regulation. Petitioner's evidence to the contrary does not outweigh that of respondent. Thus, the petitioner has failed to sustain the burden of proof to a preponderance of the evidence that the regulation was violated.

ORDER

Citation No. 329646 and the proposed penalty therefor are VACATED.

Jon D. Boltz
Administrative Law Judge

~FOOTNOTE_ONE

1 Mandatory. Ground support shall be used if the operating experience of the mine, or any particular area of the mine, indicates that it is required. If it is required, support, including timbering, rock bolting, or other methods shall be consistent with the nature of the ground and the mining method used.

~FOOTNOTE_TWO

2 Shot crete is a mixture of a type of concrete and water which is forced through air pressure onto rocks or timber (Tr. 30).