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SOL (MSHA) V. MATHIES COAL  
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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.

MATHIES COAL COMPANY,  
RESPONDENT

Civil Penalty Proceeding

Docket No. PENN 80-277  
A/O No. 36-00963-03096V

Mathies Mine

MATHIES COAL COMPANY,  
CONTESTANT

v.

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

Contest of Order

Docket No. PENN 80-121-R  
Order No. 836843 12/13/79

Mathies Mine

DECISION

Appearances: James H. Swain, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner-Respondent; William H. Dickey, Jr., Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania, for Respondent-Contestant

Before: Judge Charles C. Moore, Jr.

Mathies Coal Company was served with an order alleging a violation of its roof control plan because it seemed obvious to the inspector that the operator of the continuous miner in a particular cut had been operating under unsupported roof. When the inspector first noticed the unusually large unsupported area where Mathies had been constructing a track shoot (for its rail car haulage system) his eyeball measurement indicated to him that the depth of the cut was greater than the distance from the front of the continuous mining machine to the operator's controls on that machine. He then had the area supported and took measurements. One of his measurements showed it was 28 feet from the deepest cut to the nearest roof bolt. Since it was only some 22 feet 7 inches from the front of the continuous miner to the operator's controls, he assumed there had been a violation because the operator of necessity had been under unsupported roof.

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After the issuance of the citation the representatives of Mathies were somewhat perplexed by the measurements but rather than accept the fact of violation they brought the continuous miner back into the track shoot area and found that they could not position the miner in the track shoot in such a way that the operator would be under unsupported roof. One of their discoveries was that it was 28 feet from the far left-hand corner of the cutting blade to the miner's controls which were located on the right rear of the machine.

At the hearing Mathies produced scale drawings of the track shoot showing the last line of roof bolts and a scale model of the continuous miner. The miner would not fit in the track shoot in any area in any way which would expose the operator of the machine to unsupported roof. Furthermore, Mathies produced the continuous miner operator who cut the track shoot in question, and he testified as to how he cut this track shoot and that at no time was he under unsupported roof.

While I can sympathize with the inspector's action, it is nevertheless true and I find it as a fact that no violation of the roof control plan or of 30 C.F.R. 75.200 occurred in this track shoot. The order is accordingly vacated and these cases are dismissed.

Charles C. Moore, Jr.  
Administrative Law Judge