

CCASE:

U. S. STEEL v. SOL (MSHA)

DDATE:

19810108

TTEXT:

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

UNITED STATES STEEL CORPORATION,
CONTESTANT

v.

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

RESPONDENT

Contest of Order

Docket No. WEVA 81-33-R

Order No. 894407

Mine No. 2

DECISION

Appearances: Louise Q. Symons, Esq., Pittsburgh, Pennsylvania, for
Contestant
Barbara K. Kaufmann, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for Respondent

Before: Chief Administrative Law Judge Broderick

Pursuant to notice, the above case was called for hearing on the merits on December 16, 1980, in Charleston, West Virginia. After the completion of the evidentiary hearing and after hearing arguments by counsel, I rendered a bench decision which is set forth below:

This is a proceeding instituted by United States Steel Corporation under section 107(e) of the Federal Mine Safety and Health Act of 1977, seeking to have vacated an order of withdrawal issued pursuant to section 107(a) of the Act. The case was heard today pursuant to notice, today being December 16, 1980, in Charleston, West Virginia.

At the conclusion of the testimony, the parties orally argued their positions on the record, and have waived the right to file written proposed findings of fact and conclusions of law.

The issues are:

1. Did the practice which Inspector Walls stated existed in the subject mine, namely, the use of a shuttle car trailing cable to withdraw power for other equipment, did that practice exist as of September 9, 1980, in the subject mine?

2. The second issue, if so, was the practice an imminent danger, that is, could it reasonably be expected to cause death or serious physical harm before it could be abated?

The following are my findings of fact based upon the record made before me today and the contentions of the parties.

1. The Contestant, United States Steel Corporation, on September 8, 1980, was the operator of a coal mine known as the Gary District Mine No. 2 in the State of West Virginia, and was subject to the Federal Mine Safety and Health Act of 1977 in the operation of that mine.

2. Franklin Walls was a Federal mine inspector, Federal mine electrical inspector and was a duly authorized representative of the Secretary of Labor at all times pertinent to this decision.

3. On September 9, 1980, Inspector Walls inspected the Gary Mine No. 2 and issued Order No. 894407 under section 107(a) of the Act, alleging an imminent danger because of the practice described as, "the practice of providing power to other devices by means of equipment trailing cables."

4. I find that the evidence establishes that employees of United States Steel Corporation in the Gary Mine No. 2 did use trailing cables to provide power to other equipment in the mine. I am persuaded that this occurred because of the following factors: (a) placement of the holes in each set of holes which were found, which I find to have been approximately 10 to 12 inches apart; (b) the fact that the holes went through the entire cable, passing through the conductors and out the other side; (c) one of the holes in each set of holes was large enough so that the conductor was visible when the cable was flexed and corrosion was seen on the conductor.

For these reasons, I reject the evidence that the holes were caused by an ohmmeter or accidentally caused by the cable contacting a nail on a rib board, and I find affirmatively that they were caused by the driving of a nail or other instrument through the cable, the purpose of which was to provide power for other equipment in the mine.

There is no direct evidence that this occurred, but the inference is a reasonable and natural one from the evidence which I found.

A further question remains. Was this a practice? The evidence shows that two sets of holes were present in the same trailing cable, indicating that on at least two occasions this--what I have described--had occurred, namely, that power was drawn from the shuttle car cable to empower other equipment.

I find that these two occurrences establish a practice. This does not mean that the operator prescribed or condoned the practice. The question of fault or lack of fault on the part of the operator is not relevant to a determination of the propriety of the issuance of a 107(a) order.

So, I find and conclude that the practice charged in the withdrawal order did exist in the subject mine.

The remaining question is whether the practice was an imminent danger. I think the evidence is clear, and I find that if the practice were continued it could reasonably be expected to cause death or serious physical harm.

The company denies that the practice existed, but does not or has not submitted evidence to seriously contend that if the practice existed it was not imminently dangerous. The danger consisted essentially in the possibility of a miner receiving an electrical shock, an electrocution or the occurrence of a mine fire resulting from the baring of the power conductors in the cable.

The following are my conclusions of law:

1. I have jurisdiction over the parties and subject matter of this proceeding.
2. Inspector Walls properly issued Withdrawal Order No. 894407 on September 9, 1980, under section 107(a) of the Act. An imminent danger existed, namely, the practice of using a shuttle car trailing cable to provide power to other equipment by driving a nail or other device through the two conductors in the cable.

I find and conclude that this practice could reasonably be expected to result in death or serious physical harm before it could be abated.

I make no finding as to whether the condition or the practice described in the order constituted a violation of 30 C.F.R. 75.512.

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Therefore, I issue the following order: The contest of the order filed by Contestant United States Steel Corporation is denied, and the order of withdrawal is affirmed.

This decision will be issued in writing as I have given it orally following receipt of the transcript. The time for either party to file a petition for discretionary review with the Commission will begin to run from the date of the issuance of the written decision.

Thank you very much, ladies and gentlemen.

ORDER

The bench decision is AFFIRMED. Contest of Order No. 894407 issued September 8, 1980, is DENIED and the order is AFFIRMED.

James A. Broderick
Chief Administrative Law Judge