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SOL (MSHA) v. ISLAND 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

Civil Penalty Proceeding  
Docket No. WEVA 79-112-P  
A.C. No. 46-01459-03025 V

v.

ISLAND CREEK COAL COMPANY,  
RESPONDENT

Birch No. 2-A Mine

DECISION

Appearances: James H. Swain, Esq., Office of the Solicitor,  
U.S. Department of Labor, for Petitioner;  
Marshall S. Peace, Esq., for Respondent

Before: Judge William Fauver

This proceeding was brought by the Secretary of Labor under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The case was heard in Charleston, West Virginia. 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, Island Creek Coal Company, operated a coal mine known as the Birch No. 2-A Mine in Nicholas County, West Virginia, which produced coal for sales in or substantially affecting interstate commerce.

2. Respondent used a retreat mining method at the Birch No. 2-A Mine, which involved driving a series of rooms, about 20 feet wide and 80 feet long, into the coalbed. Pillars of coal would be left standing to support the roof until the area was fully developed. Coal would then be removed from the supporting pillars in a pattern until the roof caved in, leaving a gob area. About eight mining cycles, in four shifts, were required to drive through six rooms into a new crosscut.

3. The mining sequence in the retreat method was roof bolting, cutting, drilling, blasting, and loading. After the roof was bolted, the face would be cut with a cutting machine before the coal was blasted. Undercutting and overcutting involved making horizontal cuts along the bottom and top of the face so that the coal would separate evenly from the face following the blast. Undercutting and overcutting also relieved the coal seam from overburden stresses. After cuts, the cutter would pull out and a drill would be brought in to drill holes for the explosives.

4. Cutting was also performed to shear loose ribs and overhanging brows that often accompanied retreat mining. An overhanging brow is a rib that is not aligned at right angles with the roof and that extends over the travelway. A loose or cracked overhanging brow can create a serious hazard to miners in the area. Removal is typically done by cutting underneath the overhang and then shearing it vertically. Normally, before an overhang falls there is a warning noise accompanied by loose, falling material. About once every shift, loose ribs and overhangs are cut down as part of the regular mining cycle and it is often necessary to shear the same areas several times.

5. On August 24, 1978, Mr. McClung, a shuttle car operator, pointed out an overhang on the corner of the No. 3 room to William Bradey, the cutting machine operator, and Bradey sheared it off. Bradey had sheared this overhang on more than one occasion before this.

6. Loose ribs and overhangs are prevalent in the Birch No. 2-A Mine. Shuttle car operators customarily notify section foreman of loose overhangs observed while traveling through an area of the mine. The shuttle car operators generally make 40 to 50 trips each shift; however, none had passed through the 4-right off east main section on August 25, 1978.

7. On August 25, 1978, Eugene Cook, Respondent's section foreman in the Birch No. 2-A Mine, arrived underground with his crew at the 4-right off east main section between 8:20 and 8:30 a.m. The shift began at 8:00 a.m. Before entering the mine, Cook reviewed the report of William Bayles, the fireboss on the previous (third) shift. The report made no reference to overhanging brows. Normally, if a problem arises between shifts, the fireboss would note the problem and alert the foreman on the following shift. No mining is performed on the third shift.

8. On August 25, Cook preshifted the belt haulageway and face areas while the crew remained in the dinner hole. Cook's preshift examination did not cover all areas between the last open crosscut and the next crosscut outby. He traveled through the last two open crosscuts and observed loose overhangs in two locations (designated as #1 and #2 on Respondent's Exhibit No. 1). One of the locations was the same area reported by the shuttle car operator on August 24, 1978. Cook returned to the dinner hole at about 8:40 a.m. and told William Bradey to shear off the loose overhangs. One of them was dangerous because of a "scrap cut," which referred to an area that has not been cleared

adequately. The rest of the crew were told to move equipment,

scale tops and move cables and curtains so that the ribs and overhangs could be sheared. They would not be working in the vicinity of the cutting machine while performing these tasks.

9. On August 25, 1978, federal mine inspector Henry Baker arrived at Respondent's Birch No. 2-A Mine at 7:15 a.m. After checking mine records on the surface, Inspector Baker traveled to the 4-right off east main section and at about 9:30 a.m. began checking the faces of rooms 1 through 6 and the travelways and roadways by the docking point. No coal was being mined and no equipment was being loaded. Inspector Baker observed a cutting machine, a loading machine, two shuttle cars, a coal drill and a roof-bolting machine; however, he did not inspect any of the equipment.

10. Inspector Baker observed numerous overhanging brows and unsupported ribs in the Nos. 1 through 5 rooms, in the last open crosscut and in the first two crosscuts outby the last open crosscut. These conditions were observed in each room about every 10 feet on both sides of the room. Some of the overhangs ranged from 2 to 4 feet and over 1 dozen of the overhangs were loose and cracked.

11. By visual observation, Inspector Baker determined that the overhanging brows were loose and cracked. He estimated the size of the overhangs instead of using a measuring stick because the coal seam was about 11 feet and he was unable to reach and prod the roof.

12. The inspector determined that the condition was dangerous and that Respondent's section foreman was aware or should have been aware of the condition. About 10 men worked in the area and all of them would be exposed to the hazard of falling roof or ribs during normal mining cycles.

13. On August 25, 1978, Inspector Baker issued Order of Withdrawal No. 53415 to Respondent, which reads in part:

Loose, unsupported ribs, coal, and unsupported overhanging coal brows were present at numerous locations along the shuttle car roadways in the 4-right off east main section, section 031-0, beginning in the second line of open crosscuts outby the faces and extending inby in all areas in the number 1 to number 5 rooms.

The cited condition was abated by 5:00 p.m., by taking down the overhanging brows.

14. Between July 11, 1978, and August 25, 1978, Respondent received 12 citations charging violations of 30 C.F.R. 75.202.

#### DISCUSSION WITH FURTHER FINDINGS

Based on the order of withdrawal issued on August 25, 1978, the Secretary has charged Respondent with a violation of 30

C.F.R. 75.202, which provides:

The operator, in accordance with the approved plan, shall provide at or near each working face and at such other locations in the coal mines as the Secretary may prescribe an ample supply of suitable materials of proper size with which to secure the roof of all working places in a safe manner. Safety posts, jacks, or other approved devices shall be used to protect the workmen when roof material is being taken down, crossbars are being installed, and in such other circumstances as may be appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or supported. Except in the case of recovery work, supports knocked out shall be replaced promptly.

The basic issue as to the charge is whether Respondent failed to take down or support loose, overhanging ribs and brows.

The Secretary argues that the overhanging brows and loose ribs observed by Inspector Baker on August 25, 1978, created a risk of serious injury or death to miners working in the area. The Secretary contends that there were over 1 dozen loose, overhanging brows that were cracked and broken away from the main ribs, that Respondent had not supported the overhanging brows and ribs, and that Respondent was not in the process of shearing the overhangs when the inspector arrived. The Secretary argues that the cited condition was known or should have been known by the operator because the overhangs resulted from mining coal over at least four producing shifts.

Respondent argues that the cited standard requires that loose overhangs and ribs be taken down and that during the preshift examination the mine foreman observed only two loose overhangs that needed to be taken down. Respondent contends that at the time of the inspection, production had not begun and the cutter was shearing the loose overhangs that had been observed by the foreman during the preshift examination. Cook testified that when he preshifted the cited area he observed only two serious overhangs that required action and that he told Bradey, the cutter, to shear them off. Bradey testified that when the inspector arrived, he had already begun to cut one of the overhangs (designated as #2 on Respondent's Exhibit No. 1) and the other one (designated as #1 on Respondent's Exhibit No. 1) had been dangered off.

Respondent also argues that the inspector failed to identify specifically which of the cited overhangs were loose and that the inspector's conclusion that the overhangs were cracked and loose was based only on visual observation. Respondent contends that the inspector was unable to determine the size of the overhangs or whether the overhanging brows were dangerous without being close enough to measure the overhangs and conduct sound and vibration tests.

I credit the inspector's testimony in estimating the number and size, and in appraising the danger, of the overhangs he observed on August 25, 1978. I find that Inspector Baker's examination of the cited area was more extensive than the

foreman's preshift examination and that the inspector's opinions, which were based on visual observation, are reliable. I find that a visual

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examination in an 11-foot coal seam is a proper method of inspection and that it was not necessary that he measure and prod the overhangs to estimate their size or to determine whether they were cracked and loose.

At the time of the inspection on August 25, 1978, the shift had not yet begun to produce coal and the cutter had already begun to shear an overhang in one of the locations observed by the foreman during the preshift examination. The other overhang observed by the foreman was in a dangered off area and, therefore, posed no immediate danger. I credit the testimony of the cutter, William Bradey, that he was shearing an overhang when the inspector arrived. However, the foreman had not issued instructions to cut down the other overhangs (which were later discovered by the inspector). The evidence indicates that production would have begun without first cutting such overhangs down. I find that this condition constituted a violation of 30 C.F.R. 75.202 and a serious hazard to the miners. Respondent was negligent in failing to correct or danger off this condition before the federal inspection on August 25.

#### CONCLUSIONS OF LAW

1. The undersigned Judge has jurisdiction over the parties and subject matter of the above proceeding.

2. Respondent violated 30 C.F.R. 75.202 by failing to remove or support loose ribs and overhanging brows as alleged in Order of Withdrawal No. 53415.

3. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory safety standard, Respondent is assessed a penalty of \$2,500 for this violation.

#### ORDER

WHEREFORE IT IS ORDERED that Island Creek Coal Company shall pay the Secretary of Labor the above-assessed civil penalty, in the amount of \$2,500, within 30 days from the date of this decision.

WILLIAM FAUVER, JUDGE