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SOL (MSHA) v. ISLAND CREEK 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. KENT 79-113 A.C. No. 15-02012-03022V
v.	
ISLAND CREEK COAL COMPANY, RESPONDENT	Fies Mine

DECISION

Appearances: Darryl A. Stewart, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
William K. Bodell II, 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 at Evansville, Indiana. 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 Fies Mine in Hopkins County, Kentucky, which produced coal for sales in or substantially affecting interstate commerce.

2. Prior to December 1978, Respondent began to decrease production of coal at the Fies Mine. Sections of the mine were gradually closed down and mining crews and surplus mining equipment were transferred to producing sections. A set of conventional mining equipment generally consisted of six to eight pieces, including a loader, shuttle cars, a cutter, a drill and roof bolters. The loaders and shuttle cars were off-track vehicles with rubber

tires and wheel bases generally wider than the trolley haulage track. Such equipment could move along the track haulage entry under its own power; however, it was generally towed behind a locomotive when it was transported through the track haulage entry.

3. On December 27, 1978, a recovery crew was moving equipment from one area of the mine to another. They had begun moving the shuttle cars about four shifts earlier and had already moved three to four cars when their shift began.

4. Shuttle cars were used primarily in the mining and loading of coal and were not normally used near trolley wires. Anytime off-track equipment was moved along an energized trolley system with a low overhead clearance, there was a danger of contacting overhead trolley wire. Shuttle cars were about 52 inches high and were especially dangerous to move along an energized trolley system because their sideboards extended above the operator's compartment close to the trolley wire. The roof averaged 56 inches throughout the Fies Mine. Because of the unevenness of the mine floor, the distance between the top of the shuttle car and the trolley wire was not uniform.

Before moving the shuttle cars by locomotive along the trolley system, the crew cleaned the ribs with a scoop and lowered the roadway with picks and shovels so that the cars would not contact the overhead trolley wire. The crew also replaced the tires on the shuttle cars with smaller-sized tires to lower the cars 4 to 6 inches and placed fire-resistant conveyor belting on the shuttle car's metal frame to prevent contact with the trolley wire.

5. Two rails ran through the middle of the entry and an overhead trolley wire was located between the rib and the rail to the rib, depending on which side of the entry the trolley pole was placed. The trolley wire was energized with 300 volts DC.

6. At each intersection where the trolley wire branched, a manual trolley switch, known as an Ohio Brass cut-out switch, was located. The switch, which had a rubber handle and was about 8 inches long, could be used to cut off the current inby the switch to the end of the trolley line. The manual trolley switch was not designed to deenergize power under extreme loads because of the danger of an arc or flash burning the person opening the switch.

7. On December 27, Vernon Richardson, a general laborer, was stationed along the track haulage system near telephones at the belt drive and at the mechanic's station. Richardson's primary duties involved stopping the conveyor belt if there was a malfunction and notifying employees on the surface of problems with the conveyors. Richardson was about 300 feet from one of the trolley switches and the recovery crew was instructed to signal Richardson with their cap lamps if a problem arose (in moving equipment in the trolley entry) so that Richardson could deenergize power to the trolley system by opening the trolley

switch.

8. Each section of the trolley system at the Fies Mine received power from a separate rectifier. A rectifier was the main source of power for the trolley system and transformed alternating current to direct current. It deenergized power to the trolley system and was designed to lock-out automatically if there was a short circuit or an overload in the system. The lock-out device on the rectifier could also be operated manually by throwing a switch or pressing a button.

9. The main north rectifier was the first automatic circuit breaker outby the equipment being moved during the incident in question. During the equipment move, a miner was not stationed at or anywhere near this rectifier.

10. In the situation in question, Respondent relied on the trolley switch rather than the rectifier switch as an emergency manual cut-off, because Respondent considered it the safest and most practical power cut-off point for moving the shuttle cars. At the time the shuttle cars were being moved, supply locomotives and man trips traveled along the trolley system delivering men and supplies. Using the rectifier to deenergize power would have affected several miles of the system and thus could interrupt the transportation of sick or injured miners in an emergency.

11. At about 3 p.m., while the crew was moving the last shuttle car (towards the main north rectifier) the car moved over a high spot on the mine floor and its metal frame contacted the energized trolley wire, causing a short circuit and fire. The resulting arc ignited material in the car, which included small deposits of oil or grease mixed with coal, coal dust and rock dust. Within about 1 minute, Richardson was able to open the trolley switch to deenergize power and William Foreman, one of the crew members, came up from the shuttle car to make sure that power was deenergized. The trolley switch was about 900 feet from the car at the time of the incident.

12. The fire burned a 6-foot area on the shuttle car near and including part of the right front tire and a reel of cable on that side. The heat from the arc also scorched the shuttle car's frame and the trolley wire.

13. Respondent's safety director, Ray Ashby, was on the surface of the Fies Mine when the fire occurred. He arrived at the fire about 30 minutes later and helped to extinguish the fire with water, rock dust and chemical powder from a fire extinguisher. The recovery crew and miners in other sections of the mine were ordered to leave the mine. Inby the shuttle car, the area had been mined out and no work was being performed.

14. On that day, December 27, 1978, federal inspector George Seiler issued an investigative order of withdrawal to Respondent under section 103(k) of the 1977 Mine Act. The order was later modified to allow Respondent to continue normal operations beginning on the midnight shift of the same day.

15. On December 28, 1978, federal inspector Jewell M.

Larmouth conducted an electrical inspection of Respondent's Fies Mine to investigate the mine fire. He was accompanied by Vernon Morris, Lewis Henderson, William Blue,

Bobby Blase, a miners' representative, two safety committeemen, Jack Dixon, the UMW safety coordinator, Judson Sorrell, an MSHA supervisor, and Mr. Whitcomb, a mining engineer. When the inspector arrived at the scene, the crew was preparing to move the shuttle car that was involved in the fire. Power to the trolley wire was still deenergized.

16. On December 28, 1978, Inspector Larmouth issued Citation No. 400846 to Respondent, reading in part: "A miner was not stationed at the main north rectifier providing 300 volts direct current to the trolley circuit extending to the circuit inby No. 8 conveyor belt drive in 1 main east, into the main north entry where a unit of equipment (shuttle car) was being moved."

17. The inspector examined the main north rectifier and found that the automatic lock-out device was inoperative. He believed that the fire could have been avoided or minimized by stationing a miner at the rectifier because, even though the automatic lock-out device on the rectifier did not operate properly, the circuit could have been deenergized immediately once the miner became aware of the short. The rectifier was about 1,200 feet from the shuttle car at the time of the fire. The normal hum of the rectifier would have changed when the short circuit occurred, and thus have alerted a miner stationed at the switch. Also, if the miner had been looking in the direction of the shuttle car, he would have seen a flash and been able to throw the switch in 2-3 seconds. As another safety factor, the locomotive was traveling towards the rectifier so that a miner stationed at the rectifier would have observed a change in the intensity of the locomotive's headlight to indicate a problem.

18. The inspector determined from the burns on the car and the discoloration of the trolley wire that the flame-retardant belting had been damaged before being placed on the frame of the car.

19. The cited condition was found to be abated when the operator told the inspector that, in the future, when off-track equipment was being moved over an energized trolley system, a miner would be stationed at the first automatic circuit breaker (the rectifier in this case) outby the equipment moved and would be in communication with a person on the surface.

DISCUSSION WITH FURTHER FINDINGS

Based on the order of withdrawal issued on December 28, 1978, the Secretary has charged Respondent with a violation of 30 C.F.R. 75.1003-2(f)(3), which provides:

> (f) A minimum vertical clearance of 12 inches shall be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment; provided, however, that if the height of the

coal beam does not permit 12 inches of vertical clearance to be so maintained, the following additional precautions shall be taken:

* * * * * * *

> (3) At all times the unit of equipment is being moved or transported, a miner shall be stationed at the first automatic circuit breaker outby the equipment being moved and such miner shall be: (i) In direct communication with persons actually engaged in the moving or transporting operation, and (ii) capable of communicating with the responsible person on the surface required to be on duty in accordance with 75.1600-1 of this part.

The Secretary argues that Respondent violated the standard by failing to station a miner at the first automatic circuit outby the shuttle car while it was being moved to another area of the mine. The Secretary contends that Respondent admitted that it stationed a miner at a manual breaker switch with knowledge that the cited standard required that a miner be stationed at the rectifier.

The Secretary proposes a penalty of $5,000.

Respondent argues that stationing a miner at the manual trolley switch was safer than placing a person at the rectifier because the trolley switch was closer to the equipment being moved; and because deenergizing power with the trolley switch would have affected only a small portion of the trolley system, allowing activity to continue in other areas of the mine. Respondent also argues that the mine fire would not have been prevented by stationing a person at the rectifier and that, because both the trolley switch and rectifier were manually operated, the trolley switch was the better location for minimizing the fire.

I conclude that Respondent violated the cited standard as charged. Section 75.1003-2(f)(3) unambiguously requires that a miner be stationed at the first automatic circuit breaker outby the equipment being moved. The evidence establishes, and Respondent admits, that a miner was not stationed at the first automatic circuit breaker outby the shuttle car during the move on December 27, 1978. The alternative method used by Respondent was neither safe nor adequate to assure prompt and effective action to turn off the current in case of an emergency. In the first place, the trolley switch was not designed to deenergize power in an overloaded circuit because an overload created a hazard to the miner throwing the switch. Secondly, Richardson's primary duties on December 27, 1978, did not include standing next to the trolley switch. He was merely in the vicinity of the trolley switch and his primary duty was to watch the conveyor belt; in case of an emergency involving the movement of equipment, it was reasonable to expect that Richardson would or could be late in responding. Ashby testified that Richardson threw the trolley switch about 1 minute after seeing a flash of light from contact between the trolley wire and the shuttle car, which was about 900 feet away. Had a miner been stationed at the rectifier, emergency action would have been safer, faster, and

more effective than the alternative method used by Respondent. Finally, the alternative method used was not permitted by the standard and does not alter the fact that the standard was violated.

I also conclude that Respondent was negligent in failing to station a miner at the first automatic circuit breaker. Ray Ashby, Respondent's safety director, testified that he was familiar with the requirements of the cited standard; however, the recovery crew was not instructed to station a miner at the automatic circuit breaker. Ashby testified that he believed the trolley switch accomplished the same purpose as the rectifier and that the trolley switch was a better choice because it was closer to the vehicle being moved and a greater portion of the trolley system would remain unaffected by disengaging power at the trolley switch. However, he made this decision without ascertaining whether the law permitted this procedure. Acting in disregard of the law (the mandatory safety standard) or without making a reasonable effort to obtain an official interpretation as to whether the action was permitted by law constituted negligence in this case.

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. 75.1003-2(f)(3) by failing to station a miner at the first automatic circuit breaker as alleged in Citation No. 400846.

3. Based upon the statutory criteria for assessing a civil penalty for a violation of a mandatory standard, Respondent is assessed a penalty of $5,000 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 $5,000, within 30 days from the date of this decision.

WILLIAM FAUVER JUDGE