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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. PENN 79-122  
A.C. No. 36-00910-03015V

v.

Robena No. 2 Mine

UNITED STATES STEEL CORPORATION,  
RESPONDENT

DECISION

Appearances: James Kilcoyne and Covette Rooney, Esqs., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner  
Louise Symons, Esq., Pittsburgh, Pennsylvania, for Respondent

Before: Judge Melick

This case is before me upon a petition for assessment of civil penalty under section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," alleging violations of a safety regulation. The general issue is whether Respondent has violated the cited regulation, i.e., 30 C.F.R. 75.200, and, if so, the appropriate civil penalty to be assessed. An evidentiary hearing was held in Pittsburgh, Pennsylvania, on November 19, 1980.

30 C.F.R. 75.200 facially requires that the mine operator adopt a roof-control plan approved by the Secretary. That part of the standard has been construed however to mean also that the operator must comply with its approved roof-control plan. Zeigler Coal Company, 4 IBMA 30 (1975), aff'd, 536 F.2d 398 (D.C. Cir. 1976). It is a violation under that standard and under the roof-control plan here in effect for persons to proceed beyond the last permanent roof support unless adequate temporary support is provided.

The citation at bar actually charges two violations. As amended, it first charges that, in essence, permanent roof supports (roof bolts) were not installed to within 12 feet of the face before pillar extraction was attempted and, secondly, charges that the continuous-miner operator was exposed to unsupported roof.

It is undisputed that the approved roof-control plan then in effect required that roof bolts be located not more than 12 feet from the face or gob area before commencing retreat mining. MSHA inspector Robert Newhouse, conducting a special inspection at the 2 Main 4 Left Section of the mine on April 5, 1979, observed what he thought was a particularly long unsupported working place in which a continuous miner was in the process of retreat mining. With the help of assistant mine foreman Edward Kopec he nailed together several brattice boards and using these for support he extended his tape rule from a position below the last roof bolt to what he determined was the face. It measured 24 feet. Since it was 19 feet from the position of the machine operator's controls to the cutter head of the continuous miner, Newhouse concluded that the miner operator must have been exposed to at least 5 feet of unsupported roof when he cut through into the gob area. According to Newhouse, the miner operator, John Henderson, admitted that he had mined "a little bit past the bolts."

Newhouse concluded that the operator was negligent for allowing the condition to exist inasmuch as Assistant Mine Foreman Malinoski was standing next to the continuous miner as it was operating. Although Newhouse conceded that the roof over the cited area was stable, roof conditions outby were weak, thus suggesting the potential for similar conditions in the cited area. The hazard present here is of course from roof falls causing serious and fatal injuries. Work was immediately discontinued when Inspector Newhouse issued his citation and posts and jacks were set before work resumed.

Assistant Mine Foreman Malinoski disagreed with the inspector's measurement. He maintained that Newhouse should have taken the measurement from a roof bolt that was actually 6 inches closer to the gob area. He also argued that the inspector's measurement was inaccurate because it was taken at a 15- to 20-degree angle from the direction of the entry and because debris on the mine floor caused the tape to bend. Malinoski did, however, hear miner operator Henderson admit that he could have been working under unsupported roof.

Frank Novaski, the general mine foreman, met Malinoski in the mine after the citation was issued. They measured along the left rib from the nearest roof bolt to the point where it was "holed through" and where bit marks from the continuous miner could be seen. It measured 14 feet. Novaski was not told however where the inspector made his 24-foot measurement and he did not bother to ask.

Assistant Mine Foreman Kopec also testified on behalf of the operator. He watched as the inspector measured 24 feet from a point beneath the nearest roof bolt to what Kopec described as the pie-shaped block of coal depicted on Exhibit R-1. He accepted the word of the inspector that this was the actual distance measured but he thought it might actually have been up to 6 feet less because of the terrain over which the tape measure was bent. He admitted however, that the distance measured by the inspector appeared to exceed that allowed by the roof-control

plan and that it appeared that the miner operator might have worked beyond the last row of roof bolts.

Within this framework of evidence, I am convinced that the operator's roof-control plan was indeed violated. The testimony of Inspector Newhouse is credible in itself but is also corroborated in significant respects by the operator's own witness, assistant mine foreman Kopec, who watched the inspector make his 24-foot measurement. Indeed, Kopec in essence conceded that the violation existed. The 14-foot measurement made by Malinoski and Novaski was taken at an entirely different location along the left rib of the entry and therefore is essentially irrelevant. Indeed, by conceding that the distance along the left rib from the closest roof bolt to the gob was in excess of 12 feet they have admitted that the roof-control plan was also violated at that location.

I cannot conclude, however, that John Henderson did in fact operate the continuous miner under unsupported roof. Newhouse admittedly did not actually see this occur and the circumstantial evidence is inconclusive. I accord little weight to the statements attributed to Henderson which are equivocal at best. Moreover, because of the potential for inaccuracies in the measurement of the unsupported area as described by the operator's witnesses, I believe that an error of as much as 6 feet could have been made by the inspector. Since the machine controls were located 19 feet from the ripper head, it cannot be inferred that the machine operator was exposed to the unsupported roof. I cannot therefore conclude that the second violation did occur.

No convincing evidence has been submitted to show that the mine operator had actual knowledge of the violation of its roof-control plan. I conclude, however, that the operator, through its foreman, should have known of and prevented the violative condition as part of its general responsibility for control of the work place. It was therefore negligent. The hazard presented was serious, possibly leading to fatal injuries. I find the mine operator to be large in size and that any penalty imposed in this case would not affect its ability to continue in business. The operator has a substantial history of violations, including 21 previous violations dating back to April 8, 1977, of the standard cited herein. Under the circumstances, a penalty of \$1,000 is appropriate. The operator is ordered to pay the aforesaid penalty within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge