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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 Proceedings Docket No. LAKE 79-202-M A.C. No. 20-00371-05013
v.	
WHITE PINE COPPER DIVISION, COPPER RANGE COMPANY, RESPONDENT	Docket No. LAKE 80-24-M A.C. No. 20-00371-05017 White Pine Mine
LOCAL 5024, UNITED STEELWORKERS OF AMERICA, REPRESENTATIVE OF MINERS	

DECISION

Appearances: Gerald A. Hudson, Esq., Office of the Solicitor, U.S. Department of Labor, Detroit, Michigan, for Petitioner; Ronald E. Greenlee, Esq., Clancey, Hansen, Chilman, Graybill & Greenlee, Ishpeming, Michigan, for Respondent; Harry Tuggle, Safety and Health Department, United Steelworkers of America, Pittsburgh, Pennsylvania, for the Representative of the Miners.

Before: Chief Administrative Law Judge Broderick

Statement of the Cases

These are consolidated cases involving three citations for violations of the same mandatory standard, 30 C.F.R. 57.12-82. The standard reads: "Powerlines shall be well separated or insulated from waterlines, telephone lines, and air lines." Respondent, White Pine Copper Division (the "company") uses a 440-volt electrical distribution system in its underground mine in White Pine, Michigan. Electricity is conveyed from power centers through cables suspended from the roof ("back") by insulated hangers set behind metal pipelines. The citations were issued when a Federal inspector observed cables in contact with metal-compressed air lines and with a support chain for an air line. The conditions were abated when agents of the company repositioned the cables, separating them from the air lines.

The company claims that the cables in question are not "powerlines" covered by the standard and, even if they are, that they were "insulated" from the air lines as that term is defined in 30 C.F.R. 57.2.

A hearing was held in Houghton, Michigan, on October 23-24, 1980, pursuant to notice. Witnesses for MSHA were Bruce Haataja, the Federal inspector who issued the citations, William Carlson, a supervisory official with MSHA, James Vollmer, an electrician employed at the White Pine Mine, and Paul Price, an electrical engineer in the MSHA Denver Office. Witnesses for the company were Robert Graham, a self-employed consultant on electrical engineering specializing in wire and cable, James Wood, an electrical engineer at the White Pine Mine, Theodore Blom, chief mine electrician, and Albert Goodreau, the company's safety engineer. John Cestowski, president of the local union and an employee at the White Pine Mine, testified on behalf of the Representative of the Miners.

Each party has filed a posthearing brief. I have also examined other recent decisions on point. (FN.1) Having considered the evidence presented at the hearing and the contentions of the parties, I make the following decision.

Findings of Fact

1. White Pine Copper Division, Copper Range Company, is the operator of a large underground copper mine in White Pine, Michigan.

2. The mine extracts copper by the room and pillar method. Headings are advanced by drilling, loading and blasting the face with explosives. The resulting rubble ("muck") is removed by scooptrams, transferred to shuttle vehicles and dumped at underground crushers which feed the ore to the surface via conveyor belts.

3. On March 13, 1979, at approximately 8:20 a.m., two energized 440-volt electrical cables were touching a metal-compressed air line in NE 1, Unit 56 of the mine.

4. On March 14, 1979, at approximately 9:30 a.m., there was a 480-volt energized electrical cable touching a metal-compressed air line in E 7 between N 2 and N 3 in Unit 56 of the Mine.

5. On June 4, 1979, at approximately 10 a.m., there was a 440-volt energized cable passing through and contacting the support chains for the metal air and water lines serving working areas in Unit 95 of the mine.

6. The electrical cables are used to distribute power in the mine. They are suspended from the back by insulated hangers and are ordinarily separated

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from metal lines. Each cable consists of three insulated conductors and three grounding wires surrounded by a jacket, composed of neoprene. They have a maximum voltage rating of between 600 and 2,000 volts and have at least 25,000 volts of dielectric resistance.

7. Citations were issued by Inspector Haataja for the conditions described in Findings 3, 4 and 5. The conditions were promptly corrected by separating the electrical cables from the metal pipelines. The company displayed ordinary good faith in doing so.

8. The company was aware that MSHA requires electrical cables to be separated from metal lines or insulated from such lines by nonconducting material. The record does not show how long the cables in question had been touching the lines before the inspector observed them.

9. Under the circumstances, it was unlikely that the electrical cables would energize the metal lines. However, if the lines did become energized and an employee touched one of them, serious injury would occur.

10. The company has a moderate history of prior violations.

11. Any penalty imposed herein will not affect the company's ability to remain in business.

Issues

1. Are the electrical cables described in the subject citations "powerlines" covered by 30 C.F.R. 57.12-82?
2. If so, were those cables well separated or insulated from the metal lines described by the inspector?
3. If violations occurred, what are the appropriate penalties?

Discussion

The parties are in substantial agreement as to the facts. The cables described in Citation Nos. 286960 and 286661 were touching metal air lines at a few points. The cable described in Citation No. 294045 was touching a chain from which metal air and waterlines were suspended. The company made no issue of the fact that the cable was not actually touching a metal line. I find that the chain was composed of metal and was not insulated from the lines it supported. For the purposes of this case, it was part of those lines.

The pivotal issue is whether the electrical cables (samples were submitted as Respondent's Exhibits 9, 10 and 11) are "powerlines" within the meaning of 30 C.F.R. 57.12-82. It is the company's position that only the conducting materials in the heart of each cable are powerlines. If so, the regulation would be inapplicable under the facts presented.

"Powerlines" is not defined in the regulations, nor is it a term of art in the field of electrical engineering. (FN.2) Trying to ascertain its meaning by analyzing other standards in which it appears is not helpful since words are not used with much precision in the regulations. (FN.3) In the absence of persuasive reasons to the contrary, therefore, "powerlines" should be given the ordinary meaning that the word suggests. See *Chrobak v. Metropolitan Life Insurance Company*, 517 F.2d 883, 886 (7th Cir. 1975); *MSHA v. Burgess Mining Corporation*, 2 FMSHRC 2538, 2540 (September 5, 1980). In fixing that meaning, the purposes of the cited standard and the characteristics of the cables should be borne in mind. *MSHA v. Rushton Mining Company*, 1 FMSHRC 794-795 (July 9, 1979). The interpretation which would subject the cables to coverage should be preferred, if reasonable, given the remedial aims of the 1977 Mine Act. Cf. *District 6, UMWA v. Interior Board of Mine Operations Appeals*, 562 F.2d 1260, 1265 (D.C. Cir. 1976); *Cleveland Cliffs Iron Company v. MSHA*, 1 FMSHRC 1965, 1969-1970 (December 3, 1979); *MSHA v. Peabody Coal Company*, 1 FMSHRC 28, 38 (April 3, 1979).

Following these guidelines, I find that each of the cables cited by the inspector was a "powerline" covered by 30 C.F.R. 57.12-82. In common understanding, a powerline is any device intended to carry electrical current from a generating or transmitting point to a point where the current will be transformed or retransmitted. It may be that only the inner, metallic portions of the cables actually conduct power, but I conclude that the ordinary meaning of the term "powerline" includes the jacketing and insulation surrounding the conductors.

Since the cited cables are powerlines, it follows that they were neither well separated nor insulated from the metal lines they touched. To be separated, the cables and metal lines would have to be removed from direct or indirect contact with each other. To be insulated, nonconducting material would have to be inserted between the cables and the lines. Even though the cables insulated the conductors, the cables themselves were not "insulated from" the metal lines.

This determination is in accord with MSHA's interpretation of the standard. In February of 1975, the agency addressed an interpretive memorandum to its area directors (Respondent's Exh. 1) incorporating the interpretation of 30 C.F.R. 57.12-82 set forth above. This interpretation, of course, is not binding on the Commission. However, the evidence establishes that requiring an insulating substance between the cables and the metal lines enhances the

safety of the miners. (FN.4) The burden placed on the company is minimal. (FN.5) The company, moreover, has long been aware of MSHA's position and, in fact, generally abides by it. In light of these factors, I think MSHA's view of the standard is entitled to special weight. *Homan & Crimen, Inc. v. Harris*, 626 F.2d 1201, 1208-1209 (5th Cir. 1980); *MSHA v. Helen Mining, Inc.*, 1 FMSHRC 1796, 1801 (November 21, 1980); *Udall v. Tallman*, 380 U.S. 1, 17 (1965).

I find that the three citations issued by the inspector describe violations of 30 C.F.R. 57.12-82. The company should have been aware of the conditions and therefore was negligent in permitting them to exist. When the violations were brought to its attention by the inspector they were promptly corrected. In the circumstances presented here, the chances that a metal line would be energized and electrocute a miner were remote. Should it occur, however, the injury would be quite serious. The violations were moderately serious. I conclude that the following penalties should be assessed:

Citation No.	Penalty
286960	\$150
286661	150
294045	250
Total	\$550

Conclusions of Law

1. The Commission and the undersigned Administrative Law Judge have jurisdiction over the parties and subject matter of these proceedings.
2. The electrical cables described in the subject citations are "powerlines" covered by 30 C.F.R. 57.12-82.
3. Those cables were neither well separated nor insulated from the metal lines described by the inspector.
4. The three citations describe violations of 30 C.F.R. 57.12-82.
5. The violations were moderately serious and were the result of Respondent's negligence. The degree of negligence involved in Citation

