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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. LAKE 80-139-M
A.C. No. 20-00371-05019H

v.

White Pine Mine

WHITE PINE COPPER DIVISION,
COPPER RANGE COMPANY,
RESPONDENT

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, P.C., Ishpeming, Michigan, for
Respondent;
Harry Tuggle, Safety and Health Department, United
Steelworkers of America, Pittsburgh, Pennsylvania,
for Representative of Miners

Before: Chief Administrative Law Judge Broderick

Statement of the Case

This is a civil penalty proceeding growing out of the
issuance of an imminent danger withdrawal order under section
107(a), and a citation under section 104(a) of the Act, charging
a violation of 30 C.F.R. 57.3-22 because a scoop operator
worked under loose rock on June 4, 1979.

A hearing was held on October 23, 1980, in Houghton,
Michigan. Witnesses for the Secretary were Bruce Haataja, the
Federal inspector who issued the citation and order and Benjamin
Berno and Gordon Smith, miners and union members who accompanied
Haataja during the inspection. Witnesses called by the company
were William Carlson, a supervisory official of the Mine Safety

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and Health Administration, Albert Goodreau, the company's safety engineer, Raymond Hicks, foreman of the unit where the violation is alleged to have occurred, and Fred Smith, the operator of the scooptram observed by Inspector Haataja. The Representative of the Miners did not call any witnesses.

The parties have submitted briefs stating their positions and, having considered them and the evidence adduced at the hearing, I make the following decision.

Regulatory Provision

Title 30, Code of Federal Regulations, section 57.3-22, reads:

Miners shall examine and test the back, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

Issues (FN.1)

1. On June 4, 1979, at approximately 11 a.m., did a scooptram operator work under areas of loose rock in the subject mine as alleged by the inspector?
2. If so, was the condition a violation of 30 C.F.R. 57.3-22?
3. If a violation occurred, what is the appropriate penalty?

Findings of Fact (FN.2)

1. On June 4, 1979, at approximately 11 a.m., a scooptram operator was working under several areas of loose rock in SW30 heading of Unit 93 in the company's mine.
2. The size and condition of the loose rock was such that it could be reasonably expected to cause death or serious physical harm to miners working in the heading.

3. The condition was obvious and should have been noticed by miners working in the area.

4. The company demonstrated ordinary good faith in abating the violation.

5. The company is a large mine operator with a moderate history of previous violations. (FN.3) The civil penalty imposed herein will not affect its ability to remain in business.

Discussion

The White Pine Mine, located in Ontonagon County, Michigan, is an underground mine from which copper is extracted by the room and pillar method. Inspector Haataja testified at the hearing that, as his inspection party approached what he was told was the SW28 heading, he observed a scooptram backing out of the heading. When the tram had cleared the crosscut, he walked toward the face and found three areas of loose rock overhead about 30 feet in by the crosscut. The inspection party spent more than 15 minutes prying down (or "barring") a sizable amount of loose rock. A company representative was not present during this period. In issuing the citation and order, the inspector considered the following: A large amount of rock was barred, the tram was not equipped with overhead protection, and no bar with which loose rock could be trimmed was observed in the vicinity. The inspector's testimony was corroborated by Benjamin Berno and Gordon Smith, who actually removed the loose rock.

The company introduced evidence that no work was being performed in SW28 heading during the morning of June 4, 1979. The company also argued that the tram was not actually observed under the loose rock. However, three witnesses testified to seeing the tram back out of a dead-end heading. When they walked down the heading, they saw tracks at the muck pile and evidence that part of the muck pile had been removed. The evidence clearly shows that the tram was operating under the loose rock. The testimony of Raymond Hicks and Fred Smith strongly suggests that the scooptram was actually working in SW30 heading during the period in question. Hicks, the unit foreman, claims that when he encountered the inspection party at about 11:30 a.m., they were in SW29 heading, which contained a small amount of barred loose rock and an untouched muck pile. No work was performed in SW28 heading until the afternoon, when it was readied for blasting.

The significance of this testimony can be gleaned from a description of the mining cycle. After the face is blasted with explosives, a pile of debris, containing the ore, remains which is called "muck." The next steps, roughly, are to inspect all parts of the heading for loose rock, wet the muck pile, remove the muck with a scooptram, bolt the roof, drill and prime

~FOOTNOTE_ONE

1 The company contends that the 107(a) withdrawal order was improperly issued. This case, however, is not a proceeding to review the order but a civil penalty proceeding and the issue is whether the violation charged in the order/citation occurred.

~FOOTNOTE_TWO

2 The parties stipulated that the Commission has both subject matter and personal jurisdiction in this case.

~FOOTNOTE_THREE

3 These conclusions are based on a motion for approval of a settlement which was filed on June 2, 1980.