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SOUTHERN COAL v. SOL (MSHA)
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Federal Mine Safty and Health Review Commission
Office of Administrative Law Judges

SOUTHERN OHIO COAL COMPANY,
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

Notices of Contest

Docket No. LAKE 81-17-R
Docket No. LAKE 81-18-R
Docket No. LAKE 81-19-R
Docket No. LAKE 81-20-R
Docket No. LAKE 81-21-R
Docket No. LAKE 81-22-R

Meigs No. 1 Mine

DECISIONS

Appearances: David M. Cohen, Esquire, Lancaster, Ohio, for the
contestant;
F. Benjamin Riek III, Trial Attorney, Office of the
Solicitor, U.S. Department of Labor, Cleveland, Ohio,
for the respondent.

Before: Judge Koutras

Statement of the Proceedings

This case concerns contests filed by the contestant on October 20, 1980, pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 challenging the validity of the citations issued by Respondent, MSHA, for violations under 30 C.F.R. 75.1003-2. On December 4, 1980, Respondent filed a motion to permit late filing of its attached answer and an order granting the motion was issued December 16, 1980. A hearing on the matter was scheduled for March 24, 1981, in Columbus, Ohio, but was subsequently continued to allow the parties to submit joint stipulations for the purpose of issuing a summary decision. Accordingly, briefs by both parties were filed on April 29, 1981. Stipulations

1. The contestant operates the Meigs No. 1 Mine. This is a coal mine as defined by section 3(h) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter the Act).

2. The contestant is an operator as defined by section 3(d) of the Act.

~1450

3. The contestant is subject to the provisions of the Act pursuant to section 4 of the Act.

4. At the beginning of the day shift on September 16, 1980, contestant's miners were transporting a part of an off-track shuttle car (which part was referred to in the subject citations as a "boom") on the east track of the Meigs No. 1 Mine.

5. Because contestant's miners did not believe that said part constituted a "unit of off-track mining equipment" or "off-track mining equipment," contestant did not believe on September 16, 1980, that 30 C.F.R. 75.1003-2 or any of the subsections thereof were appropriate to said movement and acted accordingly.

Inspector Charles M. Fink, authorized representative of Respondent, believed that said part did constitute a "unit of off-track mining equipment" or "off-track mining equipment."

6. Citation Nos. 1010970 through 1010975 were served on contestant on September 16, 1980, between 9:37 a.m. and 9:42 a.m. The conditions or practices described in said citations are not now at issue.

7. On October 16, 1980, contestant filed a notice of contest concerning the validity of Citation Nos. 1010970 through 1010975.

8. All of the subject citations relate to section 310(d) of the Federal Mine Safety and Health Act of 1977 and allege violations of 30 C.F.R. 75.1003-2.

9. All of the subject citations, except for Citation No. 1010972, are classified as "significant and substantial."

10. The part of an off-track shuttle car being transported on a lo-boy supply car was 5 feet 5 inches in length, 8 feet 9-1/2 inches in width, and 23 inches in height. The off-track shuttle car was 24 feet 10 inches in length, 9 feet 6 inches in width, and 34 inches in height. The lo-boy supply car was 12 feet in length, 8 feet 6 inches in width, and 8-1/2 inches in height from the rail.

11. Subsequent to the issuance of the subject citations, a notation was made in the equipment record book for the earlier September 16, 1980, midnight shift concerning the subject part. This notation was made solely to safeguard against contestant being served with an additional citation or citations and was entered even though at that time contestant believed the subject regulations did not require any such entry.

12. Southern Ohio Coal Company produced 4,437,769 tons of coal during 1979 and 5,054,776 tons of coal during 1980. The Meigs No. 1 Mine produced 918,242 tons of coal during 1979 and 1,133,645 tons of coal during 1980.

~1451

13. Respondent will submit a computer printout documenting all violations of the Act incurred and paid by contestant at the Meigs No. 1 Mine. The parties stipulate as to the admissibility of the printout.

Issues

1. Whether a boom, a component of an off-track shuttle car, constitutes a "unit of off-track mining equipment" or "off-track mining equipment" subject to the requirements of 30 C.F.R. 75.1003-2.

2. If components such as a boom are included within the coverage of 30 C.F.R. 75.1003-2, whether the standard is so vague as to be unenforceable or unconstitutional.

3. Whether respondent correctly charged contestant with six separate violations of 30 C.F.R. 75.1003-2 for one occurrence.

Applicable Statutory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub. L. 95-164, effective March 9, 1978, 30 U.S.C. 801 et seq.

2. 30 C.F.R. 75.1003-2, which provides in pertinent part as follows:

Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; pre-movement requirements; certified and qualified persons.

(a) Prior to moving or transporting any unit of off-track mining equipment in areas of the active workings where energized trolley wires or trolley feeder wires are present:

(1) The unit of equipment shall be examined by a certified person to ensure that coal dust, float coal dust, loose coal oil, grease, and other combustible materials have been cleaned up and have not been permitted to accumulate on such unit of equipment; and,

(2) A qualified person, as specified in 75.153 of this part, shall examine the trolley wires, feeder wires, and the associated automatic circuit interrupting devices provided for short circuit protection to ensure that proper short circuit protection exists.

(b) A record shall be kept of the examinations required by paragraph (a) of this section, and shall be made available, upon request, to an authorized representative of the Secretary.

(c) Off-track mining equipment shall be moved or transported in areas of the active workings where energized trolley wires or trolley feeder wires are present only under the direct supervision of a certified person who shall be physically present at all times during moving or transporting operations.

(d) The frames of off-track mining equipment being moved or transported, in accordance with this section, shall be covered on the top and on the trolley wire side with fire-resistant material which has met the applicable requirements of Part 18 of Subchapter D of this Chapter (Bureau of Mines Schedule 2G).

(e) Electrical contact shall be maintained between the mine track and the frames of off-track mining equipment being moved in-track and trolley entries, except that rubber-tired equipment need not be grounded to a transporting vehicle if no metal part of such rubber-tired equipment can come into contact with the transporting vehicle.

Background of Controversy

On September 16, 1980, MSHA inspector Charles Fink conducted an inspection of Southern Ohio Coal Company's Meigs No. 1 Mine. During this inspection, Mr. Fink observed the boom of an off-track shuttle car being transported on a lo-boy. Finding 30 C.F.R. 75.1003-2 to be applicable, the inspector issued six citations alleging violations of subsections (a)(1), (a)(2), (b), (c), (d), and (e). Contestant contends that the citations should be vacated because a boom, a component of an off-track shuttle car, is neither a unit of off-track mining equipment nor off-track mining equipment and is not subject to the provisions of 30 C.F.R. 75.1003-2. Contestant also maintains that if the standard does apply to booms, then it is unconstitutionally vague. Further, contestant states that the inspector improperly issued six citations for one incident involving the transporting of a boom. Respondent counters each one of contestant's arguments, asserting that a boom is regulated by 30 C.F.R. 75.1003-2 and that the standard is not vague. Further, respondent asserts that it is proper to issue separate citations for each violation of a subsection of a mandatory standard.

The six citations issued in these proceedings, resulting from the movement and transportation of the off-track shuttle car boom, are as follows:

Citation No.	Date	30 C.F.R. Section	Conditions Cited
1010970	9/16/80	75.1003-2(a)(1)	No equipment examination by a certified person.

~1453

1010971	9/16/80	75.1003-2(a)(2)	Failure to examine trolley circuit and D.C. circuit breakers prior to movement.
1010972	9/16/80	75.1003-2(b)	Failure to keep a record of the required equipment examinations.
1010973	9/16/80	75.1003-2(c)	Failure by a certified person to supervise the movement of the equipment.
1010974	9/16/80	75.1003-2(d)	Failure to cover the equipment with fire-resistant material.
1010975	9/16/80	75.1003-2(e)	Failure to maintain contact between the mine track and equipment.

Discussion

A. The Use of the Phrases "Unit of Off-track Mining Equipment" and "Off-track Mining Equipment" in 30 C.F.R. 75.1003-2.

Respondent argues that all requirements of 30 C.F.R. 75.1003-2 are predicated on the movement of any unit of off-track mining equipment, and maintains that a boom is such a unit of equipment. In so stating, respondent ignores the fact that of the six subsections of which contestant has been charged with violating, only (a)(1), (a)(2) and (b) refer to "units" of off-track mining equipment. Contestant's suggestion that the terms "units of off-track mining equipment" and "off-track mining equipment" refer to the same type of equipment is more acceptable in light of the rules of statutory construction.

One such rule states that "a statute should be construed so that effect is given to all provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." C. D. Sands, 2A Sutherland, Statutory Construction, 46.06, p. 63 (1973). Accordingly, in order for section 75.1003-2 to make sense, and since units of off-track mining equipment are not distinguished from off-track mining equipment in the safety standard, I find that they refer to the same type of equipment.

Support for this conclusion can be found in the definitions of the words "unit" and "equipment." The word "unit" as defined in Webster's New World Dictionary includes both:

1.b) a magnitude or number regarded as an undivided whole.

* * * * *

3.b) a single, distinct part or object, especially one used for a specific purpose [the lens unit of a camera].

The word "equipment" is aptly noted as being: "An extremely elastic term, the meaning of which depends on context." Black's Law Dictionary.

Using these definitions, a unit of off-track mining equipment might refer to either a part of a larger piece of equipment or to only the complete machine. Regardless of whether a boom is a unit of off-track mining equipment, or just off-track mining equipment as those phrases are used in section 75.1003-2, it is apparent that the definitions of "unit" and "equipment" allow the phrases to be used interchangeably. It is therefore necessary to closely examine the regulatory standard to understand the context in which these words are used.

B. Whether a Boom, a Component of Off-track Mining Equipment is Subject to the Provisions of 30 C.F.R. 75.1003-2.

Contestant, in support of its position that a boom, as a component of off-track mining equipment, is not encompassed by the standard, thoroughly examines the textual construction and the legislative history of 30 C.F.R. 75.1003-2. Initially, contestant observes that components are not within the Congressional purpose of section 310(d) of the Act, which authorized promulgation of section 75.1003-2. Section 310(d) provides in part that: "Trolley wires and trolley feeder wires shall be guarded adequately (1) at all points where men are required to work or pass regularly under the wires."

Contestant concludes that section 75.1003-2 should apply only to equipment which needs to be guarded from contact with trolley wires. Contestant asserts that "the precautions specified in section 75.1003-2, according to respondent's interpretation, would be required regardless of how small a component was moved and how great a vertical clearance between the component and trolley wire" (Brief, pp. 2-3). Recognizing the Congressional purpose, contestant concedes that the standard should apply to complete or reasonably complete pieces of equipment (Brief, p. 6).

Contestant examines the history of the regulation, both the events leading to the promulgation of the rule and the hearings held on the rule and finds no reference made to components of off-track mining equipment. It also notes that the MSHA Inspection Manual implies that the standard does not apply to components. Volume 2, page 456 of the manual, dated March 9, 1978, which comments on section 75.1003-2, states that: "This section refers to the moving of off-track mining equipment either under its own power or when being transported by other means." Since components rarely are capable of moving under their own power, contestant contends that the quoted language supports a

conclusion that the regulation was not meant to encompass components.

Respondent's arguments apparently rely on the premise that the words "unit of off-track mining equipment" are not vague and must be given their literal interpretation. Asserting that the phrase must be examined in the context of coal mining, respondent concludes that the plain and natural meaning of the words apprise the contestant of when it must comply with the standard. It notes that the clear purpose of the standard is to permit safe movement of mining equipment over energized trolley wires. Therefore, the standard seeks to prevent any electricity-conducting equipment from coming in contact with these wires. Respondent reasons that since components are made of steel and conduct electricity, they naturally come within the scope of the standard. In view of the purpose of the standard, respondent contends that contestant should have realized that a boom was a unit of off-track mining equipment, and therefore covered by the standard.

Upon a review of the arguments of both parties and my own analysis of the standard, its language and its purpose, I conclude that section 75.1003-2 only applies to complete or reasonably complete pieces of off-track mining equipment. In interpreting this standard, I have given it the liberal construction which is necessary for remedial legislation whose primary purpose is preserving human life. See *Freeman Coal Mining Company v. IBMA*, 504 F.2d 741 (7th Cir. 1974). But while an agency's explication of its regulation is entitled to great weight, "such interpretations forfeit their entitlement to deference when they plainly conflict with other indicia of the proper interpretation of the statute." *UMWA v. Andrus*, 581 F.2d 888, 983 (D.C. Cir. 1978).

There is nothing in section 75.1003-2 to indicate that the drafters intended to include component parts of off-track mining equipment within the coverage of the standard. Neither the word "component," nor examples of component parts, are found in any of the subsections. Respondent contends that the term "unit of off-track mining equipment" was meant to be expansive "in order to cover the myriad of possible pieces of equipment that may be transported by Contestant over energized trolley wires" (Brief, p. 9). This argument is unpersuasive since another section of Part 75 specifically refers to components, indicating that such parts are subject to the safety standard. See section 75.1103-2. The word "components" easily solves the problem of listing "the myriad of possible pieces of equipment." Therefore, it is fair to assume that the drafters would have included the word "components" within the provisions under section 75.1103-2 had they intended to include a component part such as a boom.

Subsection (d) of section 75.1103-2 refers to the "frames of off-track mining equipment." The ordinary meaning of a frame is a structure upon which a thing is built. One of the examples given in Webster's New World Dictionary is: "4. any of various machines built on or in a framework." Therefore, the most natural interpretation of the phrase "frames of off-track mining equipment" would indicate that it refers only to frames of complete machinery.

Component parts, such as a boom, do not have frames. They have enclosures or shells. Applicable words are found in 30 C.F.R. 75.701 in its

~1456

reference to "metallic frames, casings, and other enclosures of electric equipment." (Emphasis added.) Since subsection (d) mentions only frames, it is evident that the drafters were considering only large, nearly complete, or complete pieces of machinery.

Subsection (g) provides as follows: "The provisions of paragraphs (a) through (f) of this section shall not apply to units of mining equipment that are transported in mine cars, provided that no part of the equipment extends above or over the sides of the mine car." The facts here indicate that the boom was being transported on a lo-boy supply car whose sides were only 8-1/2 inches high from the rail. Since there were virtually no sides to the supply car, anything that would be placed on it would "extend above * * * the sides of the mine car," and make the exception provided by subsection (g) inapplicable. Therefore, as contestant so aptly states, "the precautions specified in section 75.1003-2, according to respondent's interpretation, would be required regardless of how small a component was moved and how great of a vertical clearance between the component and the trolley wire" (Brief, p. 2). Such a broad interpretation of the standard goes beyond any Congressional purpose of providing a safe work environment and preventing accidents.

Respondent argues that subsection (f) sufficiently defines a "unit of off-track mining equipment" so as to include a boom within its scope. The standard requires a minimum clearance of 12 inches between the unit and the trolley wires with additional precautions for equipment which does not permit at least a 12-inch clearance. I fail to see how subsection (g) adequately defines a unit of off-track mining equipment, other than to include every size and type of equipment. According to respondent's interpretation, even a very small component would be a unit of off-track mining equipment as long as it is more than 12 inches from the trolley wires when it is being moved.

Furthermore, if section 75.1003-2 is meant to apply only to components of off-track mining equipment, then the very same or similar component parts of on-track mining equipment could be transported where energized trolley wires are present and not be subject to the safety requirements. This absurd situation could not have been anticipated or intended by the drafters.

Respondent's exploration of the legislative history further convinces me that section 75.1003-2 was not intended to cover component parts. The Federal Registers which proposed the initial rule and also reported subsequent hearings and comments, make no mention of components of off-track mining equipment. (FOOTNOTE.a) The drafters obviously thought the words "off-track mining equipment" were sufficiently clear without further explanation. Since no mention is made of components, or examples thereof, I conclude that they are not subject to section 75.1003-2.

