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SOL (MSHA) v. UNION CARBIDE
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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

v.

UNION CARBIDE CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 80-401-M

MSHA CASE NO. 42-00473-05006 H

MINE: Wilson Silverbell

DECISION

APPEARANCES: James H. Barkley Esq. and Phyllis K. Caldwell Esq.
Office of the Solicitor, United States Department of
Labor 1585 Federal Building, 1961 Stout Street
Denver, Colorado 80294,
for the Petitioner

John W. Whittlesey Esq.
Metals Division, Union Carbide Corporation
270 Park Avenue
New York, New York 10017,
for the Respondent

Before: Judge Jon D. Boltz

Pursuant to provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (hereinafter "the Act"), the petitioner seeks an order assessing a civil monetary penalty against respondent for the violation of 30 C.F.R. 57.6-177 as alleged in Order of Withdrawal No. 336984-1, as modified. The case was heard on April 23, 1981, in Grand Junction, Colorado.

At the conclusion of all of the evidence, the parties agreed to waive the filing of post hearing briefs and agreed to have a decision rendered from the bench after closing arguments. The bench decision follows:

BENCH DECISION

The petitioner alleges a violation of 30 C.F.R. 57.6-177.(FOOTNOTE.1) In regard to the violation alleged, the petitioner more specifically states in Order of Withdrawal No. 336984, which was modified as 336984-1, that three misfired holes were observed on November 6, 1979, at 2:30 p.m., in the No. 292 heading, which is a location designated in the respondent's mine. The order also alleges that this condition was readily apparent and also that two employees were roof bolting within approximately 8 feet of the face. The respondent denies the allegation.

The issues in the case are whether or not there was a violation of the cited regulation and, if so, what penalty should be assessed.

I make the following findings:

1. I have jurisdiction over the parties and subject matter of these proceedings.
2. The respondent is a large operator and the proposed penalty, if assessed, would not affect the operator's ability to continue in business.
3. There is no significant history of past violations.
4. The operator demonstrated good faith in attempting to achieve rapid compliance after notification of the alleged violation.

It is undisputed that there were three misfires and that they were not reported to any supervisor until their existence was brought to the attention of the respondent by the MSHA inspector. The shot took place at the face at approximately 4:30 p.m. on November 5, 1979. After the shot, the swingshift came to work and the misfires were not discovered during that 8-hour shift. The misfires were also not discovered on the subsequent shift on November 6, 1979, until approximately 2:30 p.m. It is also undisputed that the MSHA inspector observed a fuse at the face of the number 292 heading. The fuse as described by the inspector was white and approximately 18 inches in length.

