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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.

C F & I STEEL CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 81-134

ASSESSMENT CONTROL NO.
05-00296-03055

MINE: Allen Mine

DECISION

Appearances: Katherine Vigil Esq.
Office of the Solicitor
United States Department of Labor
1585 Federal Building
1961 Stout Street
Denver, Colorado 80294,
For the Petitioner

Phillip D. Barber Esq.
Welborn, Dufford, Cook & Brown
1100 United Bank Center
Denver, Colorado 80290,
For the Respondent

Before: John A. Carlson, Judge

This case, heard under provisions of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq [the "Act"], arose out of an inspection of respondent's underground coal mine near Weston, Colorado. The Secretary of Labor seeks a \$66.00 civil penalty for an alleged violation of a mandatory safety standard.(FOOTNOTE.1)

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Specifically, the citation alleges that respondent failed to provide adequate protection to a trailing cable furnishing electrical power to a continuous mining machine.(FOOTNOTE.2) The matter was tried in Denver, Colorado on July 23, 1981. The parties agreed to waive briefs and submitted the matter after closing arguments.

DISCUSSION

The Secretary's inspector issued the citation because he believed a piece of mobile equipment, a battery utility trailer (BUT car), had run over the trailing cable furnishing power to a continuous miner. He based this belief upon dust marks he observed on the cable as it lay in a haulage way.

Respondent concedes that the cited standard is violated where an operator permits equipment such as a BUT car to move across a cable. It denies, however, that the evidence shows that the cable was in fact run over.

The issue for decision here is whether the circumstantial evidence presented justifies a conclusion that the markings on the cable were left by the wheels of the car. For the reasons which follow, I hold that it does not.

Based upon the undisputed evidence, I find that the car in question weighs several tons. The 440 volt cable, which lay on the soft, moist floor of the haulage way is 2 1/2 inches in diameter and the top of its cover displayed at least one dust mark. I further find that the cable, beneath the mark, was imbedded in the floor a distance of about 1/3 of its diameter; and that subsequent examination disclosed that the cable was undamaged.

As to further particulars, most of the testimony is in conflict. The Secretary's inspector first spoke of a single mark which he believed was 8 or 10 inches wide but did not measure. He said he saw no others, but then revised his testimony to suggest that he saw "two sets of tire marks, one on each side." (Tr. 19-20).

Respondent's own mine inspector, who was present during the government's inspection, insisted that he was shown but a single mark. He also maintained, contrary to the government's inspector, that the mark was solid with no distinctive tread pattern. In his view, the mark was left by the feet of miners who had simply stepped on the cable on their way to work stations.

Both witnesses, of course, rely wholly upon inferences drawn from a few observed facts. The respondent's inferences are more persuasive than those of the government. I must agree with respondent, for example, that

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had the heavy BUT car actually crossed the cable, it would have pressed the cable more deeply into the soft floor. That the cable sustained no damage lends further credence to respondent's theory.

In short, the inspector's inferences are too speculative and fragmentary to serve as the basis for a finding of violation. I therefore conclude that no violation was proved.

ORDER

In accordance with the findings and conclusions embodied in the narrative portion of their decision, it is ORDERED that the Secretary's petition for assessment of penalty in connection with citation number 1014211 is vacated, and this present proceeding is dismissed.

It is further ORDERED, pursuant to the Secretary's withdrawal motion, that the petition filed in connection with citation number 1014217 is likewise vacated and that proceeding is dismissed.

John A. Carlson
Administrative Law Judge

AA

~FOOTNOTE_ONE

At the outset of the hearing petitioner moved to withdraw a second citation, number 1014217, which was a part of this docket. The Secretary represented that he lacked sufficient evidence to establish violation. The motion was granted and the petition as to that citation was dismissed. The dismissal is reaffirmed here.

~FOOTNOTE_TWO

The standard involved is 30 CFR 75.606 which provides:
"Trailing cables shall be adequately protected to prevent damage by mobile equipment."