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SOL (MSAH) V. SOUTHWESTERN COAL  
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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 81-68  
A/O No. 11-00609-03024

v.

Captain Strip Mine

SOUTHWESTERN ILLINOIS COAL CORP.,  
RESPONDENT

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the Solicitor, U.S.  
Department of Labor, for Petitioner;  
Brent L. Motchan, Esq., Southwestern Illinois Coal Corp.,  
St. Louis, Missouri, for Respondent

Before: Judge Charles C. Moore, Jr.

This civil penalty suit against Respondent alleges that it committed two violations of the safety standards promulgated pursuant to the Federal Mine Safety and Health Act of 1977.

Citation No. 1005247 was issued on September 16, 1980, and alleges that Respondent violated 30 C.F.R. 77.1607 in that a stop cord was not operating properly along a portion of the unguarded conveyor belt. The evidence establishes that the emergency stop cord was inoperable. The issue is whether the conveyor belt was unguarded since only unguarded conveyor belts are required to have emergency stop cords. It was the inspector's opinion that the conveyor was unguarded because there were exposed pinch points along the conveyor belt.

I do not agree with the inspector's opinion that an emergency stop cord is a substitute for a guard around pinch points. Pinch points must be guarded whether or not a stop cord is present. 30 C.F.R. 77.400, like sections 75.1722(a), 55.14-1, 56.14-1 and 57.14-1, states: "Gears; sprockets; chains; drive, head, tail, and takeup pulleys; flywheels; couplings; shafts; sawblades; fan inlets; and similar exposed moving machine parts which may be contacted by persons, and which may cause injury to persons shall be guarded."

I first had occasion to interpret the above guarding standard in Dravo Lime Company v. Mining Enforcement and Safety Administration, 2 FMSHRC 771. (FOOTNOTE 1) In that case an operable stop cord extended the entire length of the conveyor belt except that the belt was "skirted" or shielded with plate metal and rubber belting at the point where it dumped limestone onto another belt. The following statement appears at pages 772 and 773 of that decision.

For dust control purposes the entire dumping area is shielded with plate metal with rubber belting attached to the sides of the shielding. This rubber belting attached to the plate metal rubs against the belt itself forming a dust shield. MESA does not contend that all idler rollers should be shielded, because if a miner caught his hand between the roller and the belt in an unskirted area, the belt could give way and his hand could be withdrawn. In the skirted area however, there is only five-eighths of an inch between the side of the metal skirt and the belt so that if a miner's hand got caught between the roller and the belt, the belt could only raise up five-eighths of an inch before being stopped by the metal skirt. It is MESA's contention that this constitutes a "pinch point" which in turn gives rise to the requirement of guards to prevent any part of a miner's body from being caught in such a "pinch point." In this instance, a pinch point is something like a clothes wringer.

\* \* \* \* \*

Drive pulleys, head pulleys, tail pulleys and takeup pulleys all contain "pinch points" (Tr. 55-56, MESA Exhibit R-6, pages 2 and 3). That was undoubtedly the reasons why these particular pulleys were specifically included in the standard. Idler pulleys however, do not contain "pinch points" as a rule, because the belt has leeway to move away from the idler pulley in the absence of a skirted area such as the one involved in the instant case. It is the "wringer effect" which can cause a serious injury. It is my opinion, that the combination of a skirted belt with the catwalk and ladder next to it causes the idler pulleys to become "similar exposed moving machine parts which may be contacted by persons, and which may cause injury

\* \* \* ."

The existence of a stop cord beside the belt which will stop the drive and result in the belt stopping after a movement of approximately 22 feet may diminish the extent of a potential injury but would not prevent the injury unless pulled five seconds before contact with the "pinch point."

In summary, all pinch points must be guarded, (FOOTNOTE 2) and the portions of a belt which do not contain pinch points must either be guarded or be equipped with an emergency stop cord. A stop cord might help the miner who fell on the belt but it certainly would not prevent him from getting caught in a pinch point.

MSHA Exhibit No. 3 is a guide to mechanical equipment guarding. On page 14, there is a drawing (figure 11) and the following words: "In this drawing, a railing is installed along the conveyor in lieu of a stop cord. This may be considered as a guarded conveyor. The railing is placed away from and slightly above the belt to prevent contact with the moving belt." The guardrail in figure 11 appears to be parallel to, and a few inches away from, the edge of the belt. The drawing is not sufficiently clear to determine whether it is also slightly above the belt. The man in the drawing has his left hand on a handrail and his right hand on the so-called guardrail. Respondent's Exhibit No. 2 is a photograph of Respondent's conveyor belt showing a miner in a position similar to the miner in figure 11. The miner in the photograph is pointing his left hand at a lower handrail installed next to the belt and his right hand at a metal railing that had been installed above the belt to keep coal from falling off the belt. Respondent contends that this upper rail is also a guardrail eliminating the necessity of an emergency stop cord.

The inspector stated on cross-examination that the guard in Exhibit No. 2 appeared to be slightly away from and slightly above the belt. While that description is similar to the language in the guide, the

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conveyor belts are entirely different. In the photograph, Respondent's Exhibit No. 2, the railing that is supposed to be a guardrail is away from the belt only to the extent that it is above the belt. It is not installed in a position similar enough to the rail in figure 11 to prevent a miner from coming into contact with the belt or the rollers. In fact, the railing itself might create a pinch point which would require separate guarding if the distance between the upper edge of the roller and the lower edge of the railing is sufficiently small. This appears to be the case in Respondent's Exhibit No. 2, but there is insufficient evidence in the record for me to make a finding to that effect.

The regulation requires in any case, that a belt either be guarded or equipped with an operable emergency stop cord. Respondent's belt had neither and a violation is accordingly established. If there were pinch points of the type discussed in Dravo, supra, the hazard would be high. Since I cannot find that type of pinch point based on the evidence in this case, I find a moderately low degree of gravity. It is unlikely that a miner would be seriously injured if his hand went between the roller and the belt. As to negligence, if Respondent relied solely on the guardrail depicted in Respondent's Exhibit No. 2 to guard this belt I would find negligence. In this case, however, Respondent only relied on the guard as a defense after it was established that the stop cord had malfunctioned. I find a low degree of negligence and assess a penalty of \$100.

Citation No. 1005253 alleges a violation of 30 C.F.R. 77.409 in that a caterpillar dozer was operating "without being equipped with a warning device which could be sounded by the operator prior to starting operation." There was a warning horn on the vehicle but it did not work. There was also, however, a backup alarm which could be sounded prior to starting and it was operable. The regulations do not require separate backup alarms and prestarting alarms.

MSHA Exhibit No. 6 is a memorandum dated June 24, 1977, from District Manager of District 8 to the Subdistrict Manager in St. Clairsville, Ohio, concerning 77.409. Nothing in the memorandum prohibits the use of a backup alarm as a prestarting alarm. Furthermore, in a letter from the Subdistrict Manager to Respondent dated September 19, 1977, the Subdistrict Manager specifically states that "activating the backup alarm on tractors to warn persons that the machine is about to start operations could be accepted as compliance with Section 77.409(a), providing the intent as expressed in the District Manager's memorandum of June 24, 1977, is met."

The Government argues that Respondent is attempting to estop MSHA from enforcing the regulation by relying on these exhibits. Government Exhibit 7 does not estop the Government from enforcing a regulation; it merely shows that the subdistrict manager had an opinion, consistent with the regulations, that a backup alarm which is sounded continuously when the machine is backing and a startup alarm which is only sounded

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once during a "cycle of events" (See Gov't. Ex. 6) can be the same horn and have the same sound. MSHA Exhibit 6, in discussing section 77.409(a) states that alarms should be sounded:

- "1. Before the equipment is started.
- 2. Before the equipment is operated in reverse."

If the statements in MSHA Exhibits 6 and 7 were contrary to the regulations and Respondent relied on them, a question of estoppel might arise. But as these exhibits do not contradict the standard it makes no difference whether Respondent relied on them. It's the idea that backup alarms and prestating alarms must have a different sound that seems to have come out of thin air.

On this tractor the backup alarm horn was facing toward the rear, but the evidence established that it can be heard from both the front and the back of the machine. I find that no violation was approved and accordingly, vacate the citation.

ORDER

Respondent is therefore ordered to pay to MSHA, within 30 days, a civil penalty of \$100.

Charles C. Moore, Jr.  
Administrative Law Judge

AA

~FOOTNOTE\_ONE

1 Dravo was brought under the old Federal Metal and Nonmetal Mine Safety Act and was decided October 28, 1977. It appears in the March 1980 volume of FMSHRC decisions as an attachment in Secretary of Labor, Mine Safety and Health Administration v. American Sand & Gravel Co., 2 FMSHRC 763 (Mar. 31, 1980).

~FOOTNOTE\_TWO

2 The inspector did not agree as shown by the following at Tr. 51:

JUDGE MOORE: But before you do, I want to make some -- get something clear with the witness. Now you've said this before. I want you to think about it now. Section 77-400(a) . . . is the one that says gears, sprockets, chains, etc., shall be guarded. Now, it is your testimony that you're taught that they do not have to be guarded if there's a stop cord?

THE WITNESS: That -- that is MSHA policy, sir.

JUDGE MOORE: Well, now -- who told you it was MSHA policy?

THE WITNESS: Well, again, that comes from my supervisor and -- and --

JUDGE MOORE: Did they tell you that at Beckley?

THE WITNESS: -- what I've received in training. Yes, sir. Yes, sir. That conveyors, per se, the length of them, if they're provided with an emergency stop cord --