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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

MATHIES COAL COMPANY, CONTESTANT	Contests of Citations
AND	Docket No. PENN 81-240-R
CONSOLIDATION COAL COMPANY, CONTESTANT	Citation No. 1142325 September 11, 1981
v.	Mathies Mine
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Docket No. PENN 81-241-R Citation No. 1050290 September 11, 1981 Westland Mine

DECISION

Appearances: Jerry F. Palmer, Esq., Pittsburgh, Pennsylvania, for Contestant;
Covette Rooney, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Respondent.

Before: Judge Melick

These consolidated cases are before me upon notices of contest filed by the Mathies Coal Company (Mathies) and the Consolidation Coal Company (Consolidation) under section 105(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," challenging the validity of citations issued pursuant to section 104(a) of the Act. Hearings were held in these cases in Pittsburgh, Pennsylvania, commencing October 27, 1981.

Docket No. PENN 81-240-R

The issue before me in this case is whether there was a violation of the mandatory standard at 30 C.F.R. 75.1405 as alleged in Citation No. 1142325, and if so, whether that violation was "significant and substantial" as defined in the Act and as interpreted in Secretary of Labor v. Cement Division, National Gypsum Company, 3 FMSHRC at 825 (1981).

Citation No. 1142325 alleges as follows:

There were four supply cars located on the No. 2 Thomas supply track, at Thomas Portal bottom, that were equipped with automatic couplers. However, chains or rings in addition to automatic couplers are used on the automatic couplers, and a bar is used to uncouple the supply cars which is not approved device.

The cited standard provides as follows:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be equipped within 4 years after March 30, 1970.

The essential facts are not in dispute. On September 11, 1981, Francis Wehr, a coal mine inspector for the Mine Safety and Health Administration (MSHA), was performing a regular inspection of the Mathies Mine accompanied by his supervisor, William Dupree, the company safety inspector, Mr. Hamilton, and a union representative. At the Thomas portal, they observed eight to 10 rail cars coupled together on the supply track. A combination of coupling systems was employed on the cars. Two of the systems were found by Inspector Wehr to be in violation of the cited standard. The cited coupling systems combined an automatic coupler, which coupled by impact and which uncoupled without the necessity of persons going between the ends of the rail cars, and a link chain or metal ring which did not couple by impact but which could have been uncoupled without the necessity of persons going between the ends of the rail cars if a specialized "safety bar" was used. The chains and rings were engaged and disengaged from hooks attached to the automatic couplers either by hand or by the use of the "safety bar." In the former instance, miners would necessarily place themselves between the ends of the rail cars to engage or disengage the chain or ring. In the latter instance, if the "safety bar" was correctly used, miners would not necessarily be positioned between the ends of the rail cars.

The purpose of the standard here cited 30 C.F.R. 75.1405, is to prevent miners who must couple and uncouple haulage equipment from subjecting themselves to injury by going between the ends of haulage cars. Pittsburgh Coal Company v. Secretary, 1 FMSHRC 1468 (October 1979). In that case, a miner was fatally injured while attempting to uncouple two haulage cars. All of the haulage cars had operable disconnect levers on one side, and some of the cars had additional disconnect levers on the other side as well. Not all of the additional levers were operable, however, and the victim had attempted to uncouple with one of the inoperable levers. When the lever failed to work, he reached between the ends of the cars to manually disconnect them. The locomotive operator, unaware that the victim was between the cars,

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started the train and the victim was crushed. In rejecting the operator's argument that it had been in compliance with the cited standard because it had uncoupling devices operable on one side, the Commission stated that the purpose of the standard was best effectuated by requiring that all uncoupling devices be maintained in an operable condition. The Commission observed that an inoperable device might induce a miner to go between the ends of the haulage equipment to attempt manual uncoupling. As the Commission further noted, the miner was killed after going between the ends of haulage cars after unsuccessfully attempting to use an inoperable device and that the standard was designed to prevent exactly that type of accident.

In *Canterbury Coal Company*, 6 IBMA 276 (1976), *aff'd.*, *Canterbury Coal Company v. Kleppe*, 559 F.2d 1207 (3rd Cir. 1977), a petition for modification of the application of the standard here cited was rejected because a link-aligner system used by Canterbury was found to be unacceptable. Canterbury's link-aligner system was apparently similar to the chain, ring and hook systems used by Mathies in this case in that if certain specific procedures were invariably followed, there would be no need for mine personnel to go between rail cars during coupling and uncoupling operations. The problem with any of these systems is, however, similar to that described by the former Interior Board of Mine Operations Appeals in *Canterbury*:

While the testifying motorman might well do as he said at all times, we must always consider what might occur if someone else were performing the coupling. Another miner, substituting for the regular motorman, might not be so conscientious or might be confronted with an emergency situation and perform a coupling or uncoupling without thinking to use the link aligner. Further, * * * even though only a short distance away * * * a substitute might be inclined to perform a coupling without employing the link aligner. Such is not the case with automatic couplers which couple on impact. An automatic coupler is always available and except for the possibility that it might require positioning within its gathering range, it does not require human input to perform a coupling.

The chain and ring systems utilized by Mathies present the same hazard as the link-aligner found inadequate in *Canterbury*. Thus, a miner not familiar with the coupling and uncoupling operations might be called upon to perform such work. In addition, the "safety bar" needed under Mathies' system to position the chain and ring might not be immediately available to the miner. Indeed, the undisputed testimony in this case is that "8 out of 10 times" the "safety bar" was in fact not available when needed. Moreover, because of the difficulty of manipulating with an extended bar, there is always the temptation for the miner to perform the task manually without the safety bar. As noted in *Canterbury*, the automatic coupling system mandated in the cited standard essentially eliminates the possibility of these occurrences.

Under the circumstances, I conclude that the coupling systems here cited do not meet the requirements of the standard at 30 C.F.R. 75.1405. The

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systems as a whole admittedly did not couple on impact under any circumstance. In addition, since the uncoupling operation of these systems presents the same hazard found unacceptable in the Pittsburgh Coal and Canterbury Coal cases, it is clear for this additional reason that the systems are in violation of the cited standard. (FOOTNOTE.1)

Whether a violation is "significant and substantial" depends on whether "based upon the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to would result in an injury of a reasonably serious nature." Secretary v. Cement Division, National Gypsum Company, 3 FMSHRC at page 825 (1981). The test has essentially two aspects: the probability of resulting injury and the seriousness of resulting injury. Within this framework, I indeed find that the violation here was "significant and substantial."

The undisputed evidence in this case demonstrates that serious injuries and fatalities have resulted from miners positioning themselves between the ends of rail cars. In particular, case histories have shown that such incidents occurred where the miner placed himself between the cars in efforts to manually operate a coupling mechanism. While the hazard herein may have been reduced somewhat as a result of company directives and training given subsequent to the citation at issue, the determination of "significant and substantial" must be made in view of the facts existing at the time the citation was issued. The undisputed evidence in this case shows that before company directives were issued and a training program was instituted on September 23, 1981, employees responsible for coupling and uncoupling the subject rail cars had received no training in the use of the "safety bar." One witness testified that in any event "eight times out of 10" the safety bars were not even available during coupling and uncoupling operations. It was accordingly not uncommon for employees to manually engage and disengage the chains and rings while positioned between the rail cars. MSHA supervisor William Dupree also opined that serious injuries and fatalities were highly probable under the circumstances. If the cars should move while the miner is between them, crushed or broken fingers and hands and even fatal injuries were likely. According to Dupree, not even the so-called "safety bar" was free of hazard. An employee could be dragged by the "safety bar" into the path of the cars upon sudden movement of those cars.

