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

C F & I STEEL CORPORATION, CONTESTANT	CONTEST OF CITATION PROCEEDING
v.	DOCKET NO. WEST 80-384-R
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Order No. 827062 6/12/80 MINE: Allen

DECISION AND ORDER

Appearances:

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For the Respondent

Before: Judge Jon D. Boltz

STATEMENT OF THE CASE

Pursuant to Section 105 of the Federal Mine Safety and Health Act of 1977, (hereinafter the "Act") Contestant applied for review of Withdrawal Order No. 827062, dated June 12, 1980, alleging that no unwarrantable failure to comply with a mandatory health and safety standard occurred. The underlined mandatory standard was 30 C.F.R. 75.301. That regulation provides in pertinent part: "All active workings shall be ventilated by a current of air . . . The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries . . . shall be 9,000 cubic feet a minute . . .,

Respondent answered that the order was properly issued and that failure of contestant to maintain the required minimum amount of air in the last open crosscut constituted a violation of 30 C.F.R. 75.301, as alleged in the Order of Withdrawal.

Findings of Fact

1. While conducting an inspection of contestant's Allen Coal Mine on June 12, 1980, an MSHA inspector took air flow samples in the last open crosscut in one section of the mine. There were six entries into the section of the mine which was inspected.

2. The MSHA inspector measured air flow in the last open crosscut between the No. 5 and No. 6 entries as 6,552 cubic feet a minute (hereinafter "cfm"). Between entry No. 1 and No. 2 in the last open crosscut no perceptible air movement could be detected.

3. Immediately outby the last open crosscut there was a brattice curtain across the No. 1 entry. The only opening in the curtain through which air could pass was a ventilating tube 18 inches in diameter which ran along the left rib of the No. 1 entry, then through the brattice curtain with the opening of the ventilating tube ending near the working face at the end of No. 1 entry.

4. At the time of the inspection, 12:20 a.m., there was no mining of coal taking place in the section.

5. At the end of the production swing shift just prior to the time of the inspection, air flow in the section was 25,200 cfm and no methane gas was present.

6. During the idle shift maintenance is performed at the mine, and at the time of the inspection the mainenance shift personnel were on their way to the mine. The MSHA inspector prevented the maintenance shift from going into the section inspected by posting a closure sign and issuing Withdrawal Order No. 827062.

7. On two previous maintenance shifts within two days prior to the inspection in this section of the mine, the pre-shift examiner had recorded that methane gas in excess of 5% was present in that section of the mine.

Issues

1. Did the contestant violate 30 C.F.R. 75.301 relating to the amount of air required at the last open crosscut on June 12, 1980?

2. If contestant did violate 30 C.F.R. 75.301, was the violation the result of an unwarrantable failure on the part of the contestant to comply with such regulation?

Discussion

The cited regulation requires that in all active workings the minimum quantity of air reaching the last open crosscut shall be 9,000 cfm. The air flow measurements as recorded by the MSHA

inspector in the last open crosscut are not disputed by Contestant. Thus, there was a violation of 30 C.F.R. 75.301 as alleged in the Withdrawal Order if the areas covered were "active workings."

Contestant contends that the 9,000 cfm requirement at the last open crosscut does not apply to idle areas of the mine where coal is not being cut, mined or loaded, and no other work is taking place. Specifically, Contestant argues that the area where the measurements were taken were not in "active workings" of the mine. Contestant also contends that its approved ventilation plan calls for idle working places, work faces where roof bolting is done, and deadended entries will be ventilated by a perceptible movement of air. There is no requirement in the plan for 9,000 cfm in the last open crosscut with respect to idle sections.

Contestant argues that 9,000 cfm of air is required in the last open crosscut in order to ensure that a minimum of 3,000 cfm reaches the working face. Since no coal was being cut, mined or loaded, the workings were not "active" but were idle, and idle working faces need only a perceptible movement of air to be in compliance with the approved ventilation plan.

"Active workings" are defined as "all places in a mine that are ventilated and inspected regularly." U.S. Department of the Interior, Bureau of Mines, a dictionary of Mining, Mineral and Related Terms. Page 11 (1968). No mention is made in the definition that there must be production of the mineral in order for there to be "active workings".

During the idle shift at the Allen Mine, the maintenance personnel come on duty. These miners are not producing coal, but are engaged in maintenance activity. Contestant is attempting to draw too narrow of a distinction in defining "active workings". The working activity taking place in the section inspected consisted of production shifts, and maintenance or idle shifts. Since this section was ventilated and inspected regularly, it must be classified as "active workings". The last open crosscut did not have the flow of air required by the cited regulation. Therefore, my conclusion is that there was a violation of 30 C.F.R. 75.301 by the Contestant.

The next question is whether or not the violation was a result of an unwarrantable failure of contestant to comply with the regulation. Specifically, did the contestant intentionally or knowingly fail to comply with the regulation or demonstrate a reckless disregard for the health or safety of the miners? Itmann Coal Company v. The Secretary of Labor, Mine Safety, and Health Administration (MSHA), 2 MSHC 1277 (1981).

The MSHA inspector testified that Contestant failed to provide adequate ventilation to the working section even though there was a known possibility of the accumulation of excessive methane gas to an explosive level. The two previous pre-shift reports for the maintenance or idle shift showed the presence of methane gas of approximately 5%. These reports were for the two days preceding the date the withdrawal order was issued. However at the end of the production swing shift just prior to the maintenance or idle shift during which the inspection took place, there was no methane present.

The MSHA inspector testified that at the time of the violation the air that should have been going to the last open crosscut from No. 2 to No. 1

entries had no means to travel other than through the 18 inch ventilating tube, because the balance of the entry was partitioned off with the brattice curtain. In checking further the inspector found that there was no movement of air on either side of the curtain. He gave his opinion that because there was no movement of air into the area, the 18 inch ventilating tube was ineffective as an exhaust. He further stated that it was not sound mining practice to cut off ventilation in areas of known methane accumulation.

The contestant's section foreman informed the MSHA inspector that the brattice curtain was installed in order to keep the working face of the No. 1 entry, immediately inby where the brattice was erected, clear of methane gas by use of the 18 inch ventilating tube. The section foreman felt that this procedure was sufficient to accomplish the job. The 18 inch ventilating tube was intended to be used to carry return air. With this explanation by contestant's section foreman, it is apparent that contestant was attempting to keep the working face at the end of No. 1 entry free of methane during the idle or maintenance shift. When the MSHA inspector was asked whether there was any accumulation of methane gas in the section between the time the withdrawal order was issued and seven and a half hours later when the withdrawal order was terminated, he stated "not to my knowledge."

Contestant points out that the approved ventilation plan requires that idle working faces will be ventilated by a preceptible movement of air, and that tubing in conjunction with line brattice is used to provide ventilation of the working face and no auxillary fans are operated during idle shifts. Contestant was performing in accordance with this section of the ventilation plan. However, the plan also calls for a minimum quantity of 9,000 cfm of air flow reaching the last open crosscut, the same provision as the cited regulation.

The evidence does not show that contestant intentionally or knowingly failed to comply with the regulation in question. The section foreman's report prepared at the end of the shift immediately preceding the issuance of the withdrawal order showed that there was no methane gas present, and the air flow was 25,200 cfm. During the idle shift contestant was attempting to ventilate the section in which the brattice line and ventilating tube had been installed. The evidence shows that there was no accumulation of methane between the time the order was written and seven and a half hours later when it was vacated. Since these actions took place I cannot find that contestant exhibited a reckless disregard for the health or safety of the miners.

I find contestant's evidence credible in that contestant believed that because there was an idle shift period in the idle section, the contestant was in compliance with its approved ventilation control plan by merely providing a preceptible movement of air at the working face. I also find that this was the reason that contestant believed that 9,000 cfm of air would not have been a requirement in the last open crosscut of the idle

section. I have already concluded that the section was "active workings", but contestant did not have the benefit of that conclusion on the date the withdrawal order was issued.

Consequently, I find that there was a violation of 30 C.F.R. 75.301, but that the violation did not result from an unwarrantable failure of the operator to comply with that regulation.

ORDER

Insofar as Withdrawal Order No. 827062 finds that the violation of 30 C.F.R. 75.301 resulted from an unwarrantable failure of contestant to comply with that regulation, the Order, is VACATED. The allegation of a violation 30 C.F.R. 75.301 along with the Withdrawal Order is AFFIRMED.

Jon D. Boltz
Administrative Law Judge