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CONSOLIDATION COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

Contest of Citation and Order

Docket No. WEVA 82-11-R
Citation No. 858823; 9/10/81

Docket No. WEVA 82-12-R
Order No. 8588 23; 9/10/81

Blacksville No. 2 Mine

DECISION

Appearances: Jerry F. Palmer and Juanita M. Littlejohn, Esquires,
Pittsburgh, Pennsylvania, for the Contestant Howard
K. Agran, Attorney, U.S. Department of Labor, Philadelphia,
Pennsylvania, for the Respondent

Before: Judge Koutras

Statement of the Proceedings

These consolidated proceedings concern two contests filed by the contestant on October 13, 1981, pursuant to sections 104(d) and 107(e) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. challenging the propriety and legality of a section 104(a) citation and a section 107(a) imminent danger withdrawal order issued by Federal Mine Inspector Cecil M. Branham on September 10, 1981, after inspection of the subject mine.

Respondent filed timely answers in these contests asserting that the citation and order were properly issued, and pursuant to notice served on the parties, a hearing was held in Washington, Pennsylvania on January 12, 1982, and the parties appeared and participated fully therein.

Discussion

The section 107(a) - 104(a) citation-order issued by inspector Branham on September 10, 1981, no. 858823, states the following alleged "condition or practice":

In the G Bleeders Section (I.D. 016), 2.6 volume per centum of methane was being liberated in the face of the No. 5 entry (94 feet inby survey station 5698).

The current of air in this entry was not sufficient to dilute, render harmless, or carry away this methane. Tests were made 12 inches from the rib, 13 inches from the roof, and 33 inches from the face and air samples were taken.

Inspector Branham cited a violation of mandatory safety standard 30 CFR 75.301, and also made a finding that the alleged violation was "significant and substantial." He also found that the area affected by his order was "the No. 5 entry of the G Bleeder section from survey station 5698 to the face (94 feet)."

Stipulations

The parties stipulated to the following:

1. The Blacksville No. 2 Mine is owned and operated by contestant, and is subject to the provisions of the Act.
2. The presiding Administrative Law Judge has jurisdiction to hear and decide these cases.
3. MSHA Inspector Cecil M. Branham is a designated authorized representative of the Secretary of Labor and properly served the citation in question a representative of the contestant in accordance with sections 104 and 107 of the Act.
4. A true and correct copy of the citation-order may be admitted as part of the record in this case.

Testimony and evidence presented by the respondent MSHA.

MSHA Inspector Cecil M. Branham testified as to his background and experience and confirmed that he issued the citation in question after conducting a regular inspection at the mine on September 10, 1981. He identified a copy of exhibit C-1 as a sketch of the five entries on the G bleeder area in question and he testified as to what he found during his inspection. He testified that he took several methane readings with his G-7 methanometer near the continuous miner parked at the face of the No. 5 entry, as well as at the face itself after additional roof support was installed at the face. His readings ranged from 2.2 to 3.0, and he averaged it out to 2.6 and that is what he recorded on the face of the citation.

Inspector Branham testified that no mining was taking place at the No. 5 face, the power was off, the continuous miner was not energized, the fan was not running and no miners were working in the area. He made no permissibility inspection, took no air readings at the face, but did take an air reading outby the face and fan location shown on exhibit C-1 and recorded 23,000 cubic feet of air per minute at that location.

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With regard to the citation asserting a violation of section 75.301, Mr. Burnham stated that he cited this section because of the fact that he believed the presence of the amounts of methane which he found indicated to him that the air and ventilation in the area was not sufficient to carry away, dilute, or render the methane harmless.

With regard to the imminent danger portion of the citation which he issued in Docket WEVA 82-12, Mr. Burnham stated that he followed the MSHA policy guidelines set forth in the inspector's manual under section 75.308 which states that the presence of methane in excess of 1.5 may support an imminent danger withdrawal order. He also indicated that there were no indications that mine management was aware of the presence of methane at the face or was doing anything to correct the situation. He confirmed that the methane condition was corrected within an hour or so by adjustments made to the line curtain which had been installed along the left side of the rib. The curtain was tightened up, slack was taken up, and another plastic curtain was installed across the face near the miner and this reduced the methane level to the allowable limits.

Mr. Burnham confirmed that the continuous mining machine would deenergize in the event dangerous levels of methane were encountered, but he saw no indications that the face area had been dangered off. After recording his methane readings he orally advised inspector escort Delbert Eddy that the "section was on order". He remained in the area while the abatement was in process and subsequently terminated the order at 11:15 a.m. after the methane levels were reduced below the 1.0 level. He believed that the adjustments made to the line curtain cured the problem.

Contestant's Testimony

Roy D. Stone, testified that he has been employed by the contestant as a section foreman for the past ten years. He detailed his normal routine concerning his inspection of the section prior to commencing mining activities and stated that on September 10, 1981, he examined all five faces in the G bleeder section and recorded his findings in the fire boss book. He confirmed that he found methane in the number 5 entry face area and stated that it amounted to .6 or .7 on the left side of the miner and a little better than 1 or 1.5 on the right side although he could not take a methane recording directly at the face because of lack of roof support, he believed that it probably exceeded the levels which he detected by means of his methane detector, and it probably reached a level of 2.5 or 3.0.

Mr. Stone stated that when he discovered the presence of methane he proceeded to take corrective action by means of making adjustments to the existing ventilation curtain. This was done by tightening up the curtain which had been sagging from the roof because it was wet and weighting down the bottom portion which had been "flying around."

Mr. Stone stated that when he detected the presence of methane in the working place in question he proceeded to take corrective action and he stated that he advised Mr. Eddy of this fact but did not directly discuss

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it with inspector Burnham. A spad gun was used to tighten up the ventilation curtain and additional curtain was hung to dissipate the methane. He indicated that he was not aware that an imminent danger order had been placed on the section at the time abatement efforts were going on and maintained that he was in the process of attempting to adjust the ventilation to get rid of the methane at the time that the corrective action was initiated by inspector Burnham.

Findings and Conclusions

At the conclusion of the testimony of Mr. Stone, the parties advised me that after further joint consideration of the matter a proposed compromise was reached which would enable the contestant to withdraw its contests on the basis of the following agreements and stipulation freely entered by counsel for both sides:

1. Contestant will withdraw its contest with respect to that portion of citation 8588823 which alleges a violation of 30 CFR 75.301, and contestant no longer desires to contest the issuance of the section 104(a) citation which charges contestant with a violation of mandatory safety standard 75.301.
2. Respondent MSHA will vacate that portion of citation 8588823 which alleges that the condition or practice described by Inspector Burnham constituted imminent danger under section 107(a) of the Act. Inspector Burnham will modify the citation to reflect that the 107(a) imminent danger order has been vacated and rescinded.

Respondent's counsel asserted that Inspector Branham is in agreement with the aforementioned proposed disposition of these cases. After due consideration of the agreed-upon settlement disposition of these cases, including a review of the record and arguments presented by the parties, I conclude and find that the proposed disposition is reasonable and warranted and it is approved. Accordingly, IT IS ORDERED that:

1. In docket WEVA 82-11-R, the section 104(a) citation citing the contestant with a significant and substantial violation of mandatory safety standard 30 CFR 75.301, is AFFIRMED, and contestants motion to withdraw its contest in this regard is granted.
2. In docket WEVA 82-12-R, the section 107(a) imminent danger order is rescinded and vacated and respondent will modify the citation accordingly.

George A. Koutras
Administrative Law Judge