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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. PENN 81-46 A.C. No. 36-06018-03030
v.	
KEYSTONE COAL MINING CORPORATION, RESPONDENT	Emilie No. 4 Mine

DECISION

Appearances: James P. Kilcoyne, Jr., Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner
Bartley R. Simeral, Esq., Keystone Coal Mining Corporation, Indiana, Pennsylvania

Before: Judge Charles C. Moore, Jr.

Respondent is charged with five separate violations (citations) of 30 C.F.R. | 75.1103-4(a) which provides: "Automatic fire sensor and warning device systems shall provide identification of fire within each belt flight (each belt unit operated by a belt drive)." Respondent's belt system consists of five flights designated as No. 1 Main, No. 1 North, No. 2 Conveyor, No. 3 North, and No. 1 Right. No. 1 Main is the most outby belt flight and the sensor on that flight is the one that Inspector Lawson and several other inspectors first tested when they conducted a blitz inspection on September 30, 1980. Inspector Lawson stayed in the lamphouse where the alarm and monitor were located while the other inspectors went underground to assist in the testing procedure. The remote locators are, in essence, variable resistors located in each of the drive units of the five belt flights. The remote indicators are connected with heat-sensing elements along their respective belt flights and if a heat-sensing element is activated, it has the effect of shorting out the system just inby the resistors of the remote indicator on that particular belt flight. When the remote indicator is thus shorted out, a belt rings and an electronic readout in the lampshack on the surface shows a number that is supposed to indicate the particular flight where the fire is located. The indicator in the lampshack does not read in ohms of resistance but is proportional thereto so that if you double the resistance in the system you would double the number showing on the read-out indicator.

When a remote locator is triggered, it has the effect of shutting everything inby that locator out of the system and the only resistance on the system is the total of the variable resistors located in the untriggered remote locators outby the one that has been shorted. The locator system works by totaling up these resistances. Each remote locator is affixed with a testing key or switch which shorts out the wires inby the resistors, thus having the same effect as if one of the heat sensors had shorted out the wires.

The system was supposed to be adjusted so that if the test key on the remote locator for No. 1 Main was turned, the indication in the lamphouse should have been between 1 and 4. When it was turned during Mr. Lawson's test, it registered 18. The figures 18 does not correspond with any of the designed readouts for the five belts. The readout for No. 2 conveyor should be between 4 and 6, the readout for No. 3 North should be between 8 and 10, the readout for No. 1 North should be between 10 and 12, and the readout for No. 1 Right should be between 12 and 14. A reading of 18 indicates that there is a fire but does not indicate where the fire is located.

Inspector Lawson wrote Citation No. 842716 for the erroneous readout at No. 1 Main. He then tested No. 1 Right but the remote locator test key was inoperable at that location. The remote locator was replaced and in its uncalibrated state gave a reading of 9.2. This reading would have been impossible if the remote locator in No. 1 Main was still reading 18. The resistances are additive and regardless of how this replaced remote locator was calibrated, the readout in the lamphouse would have to be more than the resistance being created at No. 1 Main. The explanation is that one of Respondent's technicians was at the No. 1 Main locator trying to calibrate it for the correct reading of between 1 and 4 while the rest of the tests were being made, or at least while some of them were being made because some of the tests were made after No. 1 remote locator had been properly calibrated. Citation No. 842717 was written because of the faulty test key switch. The section cited, however, does not requre a test key and the fact that a test key is not working does not keep the remote locator from working. (TR 100) (FOOTNOTE a)

The next test was made at No. 3 North and the indication there was 10.6 which would indicate a fire in No. 1 North rather than No. 3 North. Citation No. 8428718 was written for this condition.

The next test was made on the No. 2 Conveyor remote locator and the reading was 1.8 which would indicate a fire on the No. 1 Main belt. Citation No. 842719 was written for this condition. Citation No. 842720 was written because the indication on the remote locator in No. 1 North was 18.9 which, as in the case with the original readout on the No. 1 Main remote locator, would indicate a fire but would not indicate its location within the belt system.

The first citation was issued at 8:30 a.m., the second at

8:45. the third at 9 o'clock, the fourth at 9:15, and the fifth at 9:30. Inspector

Seibert testified that he was present when the test was made in the No. 1 Main remote locator and that immediately after the test one of Respondent's employees started readjusting the resistance controls in an attempt to bring the readout to its proper value. He stayed at that position until the proper calibration had been made and then went to the No. 2 Conveyor where the fourth citation was issued, No. 842719, at 9:15. There is a discrepancy in the times because the citation for No. 1 Main was supposedly abated as soon as it came into adjustment and that was not until 9:30. Inspector Seibert could not have remained in No. 1 Main until 9:30 and have also been in No. 2 Conveyor at 9:15 even though the two remote locators for these flights are fairly close. On Respondent's Exhibit No. 1, the arrows depict the positions of the remote locators and the orange lines show the five flights of belts involved in this case.

Respondent's Exhibit No. 5 is an MSHA policy statement which to me indicates that the policy is to issue only one citation on this system if it is out of adjustment. Both inspectors, however, interpreted the policy statement as requiring a citation for each flight that was out of adjustment. I see no need to rule on these contentions because I am convinced that once the technician started readjusting the resistance on the remote indicator of No. 1 Main, it invalidated all of the readings on the other remote locators. It is a system of adding resistances and all of the remote locators inby No. 1 Main were affected by the adjustment of the locator in No. 1 Main. It is not clear to what extent the other locators were adjusted between the time of the first citation at 8:30 and the time of the last at 9:30. But it is clear, for example, that the remote locator on No. 1 Right, if tested should indicate its own resistance plus the resistance of the remote locator on No. 2 Conveyor and the remote locator on No. 1 Main. If there is a recalibration of any remote locator outby the one being tested, it destroys the validity of the test.

I therefore find that the citation issued for the No. 1 Main remote locator, Citation No. 842716 was valid but that all of the others were invalidated when the tests were improperly conducted. The four citations indicated are thus vacated.

I find the violation at No. 1 Main did occur. The inspector testified that the negligence was of a low order and there is no dispute as to the other criteria involved. A penalty of $200 is assessed.

ORDER

It is therefore ORDERED that Respondent pay to MSHA, within 30 days, a civil penalty of $200.

Charles C. Moore, Jr.
Administrative Law Judge

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~FOOTNOTE_ONE

a. The Inspector's opinion to the contrary is rejected.