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SOL (MSHA) V. YOUGHIOIGHENY 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 80-387  
A/O No. 33-00968-03059

v.

Nelms No. 2 Mine

YOUGHIOGHENY AND OHIO  
COAL COMPANY,  
RESPONDENT

DECISION

Appearances: Marcella L. Thompson, Esq., Office of the  
Solicitor, U.S. Department of Labor,  
Cleveland, Ohio, for Petitioner, MSHA  
Robert C. Kota, Esq., Youghioghenny and  
Ohio Coal Company, St. Clairsville, Ohio,  
for Respondent, Youghioghenny and Ohio  
Coal Company

Before: Judge Merlin

This case is a petition for the assessment of a civil  
penalty filed by the Government against Youghioghenny and Ohio  
Coal Company for an alleged violation of 30 C.F.R. 75.200. A  
hearing was held on December 15, 1981.

At the hearing the parties agreed to the following  
stipulations:

(1) The subject mine constitutes a coal mine, the  
products of which enter commerce or the operations or  
products of which affect commerce. Respondent operates  
and at all times pertinent to the citation at issue,  
operated the subject mine. Respondent and every miner  
employed in this mine, are subject to the provisions of  
the 1977 Act.

(2) Jurisdiction of this case vests in the Federal  
Mine Safety and Health Review Commission.

(3) During 1979 this mine produced 493,555 tons of coal. Respondent company produced one million three hundred and forty-five thousand, six hundred and thirty-one tons of coal, during the year 1979. (Based upon this factor, I found that operator is large in size.)

(4) Any penalty assessed herein, will not affect respondent's ability to continue in business.

(5) The inspector is, and at all times pertinent hereto was an authorized representative of the Secretary of Labor.

(6) The operator's history of prior violations is moderate.

(7) The alleged violation was abated in good faith.

(8) All witnesses who will testify are accepted generally as experts in Mine Health and Safety.

The subject citation dated May 27, 1980, charges a violation of 30 C.F.R. 75.200 under the following circumstances:

The company's approved roof control plan was not being complied with in No. 29 room of the 7 west off 2 south working section which the continuous mining machine was operating. The mine roof was broken from 2 to 10 inches in thickness for a distance of 18 feet and 8 feet in width in which roof mats were being used and the area had not been center bolted or other supports installed where subnormal roof conditions existed.

The citation was abated in fifteen minutes.

A modification to the citation was issued on June 3, 1980, as follows:

Citation No. 0783977 is being modified to show that the company had installed 3 additional roof mats as additional support in the area; however, the roof was still not adequately supported in that the broken area was hanging down

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and resting on the roof mats in the middle part of that entry. This citation was terminated on 5-27-80.

The operator's roof control plan provides in pertinent part:

The roof support specified is considered the minimum required. Additional bolts or other support will be installed where conditions require.

The cited roof is a rectangular area of the dimensions set forth in the citation defined by a crack running all the way around and hanging down. Part of one side of this area is adjacent to one where a roof fall previously occurred (Tr. 15, Op. Exh. No. 1). Under the roof control plan roof mats are required to be placed on five-foot centers (Tr. 16). In the affected area three extra mats were installed so that the mats were on 2 1/2 foot centers (Tr. 16). The inspector testified that when he originally issued the citation he did not realize that additional roof mats had been installed and that to take account of this, the modification was subsequently issued (Tr. 24-25, 27-31). At the hearing however, the inspector adhered to the position that the roof mats were not additional supports within the meaning of the roof control plan and that therefore, the plan was violated. I believe the inspector is wrong in this respect. The roof control plan quoted above, requires "additional bolts or other support" where conditions require. The plan does not specify what other support should be used and more importantly, it does not rule out the use of roof mats. Or the contrary, the general direction that roof bolts or other support are allowable indicates that mats are permissible. If the plan is to prohibit or require use of certain types of support under certain circumstances, the plan must say so. Not only does the plan not have any such provision, but the inspector and the operator's section foreman testified that the plan requires center bolts where rooms are going to be left standing over an extended period of time which was not the situation here (Tr. 41, 55). The fact that the plan explicitly mandates center bolts in certain cases demonstrates that where, as here, nothing is said, the plan cannot be interpreted to require such bolts.

The operator adopts a roof control plan and MSHA approves it. An inspector cannot, after the fact, read into the plan things which are not there and which the operator cannot be expected to know. Accordingly, I conclude there was no violation of the roof control plan.

Over and above the requirements of the roof control plan there is a general duty placed upon the operator to insure that the roof be adequately supported. On this matter the evidence is in conflict. The inspector expressed the view that because the mats did not have center bolts they did not support the middle of the entry (Tr. 32, 35). The inspector admitted that his determination that the mats were inadequate was a judgment call but the basis for that call is not apparent since he did not know how much weight was involved in the roof area covered by the mats (Tr. 36-37, 38-39). The operator's section foreman was of the opinion that the roof mats did sufficiently support the middle of the entry (Tr. 52-54). The section foreman had one of his men test the roof and determined that only the immediate roof was broken and he stated that since the roof was hanging near the left side towards the adjacent fall area, not in the middle the stress was on the left side not in the middle (Tr. 54, 56-58, 60). I find the section foreman's evidence persuasive.

The section foreman's evidence is not the only evidence in favor of the operator. The most persuasive evidence of record is that of a civil engineer who testified that according to an MSHA report (Op. Exh. No. 3) the roof mats could bear a 9,000 lb. load and that if the straps were on five foot centers the stress on the center of each strap would be 5700 lbs. and that therefore, in his opinion the strap would hold in the worst possible situation (Tr. 67). The engineer also explained how he determined the weight was 5700 lbs. (Tr. 80). As already noted, the inspector did not know what the weight was (Tr. 36-37). A safety factor of 1.5 to 2 is considered safe and the factor would be 1.6 on five foot centers (Tr. 68). Because of the additional straps, 2 1/2 foot centers were present here which would increase the safety factor. The civil engineer thought the safety mats installed by the operator were adequate to hold this roof and that center bolts were not necessary (Tr. 78). He stated straps were better than center bolts because as long as the strap is pulled tight at the lip of the fall, it would prevent material from falling off and thereby provide an added measure of safety (Tr. 81). The Solicitor did not cross-examine the engineer and did not produce any contrary evidence in rebuttal. I find the engineer's testimony convincing and accept it.

Based upon the testimony of the operator's witnesses I conclude the roof was adequately supported and that there was no violation of the mandatory standard.

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ORDER

In light of the foregoing, it is ORDERED that the Citation be VACATED and that the petition for assessment of civil penalty be DISMISSED.

Paul Merlin  
Chief Administrative Law Judge