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

CLINCHFIELD COAL COMPANY,
CONTESTANT

v.

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

Contests of Citation and Order

Docket No. VA 81-92-R

Citation No. 1080109
July 7, 1981

Docket No. VA 81-93-R

Order No. 1080112
July 9, 1981

McClure No. 1 Mine

DECISION

Appearances: Timonthy W. Gresham, Esq., Lebanon, Virginia, for Contestant;
Catherine M. Oliver, Esq., Office of the Solicitor, U.S.
Department of Labor, Philadelphia, Pennsylvania, for
Respondent.

Before: Judge Melick

These cases are before me upon Contests filed by the
Clinchfield Coal Company (Clinchfield) pursuant to section 105(d)
of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.
801 et seq., "the Act," challenging a citation and an order of
withdrawal issued under sections 104(a) and 104(b) of the Act,
respectively. (FOOTNOTE 1)

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Citation No. 1080109

This citation charges a violation of the regulatory standard at 30 C.F.R. 75.1105 and alleges as follows:

The battery-charging station (permanent) located in the No. 5 intake entry, Caney No. 2 section (005) was not housed in a fireproof structure in that the asbestos curtains used as fireproofing did not extend the length of the coal ribs back to the permanent stopping.

The cited standard reads in relevant part as follows:

Underground * * * battery-charging stations * * * shall be housed in fireproof structures or areas. Air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return * * *.

The essential facts in this case are not in dispute. The parties agree that the cited underground battery charging station was laid out as illustrated in Exhibit A, attached hereto. As shown in Exhibit A, the battery charger was centered in the subject station 29 feet 6 inches in by a permanent incombustible cinder block stopping but only 7 feet from the coal ribs. The station was 8 feet high and its roof and floor were composed of incombustible slate. Sections of fireproof asbestos curtain were hung alongside the right and left ribs in the general vicinity of the charging station but not immediately adjacent to the battery charger. It is undisputed that the coal ribs adjacent to the battery charger had been properly rock dusted but that did not make the coal in these ribs incombustible and certainly not fireproof.

In practice at relevant times batteries to be charged were removed from mining machinery and placed on one of several metal battery stands located within the charging station. At the time the citation was issued, one

battery was being charged about 8 feet from the battery charger. In the charging process explosive hydrogen gas is generated and accordingly ventilation must be maintained. There is no dispute that such ventilation was maintained in this case and that the hazard from hydrogen gas was accordingly minimal. The possibility of a short circuit in the charger resulting in fire and heat buildup is also mutually recognized.

Clinchfield admits that its battery-charging station was not completely "housed in fireproof structures or areas" but argues that it was impossible to comply with that requirement because it is in conflict with another requirement in the same standard that "air currents used to ventilate structures or areas enclosing electrical installations * * * be coursed directly into the return." It argues further that because of this conflict and the resulting ambiguities in the cited regulation it can be constitutionally enforced only if the operator had actual knowledge that the cited condition or practice was hazardous or if it can be shown that a reasonably prudent man familiar with the circumstances of the industry would have protected against the hazard. *Bristol Steel and Iron Works v. O.S. and H. Review Com'n*, 601 F.2d 717 (4th Cir. 1979). Such an analysis of a regulatory standard is not required, however, where the standard itself provides "reasonable certainty" and is facially unambiguous. *Connally v. General Construction Company*, 269 U.S. 385, 391; *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337.

Indeed Clinchfield itself suggests in its brief how the two parts of the regulation may be read in harmony:

The proper interpretation of this mandatory standard insofar as it states the charging station be housed in a fireproof area must be that the battery-charging station must be so housed as to prevent the spread of fire to combustible materials while, at the same time, allowing proper and necessary ventilation to carry away any and all gases and fumes which could contribute to an ignition and fire and all fumes and smoke that would result from an ignition or a fire.

I agree that the two parts of the standard are not in necessary conflict and that the standard may be read as a consistent and harmonious whole. See 73 Am. Jur. 2d Statutes 254. Accordingly, I find that the standard provides constitutionally sufficient certainty. *Boyce*, supra. The only issue before me then is whether Clinchfield was complying with those specific requirements. On the undisputed facts of this case, I find that it was not. As shown in stipulated Exhibit A the battery charger was located only 7 feet from combustible coal ribs with admittedly no fireproof separation. Moreover, while short sections of asbestos curtains were hung in the vicinity of a battery being charged, that battery was situated within 10 feet of another coal rib. Even under the most liberal construction of the standard as advocated by Clinchfield the cited battery-charging station could not therefore have been "housed" within a fireproof structure or area.

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Clinchfield nevertheless appears to claim as an affirmative defense that the absence of fireproof housing around portions of the battery-charging station was necessary to allow for the ventilation required by the second part of the standard. The proof in this case fails, however, to support the claimed defense. Indeed there is no evidence to show that the fireproof enclosure as finally approved by MSHA in this case prevented compliance in any way with the ventilation requirements of the standard. Clinchfield contends, finally, that the cited standard should be interpreted with deference to the MSHA Coal Mine Inspection Manual, Chapter 2, section (3) Page 514 (March 1978). The manual provides in relevant part that the "coal, or other combustible materials below, above and to the sides of the battery(s) should be protected." However, since Clinchfield in this case did not as a matter of undisputed fact protect all sides of the battery being charged, it was clearly in violation of the manual provisions as well as the standard. Accordingly, the contention is irrelevant.

ORDER

Citation No. 1080109 is AFFIRMED and the contest of that citation is accordingly DISMISSED.

Docket No. VA 81-93-R

Clinchfield stipulated at hearing that the section 104(b) order of withdrawal in this case, Order No. 1080112, would not be disputed in the event that the underlying citation in Docket No. VA 81-92-R was affirmed. I consider that stipulation to be a request to withdraw the contest of the captioned proceeding conditioned upon the affirmation by the undersigned of the underlying citation in the preceding case. Since that citation has been affirmed, I approve of the withdrawal by Clinchfield of its contest in this proceeding.

ORDER

Order No. 1080112 is AFFIRMED and the contest of that order is accordingly DISMISSED.

Gary Melick
Administrative Law Judge

EXHIBIT "A"

AA

~FOOTNOTE_ONE

1 Section 104(a) of the Act provides as follows:

"If, upon inspection or investigation, the Secretary or his authorized representative believes that an operator of a coal or other mine subject to this Act has violated this Act, or any mandatory health or safety standard, rule, order, or regulation promulgated pursuant to this Act, he shall with reasonable promptness, issue a citation to the operator. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The requirement for the issuance of a citation with reasonable promptness shall not be a jurisdictional prerequisite to the enforcement of any provision of this Act."

Section 104(b) of the Act provides as follows:

"If, upon any follow-up inspection of a coal or other mine, an authorized representative of the Secretary finds (1) a violation described in a citation issued pursuant to subsection (a) has not been totally abated within the period of time as originally fixed therein or subsequently extended, and (2) that the period of time for the abatement should not be further extended, he shall determine the extent of the area affected by the violation and shall promptly issue an order requiring the operator of such mine or his agent to immediately cause all persons, except those persons referred to in subsection (c), to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated."