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SOL (MSHA) V. PRICE 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

v.

PRICE RIVER COAL COMPANY,
SUCCESSOR TO
BRAZTAH CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDING

DOCKET NO. WEST 79-366

A/C No. 42-01202-03019

MINE: Braztah No. 5

Appearances:

Phyllis K. Caldwell Esq.
Office of Henry C. Mahlman, Regional Solicitor
United States Department of Labor
Denver, Colorado,
For the Petitioner

Stanley V. Litizzette Esq.
Price River Coal Company
Helper, Utah,
For the Respondent

Before: Judge John J. Morris

DECISION

The Secretary of Labor, on behalf of the Federal Mine Safety and Health Administration, (MSHA), charges respondent Price River Coal Company, successor in interest to Braztah Corporation, with violating a safety regulation (FOOTNOTE 1) adopted under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. Respondent denies the violation occurred.

After notice to the parties a hearing on the merits was held on March 19, 1981 in Salt Lake City, Utah. The parties waived the filing of post trial briefs.

ISSUES

The issues are whether the citation was vague, whether Price violated the regulation and, if so, what penalty, is appropriate.

SUMMARY OF THE EVIDENCE

On June 12, 1979, MSHA's duly authorized representative Blake Hanna and Braztah safety manager John Tatton, inspected the mine (Tr. 11, 13, 82, 83).

Over a period of time coal dust, the consistency of sand, had accumulated two to six inches deep along the full 1200 foot length of the #4 belt conveyor. The 42 inch wide conveyor was touching the pile for about 12 feet (Tr. 13, 14, 19-23, 28, P1, P2).

A pile of coal dust, estimated to weigh 10 tons, was located 33 to 60 feet from the mine fan (Tr. 45, 58, P1, P2).

Dry tumble weeds, brush and small pieces of paper were under a nearby bridge (Tr. 27, P2).

Oil cans, weeds, and grease cartridges littered the area (Tr. 18, 19, 41, P1, P2).

Ignition sources included possible spontaneous combustion from the accumulated coal dust, a nearby battery charging station, a welder, and electrical boxes (Tr. 17, 22-23, 28-29, 42, P1).

DISCUSSION

Respondent contends that the citation is vague (Tr. 10, 107). The citation issued on the day on the inspection recites that Section 77.1104 was violated and it further reads as follows:

The operating number 4 surface belt had accumulations of fine dry coal dust and other combustible materials, from the number 4 portal to the tailpiece (amended to headpiece, Tr. 7), a distance of about 1200 feet.

The fine dry coal dust was from 2" to 6" deep under the belt. A pile of loose coal (about 10 tons) was stored within 60 feet of the mine fan. Dry weeds, wood, paper, and empty oil cans were scattered throughout most of the area surrounding the belt.

Section 104(a) of the Act requires, in part, that a citation be in writing and "shall describe with particularity the nature of the violation." In this case the company safety inspector had

no difficulty in starting to abate the violative conditions. In fact, the next morning when a closure order was issued Tatton told the inspector he didn't know why the

