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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

UNITED MINE WORKERS OF AMERICA,
(UMWA),
INTERVENOR

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

Contest of Citation

Docket No. WEVA 82-3-R
Citation No. 857536; 8/31/81

Civil Penalty Proceeding

Docket No. WEVA 82-105
A.C. No.

McElroy Mine

DECISION

Appearances: Jerry F. Palmer, Esq., Pittsburgh, Pennsylvania, for
Consolidation Coal Company
David Bush, Esq., Office of the Solicitor, U.S. Department of
Labor, Philadelphia, Pennsylvania, for the Secretary of Labor
Joyce Hanula, Washington, D.C. for Intervenor, United Mine
Workers of America

Before: Judge Melick

These consolidated cases are before me pursuant to sections 105(a) and 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act" to contest a citation issued to the Consolidation Coal Company (Consolidation) pursuant to section 104(a) of the Act (Citation No. 857536) and for review of a civil penalty proposed by the Mine Safety and Health Administration (MSHA), for that citation. The issue before me is whether Consolidation violated the regulatory standard at 30 C.F.R. 48.10(a) as alleged in Citation No. 857536 and, if so, the appropriate civil penalty to be assessed for that violation. An evidentiary hearing on this issue was held in Morgantown, West Virginia, on March 9, 1982.

The citation at bar was issued by MSHA Inspector Kenneth Williams on August 31, 1981, and alleged as follows:

Training was not conducted during normal working hours for 10 of the 19 employees who received annual training on August 8, 1981, on the 8 to 4 p.m. shift. Nine employees Yoho, Whitlatch, Ice, Smith, Studenc, Edgell, Crow, Campbell, and Robinson were normally working the 4 to 12 p.m. shift. The other employee Robert Hess was normally working the 12 to 8 a.m. shift. Training was conducted by Wayne McCardle.

The cited regulatory standard, 30 C.F.R. 48.10(a), reads as follows: "Training shall be conducted during normal working hours; miners attending such training shall receive the rate of pay as provided in section 48.2(d) (definition of normal working hours) of this subpart A."

Section 48.2(d) referred to above provides as follows:

"Normal working hours" means a period of time during which a miner is otherwise scheduled to work. This definition does not preclude scheduling training classes on the sixth or seventh working day if such a work schedule has been established for a sufficient period of time to be accepted as the operator's common practice. Miners shall be paid at a rate of pay which shall correspond to the rate of pay they would have received had they been performing their normal work task.

The essential facts in this case are not in dispute. On Saturday, August 8, 1981, Consolidation conducted a federally mandated training session on the 8 a.m. to 4 p.m. shift. During the 5-day period immediately preceding August 8th, nine of the ten employees listed in the citation as having attended the training session had been working on the 4 p.m. to 12 midnight shift and one had been working the 12 midnight to 8 a.m. shift. The mine regularly operated on three shifts and the parties stipulated at hearing that it was common practice at the mine for all three shifts to work on Saturdays. The company had the right to require such Saturday work and indeed had exercised that right in the past.

It is also undisputed that Consolidation had the right to "cross-shift" the miners during the week and on Saturdays and had exercised that right in the past. (FOOTNOTE 1) It is clear under the circumstances that all 10 of the miners listed in the citation could therefore have been properly cross-shifted on

