

CCASE:
REPUBLIC STEEL V. SOL (MSHA)
DDATE:
19820818
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

REPUBLIC STEEL CORPORATION,
CONTESTANT-RESPONDENT

Contest of Citation

v.

Docket No. PENN 81-115-R
Citation No. 1046699 3/10/81

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

Civil Penalty Proceeding

Docket No. PENN 81-177
A/O No. 36-00973-03079F

RESPONDENT-PETITIONER

Banning Mine

DECISION AND ORDER

On March 10, 1981, a shuttle car operator was killed due to the inadequacy of the field of vision provided under the protective canopy installed on his equipment. Because of the inadequacy of the field of vision, the miner stuck his head out around the canopy in order to see to position the mine cars he was loading. When the car spotter failed to function properly, the mine cars caught the shuttle car boom and swung the car in such a way that the miner's head was crushed against a post. The parties move to reduce the amount of the penalty initially proposed from \$6,000 to \$500 on the ground that the canopy was adequate to protect the miner from falls of the roof or rib which, they claim, is all the standard required.

I think the facts of this case demonstrate what I have been inveighing against for years with respect to canopies, namely that MSHA's failure to require the installation of canopies that provide a field of vision adequate to permit their safe use in the performance of a job renders many if not most "approved" canopies accidents waiting to happen. Despite this, MSHA is insistent on requiring canopies wherever the mining height permits, regardless of the hazards created by their use where the mining height does not permit an adequate field of vision. In this case, after the fatality MSHA and the operator tried to cure the hazard by painting stripes on the sides of the mine cars but made no adjustment in the canopy. Thus, any time a string of cars that are not painted comes along the same accident may occur. In my judgment if a canopy cannot be provided that permits the operator an adequate field of vision to perform his tasks safely, it should be removed and not required.

For these reasons, as well as MSHA's admission that "the canopy was totally adequate for normal operation of the shuttle car," (FOOTNOTE 1) I find the violation charged did not, in fact, occur.

