

CCASE:
SOL V. CONSOLIDATION COAL
DDATE:
19821028
TTEXT:

~1928

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

SECRETARY OF LABOR,
PETITIONER

Civil Penalty Proceeding

v.

Docket No. WEVA 82-18
AC No. 46-01867-03088V

CONSOLIDATION COAL COMPANY,
RESPONDENT

CONSOLIDATION COAL COMPANY,
CONTESTANT

Contest of Citation

v.

Docket No. WEVA 81-552-R
Citation No. 856134

SECRETARY OF LABOR,
RESPONDENT

Dated: July 20, 1981

DECISION

Appearances: John H. O'Donnell, Esq., Office of the Solicitor, U.S. Department of Labor, for Petitioner and Respondent
Jerry F. Palmer, Esq., Consolidation Coal Company, for Respondent and Contestant

Before: Judge Fauver

These proceedings involve the same citation issued under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. The Secretary seeks a civil penalty for a violation of a mandatory safety standard as alleged in the citation. The company seeks to have the citation reviewed and vacated.

The cases were consolidated and heard at Morgantown, West Virginia.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times Consolidation Coal Company ("Consol") operated an underground mine known as Blacksville No. 1 Mine, which produced coal for sale or use in or substantially affecting interstate commerce.

2. On July 20, 1981, MSHA Inspector William Ponceroff observed a roof condition that he found to be in violation of 30 CFR 75.200, and, on the basis of this finding, issued Citation No. 956134; the citation was modified the next day to insert one word left out in the citation. The citation, as modified, reads:

The mine roof was not adequately supported 35p inby the old 1 West loader switch. There were 3 dislodged roof bolts that fell out and these bolts were installed in a fall cavity. The distance between the last permanently installed roof bolts to a arch located inby measured 9p 3" and 10p 4" . The width of this area measured 13p 10" . The height of this cavity was approximately 15p high. There were loose pieces of rock in this area and the roof was broken. This area was not supported between the bolts and arch. Motormen travel through this area to switch empty mine cars. The condition was reported to Bill Galeota, the day shift foreman, by Glen Clutter on 7/10/81. This condition should have been reported in the preshift examination book, and roof bolts should have been installed. Neither action was taken.

3. The facts alleged in the citation were proved by a preponderance of the evidence. Some of the roof bolts had been dislodged, leaving the roof unsupported for about 9 feet, 3 inches on one side and 10 feet, 4 inches on another side. There were loose pieces of roof hanging and some had already fallen. Miners normally traveled under this area of the roof. The cited area was in a track haulageway where empty cars were switched off by motormen to a rotary dump. The motormen did not have canopies on their vehicles.

4. The roof condition was hazardous, and could significantly and substantially contribute to a mine hazard.

~1930

5. The roof condition was readily observable and had existed for a substantial period before the inspection on July 20, 1981. Mine management was negligent in not detecting and correcting the hazardous roof condition before the inspection.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of these proceedings.

2. Consol violated 30 CFR 75.200 on July 20, 1981, as alleged in Citation No. 856134, modified on July 21, 1981. The facts showed an unwarrantable failure to comply with the safety standards of this section, specifically the sentence: "The roof and ribs of all active underground roadway, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs."

3. Based upon the statutory criteria for assessing a civil penalty for a safety violation, Consol is assessed a penalty of \$1,500 for the above violation.

Proposed findings of fact or conclusions of law inconsistent with the above are rejected.

ORDER

WHEREFORE IT IS ORDERED:

1. Citation No. 856134, issued on July 20, 1981, and modified on July 21, 1981, is, as modified, AFFIRMED.

2. Consol shall pay to the Secretary of Labor the above-assessed civil penalty of \$1,500 within 30 days from the date of this decision.

WILLIAM FAUVER
JUDGE