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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	Civil Penalty Proceeding Docket No: WEST 81-385-M A.O. No: 42-01472-05005 I
v.	
ENERGY FUEL NUCLEAR INC., RESPONDENT	Betty Mine

DECISION

Appearances: Robert J. Lesnick, Esq., Office of the Solicitor, U.S. Department of Labor, 1961 Stout Street, Denver, CO for Petitioner
Bill Maywhort, Esq., Holland and Hart, P.O.B. 8749, Denver, CO, for Respondent

Before: Judge Moore

The citation in this case resulted from an accident caused by a premature explosion in which a miner was severely injured. While the injured miner takes sole responsibility for the fact that he was injured, and admits that he was taking short cuts not allowed by management, it is MSHA's position that that fact does not subtract from the operator's guilt in this matter. In fact, MSHA seeks a penalty in excess of that recommended by the assessment office on the theory that the employment of a bonus system for miners increases the negligence factor. The argument is that an incentive plan or bonus system encourages miners to push production at the expense of safety.

Terminology is important in this case. Ignitor cord is an easily ignited cord which burns with a hot external flame at a certain speed. A slow burning cord would burn at the rate of twenty seconds per foot and a fast burning cord would burn at 5 seconds per foot. The cord is marked off at 1 foot intervals so if you know the burning rate it is easy to assemble a series of explosions that will go off as desired. In a normal connection, the ignitor cord is passed under the lip of the thermalite connector sometimes referred to as a spitter and the lip of the thermalite connector is crimped down with the thumb. The thermalite connector is a small metal capsule which is a type of fuse lighter. The end not connected to the ignitor cord is crimped around the fuse. The fuse itself is a wax and string covered powder stream that in this case burned at a rate of forty-five seconds per foot. The other end of the fuse sets off the blasting cap which in turn sets off the primer and then the main body of the dynamite and prell explosion. "Prell" is a trade name for ANFO which stands for ammonium nitrate and fuel oil.

During the course of the questioning of the injured miner and the inspector there was an obvious confusion concerning the meaning of the terms, test fuse, spitter (fuse lighter) and ignitor cord. I also think there are errors in the transcript which add to the confusion. There were, however, terminology problems unassociated with the transcript. For example the narrative findings for a special assessment refers to "lead spitters which had a burning rate of 4.5 seconds per foot." The accident report (petitioner's exhibit 7) states "Dupont fuse ignitors and caps were used and when tested burned at 45 seconds per foot." A fuse lighter (the type used at this mine), a spitter, and a thermalite connector are all the same thing. They are metallic devices with a diameter sufficient for a safety fuse to be inserted and very much resemble a blasting cap. The length is about 1" to 1-1/2" and there is no burning rate in the normal sense of the word (FOOTNOTE 1) involved. A blasting cap does not have a burning rate, in the practical sense of the word, since it explodes. Whatever the accident report and the special assessment writers were talking about it was not spitters or blasting caps. It must have been either safety fuse or ignitor cords. Sometimes the inspector, Mr. Deason, used the term "spitter cord" when he meant ignitor cord. I do not believe, however, that the inspector said that ignitor cord was the same thing as a spitter as indicated on page 117 of the transcript. In his testimony concerning overdrilling however, he did seem to confuse ignitor cord and safety fuse. At times he seemed to think that the ignitor cord was burning back down in the drill hole toward the detonator. It is the fuse (safety fuse) that burns back in the hole.

The company is charged with 2 violations in connection with this accident. One of the citations alleges a violation of 30 C.F.R. 57.6-90 which states:

> "persons who use or handle explosives or detonators shall be experienced men who understand the hazards involved4)4B"B")4B'

In connection with this standard it is charged that Mr. Tate did not understand the hazards involved. The other citation alleges a violation of 30 C.F.R. 57.6-116 which states:

> "fuse shall be ignited with hot wire lighters, lead spitters, ignitor cord, or other devices designed for that purpose. Carbide lights shall not be used to light fuses."

30 C.F.R. 57.2 contains definitions of ignitor cord and safety fuse but does not contain a definition of "fuse." I am interpreting the regulation as requiring that "safety" fuse "be lighted with hot wire lighters, lead spitters, ignitor cord, or other such device designed for this purpose." Despite the fact that both the inspector and Mr. Tate as well as the attorneys for both parties were of the opinion that the lighting of the spitters with a propane torch is prohibited by 57.6-116, I am of the opinion that it is not. The regulation says that you can not light the fuse except with certain devices, and Mr. Tate in this case lit the fuse with a spitter. Using a propane torch to light the spitter may violate company policy but it does not violate the regulation. Every fuse had a blasting cap on one end and a spitter on the other. (Tr. 139-140). If he had used his torch to light the fuse directly, it would have been a violation. But he did not do that. Citation No. 576778 is Vacated.

As to the remaining charge, that Mr. Tate did not fully understand the hazards involved, there are two items that must be considered. The first involves the allegation, made for the first time at the trial, that it was an unsafe practice to overdrill, that is, drill too many holes, in the face area. The inspector testified that the area had been overdrilled and that this created a hazard in that certain holes may not fire and may end up in the muckpile. Mr. Tate had been questioned about the overdrilling and did not think it was a hazard. Since this particular so-called hazardous practice was not mentioned in the citation, the accident report, or the special assessment, but only for the first time at the trial, I doubt that anyone gave it serious consideration until just before the trial. I am going to disregard the charge. Moreover the standard requires that the miner understand the hazards. It does not require that he agree with an inspector as to what the hazards are.

The second item involves the practice of wrapping the ignitor cord around the spitter once before crimping the rim of the spitter down on the cord. The inspector did not convince me that this practice would lead to the failure of the round to fire and there was other testimony including that of Mr. Tate that it was an acceptable method of attaching ignitor cord to a spitter. Like the prior matter, this was not mentioned in the citations, in the accident report, or in the narrative findings for a special assessment. It is not fair to raise such a charge for the first time at a trial but, as stated, the inspector's testimony regarding this practice was unconvincing in any event.

The are two versions of what actually went on at the accident site just before the premature explosion. One version is supplied by the victim himself and the other version is supplied by the inspector who examined the site after the accident and interviewed the victim. I think it fairly obvious that the victim had not recovered from the explosion effects at the time of his interview with the inspector.

The victim, Mr. Tate, was not too clear in his testimony about the distinction between the main face area and what he called the slab round. From hearing his testimony I thought he put fifty or so loaded holes in the face and about twenty in the rib right next to it. I thought he lit all of the spitters with a butane torch and had his safety test fuse on the ground at his feet. The safety test fuse was merely a fuse of the same length as the others that he lit so that he could observe it burning and see how much time he had left before his rounds would go off. If he lit the safety fuse first and if it burned at the proper rate it should complete its burning before any of the fuses that he lit with the torch and spitter would ignite and explode the detonator caps. From the inspector's testimony it turns out that the so-called slab round was thirty or fifty feet away from the face round and was not in a direct line. In other words the entry after the slab area turned slightly to the right. The inspector says that Mr. Tate told him he wired up the face area correctly with spitter and ignitor cord and was using his torch to light the spitters in the slab area when the face explosions went off. But regardless of which version actually occurred, Mr. Tate was well aware of the hazard involved in lighting the spitters with a torch rather than ignitor cord. The hazard involved in lighting the spitters with a torch rather than ignitor cord is that you have to stand there and light each spitter, whereas if you use ignitor cord you just light it and leave. Using the ignitor cord, as the inspector said Mr. Tate did, to light spitters and then stand there and make sure the spitters are properly lighted does not make sense. I do not believe he did that. But Mr. Tate did light spitters with his torch, which while not prohibited, is not as safe as using ignitor cord. He did it, because he was in a hurry and trying to get some extra production so that his crew would get an incentive bonus.

The standard states that the blaster should be aware of the hazards involved and I think it clear that Mr. Tate was aware. He deliberately chose to ignore safety precautions. He was however, an experienced blaster and I can not find that he failed to understand the hazards involved. Citation No: 576779 is vacated and the case is DISMISSED.

Charles C. Moore, Jr.,
Administrative Law Judge

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~FOOTNOTE_ONE

1 Technically even explosions have a propagation rate but it is not on the scale involved here. None of the items involved in this case have a burning rate of 4.5 seconds per foot and only the safety fuse has a burning rate of 45 seconds per foot.