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

MATHIES COAL COMPANY,
CONTESTANT

v.

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

Contest of Citation

Docket No. PENN 82-209-R
Citation No. 1145237 3/30/82

Mathies Mine

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

v.

MATHIES COAL COMPANY,
RESPONDENT

Civil Penalty Proceeding

Docket No. PENN 82-260
A.C. No. 36-00963-03201

Mathies Mine

DECISION

Appearances: Robert M. Vukas, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for
Contestant/Respondent, Mathies Coal Company
Agnes M. Johnson-Wilson, Esq., Office of the
Solicitor, U. S. Department of Labor,
Philadelphia, Pennsylvania, for Respondent/
Petitioner, MSHA

Before: Judge Merlin

Statement of the Case

The first docket number captioned above is a notice of
contest filed by Mathies Coal Company under section 105(d) of the
Act to challenge the validity of a citation issued by an
inspector of the Mine Safety and Health Administration for an
alleged violation of 30 C.F.R. 75.200. The second docket
number is a petition for the assessment of a civil penalty filed
by the Secretary of Labor under section 110(a) of the Act for the
violation alleged in the citation.

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The hearing was held as scheduled on September 8, 1982. Documentary exhibits and oral testimony were received from both parties. The cases were consolidated for hearing and decision with the consent of the parties (Tr. 4). At the conclusion of the hearing, I directed the filing of written briefs simultaneously by both parties within 21 days after receipt of the transcript (Tr. 102).

The Mandatory Standard

Section 75.200 of the mandatory standards, 30 C.F.R. 75.200 provides as follows:

75.200 Roof control programs and plans.

Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. The roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining system of each coal mine and approved by the Secretary shall be adopted and set out in printed form on or before May 29, 1970. The plan shall show the type of support and spacing approved by the Secretary. Such plan shall be reviewed periodically, at least every 6 months by the Secretary, taking into consideration any falls of roof or ribs or inadequacy of support of roof or ribs. No person shall proceed beyond the last permanent support unless adequate temporary support is provided or unless such temporary support is not required under the approved roof control plan and the absence of such support will not pose a hazard to the miners. A copy of the plan shall be furnished to the Secretary or his authorized representative and shall be available to the miners and their representatives.

The Cited Condition or Practice

Citation No. 1145237 cites a violation of 30 C.F.R. 75.200 for the following condition:

There was loose drawn roof at intersection in No. 2 track haulage entry surveyor spad No. 29á721 which measured approximately 80 ft. [in length] 16 ft. in width and was drawn approximately 2 inches across crosscut. Section foreman Martin Nogy.

Stipulations

At the hearing, the parties agreed to the following stipulations which were accepted (Tr. 5):

1. Mathies Coal Company is the owner and operator of the Mathies Mine.
2. The operator and the Mathies Mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.
3. The presiding administrative law judge has jurisdiction over this proceeding.
4. The inspector who issued the subject citation was a duly authorized representative of the Secretary.
5. A true and correct copy of the subject citation was properly served upon the operator.
6. All witnesses are accepted generally as experts in coal mine health and safety.
7. Imposition of any penalty in this proceeding will not affect the operator's ability to continue in business.
8. The alleged violation was abated in good faith.
9. The history of prior violations is noncontributory with respect to the amount of any civil penalty that may be assessed.
10. The operator is large in size.

Discussion and Analysis

The inspector testified that on the track haulageway there was loose or deteriorated roof, described as a cutter, for 80 feet near the the rib on the tight side and along the wide side for 40 feet. He also testified that there was a 2-inch wide crack in the roof in the intersection extending across the 16-foot haulageway from the center to one side. According to the inspector the crack was in a clay vein and a clay vein is an indication most of the time of a deteriorated roof. Wedges were missing from two posts on the tight side outby the intersection. In addition, the inspector noted sloughage of the coal on the tight side which was being cleaned up at the time he saw the condition. The sloughage appeared to him to be of recent origin and in his opinion was an indication of pressure. Based upon what he saw the inspector believed that there was a reasonable likelihood of a roof fall which could result in death or crushing injury. The shift foreman told him that the operator knew of the condition and intended to install steel beams. The inspector felt he could not wait for the beams to be installed. The inspector admitted that there were eight to ten posts installed along the tight side of the entry outby the intersection and that the operator had done far more bolting than was required or necessary in the intersection. The inspector did not know the length of the bolts installed and did not ask because when he saw the separation in the roof and the stress he figured that whatever bolting had been done was not enough. The inspector also did not know if the crack along the clay vein had been present before the additional roofbolting had been done and he did not know if the crack had opened up more after the rebolting.

He expressed the view that the sloughage indicated stress although he could not say whether the sloughing occurred before the additional bolts were put in. He had not seen the roof condition before he cited it or he did not recall seeing it.

The operator's shift foreman testified that about 20 to 22 days before the citation was issued this area had been mined through and the clay vein had been noticed indicating to him abnormal roof conditions which needed additional support. About a week after the original mining the operator installed 35 to 40 additional 12-foot roof bolts in the intersection and along the cutter on the rib for a distance of 120 feet. According to the shift foreman, after rebolting and until the citation was issued there was no change in the

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condition of the roof. In particular, the 2-inch gap along the clay vein was present at the time of rebolting and remained unchanged thereafter with no widening. Also the deteriorated roof along both ribs had been present at the time of rebolting and he did not see any change in this from the day of rebolting until the citation was issued. The shift foreman went through the area twice a week or more. With respect to the future installation of steel beams, the shift foreman testified that the operator was going to put a ramp in the next intersection in by this area which would necessitate taking more off the corner and thereby taking some support from the subject area. Steel beams were going to be installed for this reason and not because of the subnormal nature of the roof. The shift foreman admitted that he did not tell the inspector this was the reason steel beams were going to be installed. The shift foreman did not know exactly when the sloughing occurred, but he stated that at the time of rebolting there already was some sloughage from the ribs and that rebolting itself had caused some more. The sloughage had not been cleaned up at the time of rebolting.

The operator's assistant supervisor who was the walkaround accompanying the inspector on the day the citation was issued, corroborated the shift foreman's testimony. He also stated that right after the area was mined through, a determination was made to install extra roof supports and this was done on March 13. The assistant supervisor agreed with the shift foreman that there was no change whatsoever in the roof along the cutter or in the crack, from the time of rebolting until the citation was issued. He further testified that he made it a specific point to go to the area and recheck it, that he went at least twice a week and that after the rebolting there was no additional sloughage. The assistant supervisor explained that the men whom the inspector saw cleaning up were removing sloughage which had been there from the time of rebolting. According to the assistant supervisor this was not a totally abnormal time for sloughage to be left.

Finally, the operator's underground mine foreman testified that he had ordered the additional rebolting and he agreed with the statements of the shift foreman and the assistant supervisor about the rebolting. He also agreed that the roof including the gap in the clay vein had not changed after rebolting. He stated that some of the sloughage had been present before rebolting and some had been caused by the rebolting itself.

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The citation alleges a violation of 30 C.F.R. 75.200 which requires, inter alia, that the roof and ribs of all active underground roadways, travelways and working places be supported or controlled adequately to protect a person from falls of the roof or ribs. There is no contention that the operator failed to comply with its roof control plan.

No dispute exists as to the condition of the roof when the inspector cited it. Therefore, I accept the inspector's description of the roof at that time. The issue presented is whether these conditions demonstrated that the roof was not adequately supported. I conclude they did not. The inspector knew additional bolting had been done but he did not believe the roof was adequately supported because of the sloughage, cutters and clay vein. He did not however, know the chronological sequence of relevant events affecting the nature and status of the roof. In particular, he did not know when the sloughing, clay vein and cutters occurred in relation to the rebolting. His conclusion that the roof was subject to stress and needed support was based upon the assumption that the sloughing and other conditions happened after the installation of additional roof supports. This assumption is shown to be wrong by the operator's evidence which demonstrates that there had been no change in the condition of the roof after rebolting and that the sloughage being cleaned up when the citation was issued was not of recent origin. The testimony of the operator's witnesses is consistent on this crucial point. Moreover, the operator's witnesses had been in the area from the time it was first mined until the citation was issued, whereas the inspector testified that he had not seen the intersection prior to his issuance of the citation or that at the very least he did not recall seeing it previously.

I find the operator's evidence regarding the condition of the roof before and after rebolting persuasive and I accept it. Based upon this evidence I conclude the additional bolting was sufficient to support the roof and that there had not been further deterioration after rebolting. The fact that the inspector was mistaken in believing that the steel beams were going to be installed because of the condition of the roof may not have been his fault, but this circumstance cannot alter the fact that the evidence convincingly demonstrates the roof was adequately supported by the rebolting.

I have reviewed the briefs. To the extent they are inconsistent with this decision they are rejected.

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ORDER

In light of the foregoing, it is Ordered that the operator's notice of contest be Granted.

It is further Ordered that the petition for the assessment of a civil penalty be Dismissed.

Paul Merlin
Chief Administrative Law Judge