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SOL (MSHA) V. JIM WALTER
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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 PROCEEDINGS

Docket No. SE 82-52
A.C. No. 01-00758-03132 V

v.

No. 3 Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

Appearances: Deborah Greene, Esq., Office of the Solicitor, U.S.
Department of Labor, Birmingham, Alabama, for Petitioner
Robert W. Pollard, Esq., Birmingham, Alabama, for Respondent

DECISION

Before: Judge Melick

This case is before me upon the Petition for Assessment of Civil Penalty filed by the Secretary of Labor pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 40 U.S.C. 801 et seq., the "Act," for one violation of the regulatory standard at 30 C.F.R. 75.503. The general issue before me is whether Jim Walter Resources, Inc. (Jim Walter) has violated the cited regulatory standard and if so, whether that violation was "significant and substantial" as defined in the Act and as interpreted by the Commission in Secretary v. Cement Division, National Gypsum Company, 3 FMSHRC 822. If it is determined that a violation has occurred, it will also be necessary to determine the appropriate penalty to be assessed. Hearings on these issues were held in Birmingham, Alabama, on November 30, 1982.

The order at issue, No. 758262, reads as follows:

A non-permissible three-phase filter capacitor was installed on the outside of the No. 50 Joy shuttle car reel housing and not in an explosion proof compartment. Car was observed hauling coal out of the face of No. 4 working place.

The cited standard, 30 C.F.R. 75.503, requires, in essence, that all electric face equipment operating in by the last open crosscut be "permissible". Permissible electric face equipment, as defined in 30 CFR 75.(2)(i), is equipment in which the electrical parts, including associated electrical equipment, components, and accessories, are designed, constructed, and installed in accordance with specifications of the Secretary, to assure that the equipment will not cause a mine fire or mine explosion.

There is no dispute in this case that the three-phase filter capacitor here cited was an electrical component of electric face equipment and was not installed in an explosion and fire proof compartment as required by the cited standard. John Trusik, an electrical engineer employed at the Jim Walters No. 3 Mine, conceded that it was not "permissible" to have the filter capacitor installed as it was in this case and that indeed it constituted a safety hazard. The cited violation is therefore proven as charged. The only issues remaining then are whether that violation was "significant and substantial" and the amount of penalty to be assessed.

A violation is "significant and substantial" if, based upon the particular facts surrounding the violation, there exists a reasonable likelihood that the hazard contributed to would result in an injury or illness of a reasonably serious nature. National Gypsum, supra, 3 FMSHRC at 825. The test essentially involves two considerations: the probability of resulting injury, and the seriousness of resulting injury. MSHA resident coal mine inspector at the No. 3 Mine, Bobby Horton, issued the order in question on March 17, 1982. A "resident inspector" was required at the No. 3 Mine because of its history of mine accidents and high methane liberation. MSHA records show that as of January 9, 1981, the No. 3 Mine was liberating over nine million cubic feet of methane daily. Moreover, the evidence shows that there had been over twenty methane ignitions at the No. 3 Mine since it began operations in 1975 or 1976. Although Inspector Horton found only .5% to .8% methane concentrations in tests performed ten to twenty minutes before his discovery of the violation cited in this case, he opined that the possibility of sudden inundations exceeding the 5% explosive range always existed at a gassy mine such as this. According to Horton, methane concentrations in the 5% range combined with an ignition source such as the non-permissible phase filter in this case presented a serious explosion hazard. He thought it reasonable to infer that all 200 miners working on the shift could receive fatal injuries in such an explosion.

MSHA Inspector Claude Lutz further opined that coal dust and powdered coal were explosive even in the absence of methane if ignited by electric spark or arc such as could occur from the non-permissible phase filter. While Inspector Horton conceded that the methane sensor mounted on the cutting machine on which the cited filter was located was designed to cut off electrical power if the level of methane reached 2%, he noted that such monitors have been known to malfunction. In addition, Horton explained that methane concentrations in excess of 5% regularly occur in the immediate vicinity of the face as coal is cut.

On the other hand, electrical engineer John Trusik opined that the odds were "high against failure" of the non-permissible filter. He conceded, however, that there had been failures in a number of smaller filters formerly used at the mine. Under all the circumstances, I find that there did indeed exist a reasonable likelihood that the hazard of an explosion or fire would occur if the condition cited had remained uncorrected, and

that if, indeed, an explosion occurred in the No. 3 Mine, it could very well lead to the death of up to 200 miners. The violation was, accordingly, "significant and substantial". For the same reasons, I also find a high level of gravity associated with the violation.

It is also apparent from the record in this case that the operator was "grossly negligent" in allowing this known violative condition to exist. The uncontradicted evidence shows that as early as 1979, an MSHA inspector had advised Jim Walter officials of the problems relating to the use of impermissible phase filters on their electric face equipment. Two citations had been issued at the No. 3 Mine on November 18, 1981, and again on January 20 and January 21, 1982, for the same violation as cited in this case. Moreover, MSHA officials met on November 16, 1981, with officials of Jim Walter's, including company Vice President Don Schlick and the chief of maintenance for several Jim Walter's mines including the No. 3 Mine, concerning the use of impermissible phase filters. There is no dispute that the operator was then clearly informed that the use of impermissible phase filters on electric face equipment was a violation of the cited standard. In any event, electrical engineer Don Trusik admitted that the use of these filters had always been known by mine personnel to be a safety hazard. Trusik candidly admitted that, in spite of that knowledge, it was management's position that coal production was more important than the correction of that hazard. He testified in this regard that "with the amount of coal we run and the people we have down there, they will do what they have to do to move coal".

Management's attitude is further illustrated by the uncontradicted evidence that maintenance foreman Douglas Sergeant told Inspector Horton that the violations would be corrected only so long as Horton was present. Within this framework of evidence, it is clear that the operator's agents had been warned of the violation at issue and had been repeatedly cited for continuing violations in spite of such warnings. The operator has shown blatant disregard for the safety of its miners by allowing the admitted safety hazard to continue uncorrected.

In determining the amount of penalty to be assessed in this case, I am also taking into consideration that the operator is large in size and has a history of repeatedly violating the standard at issue herein. Under all the circumstances, I find that a penalty of \$2,000 is appropriate.

ORDER

Jim Walter Resources, Inc., is ordered to pay a civil penalty of \$2,000 within 30 days of the date of this decision.

Gary Melick
Assistant Chief Administrative Law Judge