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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 82-114-M
A/O No. 42-01150-05017

v.

Lucky Strike Mine

PLATEAU RESOURCES LIMITED,
RESPONDENT

DECISION

This matter is before me on the Secretary's motion to withdraw Citation 584335 and the parties' waiver of hearing and cross motions for summary decision with respect to Citation 584333. The latter came on for oral argument on the parties' stipulation of material facts not in dispute in Salt Lake City, Utah on March 23, 1983.

Citation 548335

This citation charged a violation of 30 C.F.R. 57.6-103 which provides:

Areas in which charged holes are awaiting firing shall be guarded or barricaded and posted or flagged.

The citation was issued because an area in which charged holes were awaiting firing "was not guarded or barricaded from unauthorized entry." The only warning of the existence of charged holes was the presence of an empty explosives' sack which had been hung on a wire hanging from the left rib. The Secretary's motion to withdraw is predicated on the view that the standard does not require both a physical barrier and visual warning but only one or the other and that the sack constituted a sufficient visual warning.

I do not agree. The existence of charged holes is an extra-hazardous condition that clearly warranted greater precautions than hanging an empty sack from a wire on the left rib. Such an equivocal "warning" could easily be overlooked or misunderstood.

In my view, the standard was designed to require that anyone approaching the area be confronted with both a physical barrier and

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an unmistakable visual warning of the existence of an explosives hazard. The mere hanging of an explosives' sack that may or may not have been readily observable or legible provided an inadequate warning of the hazard against which the standard was directed.

Accordingly, it is ORDERED that the motion to withdraw and dismiss be, and hereby is, DENIED. It is FURTHER ORDERED that the operator pay the amount of the penalty proposed, \$32.00, on or before Friday, April 15, 1983, unless prior thereto the operator requests an evidentiary hearing.

Citation 584333

This citation was issued for a claimed violation of 30 C.F.R. 57.6-50. This provides that in the cargo space of a conveyance containing explosives, detonating cord or detonators, no other materials shall be placed except safety fuses or properly secured, nonsparking equipment that is to be used in the handling of the explosives, detonating cord or detonators.

The stipulated facts show the citation issued because the rear compartment space of a drill buggy was found to contain (1) an uncovered powder box containing 3-1/2 boxes of explosives powder, (2) a covered plywood box that was full of detonators, (3) a metal jackleg with a pneumatic air drill on the end that weighed 70 to 100 pounds, (4) a pneumatic machine oiler of metal construction and weighing from 5 to 8 pounds, (5) solid metal drill steels 4' to 6' long and 1" in diameter, (6) molded metal strips with clamps for holding ventilation tubing in place, (7) rolls of 3/4" pneumatic hoses with metal wing nuts, and (8) metal drill bits approximately 1-3/4" by 1-1/2" long. Lying beside the box of detonators was a metal tool box containing metal chains and oil.

None of the extraneous equipment or material was "properly secured, nonsparking equipment used expressly in the handling of such explosives, detonating cord or detonators." (Stipulation, Para. 9.)

The dispositive issue is whether the term "cargo space" embraces the entire open space in the rear compartment of the drill buggy. The operator argues that it does not and that the term should be defined so as to include only the two boxes in which the explosives and the detonators were placed.

I do not agree. As the transcript shows, the Secretary persuasively pointed out that this and related standards in Part 57.6 are designed to keep the carriage, storage and placement of explosives and detonators separate from extraneous materials which might provide the source for an ignition of the detonators and fire of the explosives. With this understanding of the hazard against which the standard is directed, I have no difficulty in accepting the plain meaning of the term "cargo space" as embracing the entire rear cargo compartment of the drill buggy.

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For these reasons, I find the Secretary's motion should be granted and the operator's denied.

I further find that the violation charged did, in fact, occur; that it posed a significant and substantial risk of death or a disabling injury and that it resulted from the operator's negligent failure to understand that safety demands some sacrifice in efficiency. Finally, after giving due weight to the operator's prompt abatement, its size and history of prior violations, as stipulated to by the parties, I conclude that the amount of the penalty warranted is that proposed by the Secretary, namely, \$98.00. Let me add, however, that this mine does not have a good safety record, that I consider the penalty assessed minimal, and that in the event of a future violation of this or any of the related explosives standards a much heavier penalty may be warranted.

Accordingly, it is ORDERED that the operator pay the penalty assessed, \$98.00, on or before April 15, 1983.

Joseph B. Kennedy
Administrative Law Judge