

CCASE:  
SOL (MSHA) V. U.S. STEEL MINING  
DDATE:  
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TTEXT:

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. PENN 82-321  
A.C. No. 36-03425-03503

v.

Maple Creek No. 2 Mine

U.S. STEEL MINING CO., INC.,  
RESPONDENT

DECISION

Appearances: Covette Rooney, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania, for Petitioner Louise Q. Symons,  
Esq., Pittsburgh, Pennsylvania, for Respondent

Before: Judge Broderick

STATEMENT OF THE CASE

In the above proceeding, the Secretary seeks civil penalties for seven alleged violations of mandatory safety standards. The violations were charged in citations issued by the Secretary, each of which alleged that the violations charged were significant and substantial as that term is used in the Mine Act. Respondent admits that the violations occurred, but denies that they were significant and substantial, and contests the penalties proposed. Pursuant to notice, the case was heard in Uniontown, Pennsylvania, on April 28 and 29, 1983. Francis Wehr, Cleutas McConville, Wayne Schneider, and Joseph Baniak testified on behalf of Petitioner; David Coffman, Paul Shipley, and Gary Stevenson testified on behalf of Respondent. Each of the parties has filed a posthearing brief. Based on the entire record and considering the contentions of the parties, I make the following decision.

ISSUES

1. Are the violations cited of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard?

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2. What is the appropriate penalty for each violation?

#### FINDINGS AND CONCLUSIONS COMMON TO ALL VIOLATIONS

1. At all times pertinent to this proceeding, Respondent was the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 2 Mine.

2. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the Maple Creek No. 2 Mine, and the undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of this proceeding.

3. The subject mine has an annual production of 872,848 tons of coal. Respondent has an annual production of 15,046,082 tons. Respondent is a large operator.

4. The assessment of civil penalties in this proceeding will not affect Respondent's ability to continue in business.

5. Between June 21, 1980 and June 20, 1982, there were 538 paid violations at the subject mine. Of these, 42 were violations of 30 C.F.R. 75.1403; 13 were violations of 30 C.F.R. 75.605; and 56 were of 30 C.F.R. 75.200. I conclude that this history is not such that penalties otherwise appropriate should be increased because of it.

6. In the case of each citation involved herein, the violation was abated promptly and in good faith.

7. Whether a cited violation is properly checked as a significant and substantial violation is per se irrelevant to a determination of the appropriate penalty to be assessed. The penalties hereinafter assessed are based on the criteria in section 110(i) of the Act.

CITATION NOS. 1250086, 1250091, 1250093, 0829641, AND 0829647  
ISSUED MAY 25, 1982, JUNE 1, 1982, JUNE 2, 1982, JUNE 4, 1982 AND  
JUNE 9, 1982

Each of the above citations was issued for violation of the same notice to provide safeguard. The safeguard notice was issued July 26, 1973, and required that "all track locomotives operated in this mine shall be equipped with a suitable lifting jack and bar." The purpose of a lifting jack and bar is to assist in putting a derailed locomotive back on the track. The requirement that a lifting jack and bar be available is designed to prevent or mitigate two hazards: (1) in the absence of such equipment, miners might use other and less safe means to slew the derailed locomotive back on track; (2) it may be more difficult to free a miner who is pinned or trapped by a haulage accident or derailment without such equipment. The locomotives involved herein all had "rerailers" but

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in some circumstances these devices are not effective to rerail locomotives. Derailments are common at the subject mine. Injuries have occurred at the mine in attempting to rerail locomotives without a lifting jack and bar. Injuries have occurred at the subject mine due to derailments where a lifting jack and bar might have mitigated their severity. I conclude that all of the violations here were of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard. The violations were serious. There is no evidence that mine management was aware of the violations, but proper inspection would have revealed them. They resulted from Respondent's negligence. I conclude that an appropriate penalty for each violation is \$100. There is no support in the record for Petitioner's proposal to assess a higher penalty for the violation charged in Citation No. 1250086.

CITATION NO. 1250100 ISSUED JUNE 4, 1982

This citation was issued because a clamp was missing from the trailing cable of a shuttle car. The clamp is designed to protect the cable, to keep it from pulling off the reel. Should that occur, the possibility of a spark occurring when the cable leads come apart, or the possibility of the trailing cable energizing the shuttle car are very remote. I conclude that the violation was not significant and substantial. I conclude further that it was not serious and Petitioner has not shown that it was caused by Respondent's negligence. I conclude that an appropriate penalty for this violation is \$30.

CITATION NO. 0829648 ISSUED JUNE 10, 1982

This citation charges a violation of the approved roof-control plan and therefore of 30 C.F.R. 75.200, in that the diagonal distance in the intersection of a room was 34 feet. The approved plan provides that whenever the sum of the diagonals exceeds 62 feet or either diagonal exceeds 32 feet, additional supports shall be provided. There was a slip or fault in the roof. The roof bolting was on pattern. The roof in the area in question had a drummy sound. The excessive width causes a situation of unsupported roof and, because of the abnormal roof conditions, created a likelihood of a roof fall. The failure to comply with the roof control plan under these circumstances could result in a roof fall which could seriously injure or kill miners. I conclude that the violation was significant and substantial. It was serious and was known or should have been known to Respondent. Therefore, it resulted from Respondent's negligence. I conclude that an appropriate penalty for this violation is \$250.

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ORDER

Based upon the above findings of fact and conclusions of law, Respondent is ORDERED to PAY within 30 days of the date of this decision the following penalties for the violations found herein to have occurred:

CITATION	PENALTY
1250086	\$ 100
1250091	100
1250093	100
0829641	100
0829647	100
1250100	30
0829648	250
Total	\$ 780

James A. Broderick  
Administrative Law Judge