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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. PENN 82-336
A.C. No. 36-00970-03504

v.

Maple Creek No. 1 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

This proceeding involves a single citation alleging a violation of the mandatory safety standard contained in 30 C.F.R. 75.517. Respondent concedes that the violation occurred but denies that it was significant and substantial as the citation charges. Pursuant to notice, the case was called for hearing in Uniontown, Pennsylvania, on April 29, 1983. William P. Brown testified on behalf of Petitioner; Gary Stevenson and Samuel Curtis testified on behalf of Respondent. Both parties have filed posthearing briefs. Based on the entire record, and considering the contentions of the parties, I make the following decision.

FINDINGS OF FACT

1. Respondent is the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 1 Mine.

2. The subject mine has an annual production of 541,835 tons of coal, and Respondent has an annual production of 15 million tons. Respondent is a large operator.

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3. The imposition of a penalty in this case will not affect Respondent's ability to continue in business.

4. In the 24 months prior to May 18, 1982, Respondent had 538 violations of mandatory health and safety standards, of which 28 were of 30 C.F.R. 75.517. This is a moderate history of prior violations and penalties otherwise appropriate should not be increased because of it.

5. Citation No. 1146357 was issued to Respondent on May 18, 1982, because of damage to the outer jacket of a trailing cable to a continuous mining machine. The damage consisted of a 6 inch cut in the cable jacket, 2 inches of which were covered by tape. The ground wire was exposed. There was no visible damage to the insulation covering the three power wires.

6. The miner was cutting coal at the time the citation was issued.

7. The trailing cable is dragged along behind the miner on the mine floor as the miner moves from place to place, and is subject to damage upon such movement.

8. The violation was abated promptly and in good faith.

ISSUES

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

2. What is the appropriate penalty for the violation?

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the subject mine, and the undersigned administrative law judge has jurisdiction over the parties and subject matter of this proceeding.

2. The condition cited by the Federal Mine Inspector on May 18, 1982, described in Finding of Fact No. 5 was a violation of the mandatory standard contained in 30 C.F.R. 75.517.

3. The violation found above was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

DISCUSSION

A continuous miner trailing cable is subject to extraordinary abuse in the harsh atmosphere of an underground coal mine. For this reason, it has extraordinary protection: a thick outer jacket of reinforced lead cured neoprene, inside of which is a bare ground wire and three conductor wires, each of which is insulated with ethylene-propylene rubber. From the standpoint of miner safety, both the outer jacket and the conductor wire insulation are important. The area of the mine where the continuous miner is operating is characteristically wet. Water can of course enter through a break in the outer jacket. If there is a pin hole in the inner insulation through which water seeps, this could result in cutting the power by tripping the ground fault. However, it also may cause electric shock to a miner handling the cable, particularly if he is standing in water. Following the test in the National Gypsum case, 3 FMSHRC 822 (1981), I conclude that the latter event is reasonably likely to occur. Should it occur, it would result in an injury of a reasonably serious nature.

Whether a violation is significant and substantial must be determined as of the time the citation is issued. It cannot be assumed either that it will be corrected or that it will not be corrected. The condition cited by the inspector in the context of continued normal mining operations, was of such nature as could contribute to the cause and effect of a mine safety hazard.

4. The violation was serious and since the cable damage was visible and should have been observed on examination, it resulted from Respondent's negligence.

5. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$175.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED

1. The citation No. 1146357 including its designation as significant and substantial is AFFIRMED.

2. Respondent shall within 30 days of the date of this decision pay the sum of \$175 for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge