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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 83-43
A.C. No. 36-00970-03506

v.

Maple Creek No. 1 Mine

UNITED STATES STEEL MINING
CO., INC.,
RESPONDENT

DECISION

Appearances: Matthew J. Rieder, 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 two citations alleging violations of mandatory safety standards contained in 30 C.F.R. 75.503 and 30 C.F.R. 75.200. Both violations were originally designated as "significant and substantial," but at the hearing counsel for Petitioner conceded that the violation of 30 C.F.R. 75.503 was in fact not significant and substantial. In its answer and by a clear statement in open court, Respondent has admitted that the violations occurred but denies that there were significant and substantial and contests the penalties proposed. Pursuant to notice, the case was heard in Uniontown, Pennsylvania, on June 21, 1983. William R. Brown and Francis E. Wehr, Jr. testified on behalf of Petitioner; Ira Seaton, Jr. 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.

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.

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2. The subject mine is a large mine and the Respondent is a large operator.

3. The imposition of penalties in this proceeding will not affect Respondent's ability to continue in business.

4. Between August 17, 1980 and August 16, 1982, Respondent in all its mining operations had 4,245 paid violations of mandatory health and safety standards. Of these violations, 51 were of 30 C.F.R. 75.503, and 55 were of 30 C.F.R. 75.200. Considering the size of Respondent's operation, this is a moderate history of prior violations, and penalties otherwise appropriate should not be increased because of it.

5. Citation No. 1146360 was issued to Respondent on May 21, 1982, alleging a violation of 30 C.F.R. 75.503 because a plug on a scoop was not padlocked to the receptacle.

6. The hazard caused by the violation cited was the possibility of an ignition if the plug was accidentally pulled from the receptacle. The scoop was in a section which had been idle for approximately 6 months and the occurrence of an ignition was remote.

7. Citation No. 2012243 was issued to Respondent on September 16, 1982, alleging a violation of 30 C.F.R. 75.200 because the approved roof control plan was not being complied with in the 7 flat left section MMV006. Only five temporary supports had been installed in the 1 butt cut, 11 room 2 split, which cut was 12 feet deep. For such a cut, the plan required six temporary supports.

8. The citation was issued at 8:55 a.m., prior to any work being performed on the day shift. The five temporary supports had been set during the previous shift (12:00 m. to 8:00 a.m.).

9. The hazard caused by the violation was an area of unsupported roof.

10. There was a slip in the roof and the roof was loose and drummy sounding.

11. Both violations were abated promptly and in good faith.

ISSUES

1. Was the violation charged in Citation No. 2012243 properly designated significant and substantial?

2. What are the appropriate penalties for the violations?

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 violation of 30 C.F.R. 75.503 charged in Citation No. 1146360 was not of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

3. The violation was moderately serious because it could have resulted in serious injury if an ignition occurred.

4. There is no evidence that the violation was due to Respondent's negligence.

5. Whether a cited violation is properly designated as a significant and substantial violation is per se irrelevant to a determination of the appropriate penalty to be assessed.

6. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$100.

7. The violation of 30 C.F.R. 75.200 charged in Citation No. 2012243 was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

DISCUSSION

Setting fewer supports than are called for in the approved minimum roof control plan results pro tanto in an area of unsupported roof. Unsupported roof can fall and result in serious injury to miners. Following the test in the National Gypsum case, 3 FMSHRC 822 (1981), I conclude that a roof fall and serious injury is reasonably likely to occur. Therefore, the violation was significant and substantial. Respondent argues that if no temporary supports had been set by the midnight shift, no violation would have been cited, since it would be assumed that the day shift would set the posts before beginning to bolt. However, the absence of a single support could easily be overlooked. In fact the absence of the support was not noted in the preshift examiner's book. The absence of all temporary supports would more likely result in a roof fall, but it would also be more evident, and miners would be much less likely to travel under the roof.

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8. The condition was serious. It was known or should have been known to Respondent: The midnight shift foreman and the preshift examiner on the day shift should have noted it. Therefore, it resulted from Respondent's negligence.

9. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$250.

ORDER

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

1. The violation of 30 C.F.R. 75.503 described in Citation No. 1146360 was not significant and substantial.

2. Respondent shall within 30 days of the date of this decision pay the sum of \$100 for the violation of 30 C.F.R. 75.503 found herein to have occurred.

3. The violation of 30 C.F.R. 75.200 described in Citation No. 2012243 was properly designated as significant and substantial.

4. Respondent shall within 30 days of the date of this decision pay the sum of \$250 for the violation of 30 C.F.R. 75.200 found herein to have occurred.

James A. Broderick
Administrative Law Judge