

CCASE:
SOL: (MSHA) U.S. STEEL MINING
DDATE:
19831004
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 83-39
A.C. No. 36-05018-03505

v.

Cumberland Mine

U.S. STEEL MINING COMPANY, 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

In the above proceeding the Secretary seeks civil penalties for nine alleged violations of mandatory safety standards. Each violation was cited as significant and substantial. However, with respect to Citation No. 2011904, alleging a violation of 30 C.F.R. 75.1722, the Secretary in open court deleted the significant and substantial designation and proposed that the violation be settled. With respect to Citation No. 2012075, alleging a violation of 30 C.F.R. 75.606 the Secretary in open court deleted the significant and substantial designation. With respect to Citation No. 2011908, alleging a violation of 30 C.F.R. 75.903, the Secretary moved that the citation be vacated and no penalty be imposed for the cited condition. Respondent admits that the remaining 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 June 21 and June 22, 1983. Robert W. Newhouse and Clarence D. Moats testified on behalf of Petitioner; Robert Alan Bohach, Mark Skiles, and Chuck Lemunyon testified on behalf of Respondent. Each party was afforded the opportunity to file a posthearing brief. Respondent filed such a brief. Based on the entire record and considering the contentions of the parties, I make the following decision.

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ISSUES

1. Whether the violations are 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 each violation?

FINDINGS AND CONCLUSIONS COMMON TO ALL VIOLATIONS

1. Respondent is the owner and operator of an underground coal mine in Greene County, Pennsylvania, known as the Cumberland Mine.

2. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the subject mine and I have jurisdiction over the parties and subject matter of this proceeding.

3. Respondent is a large operator and the subject mine is a large mine.

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

5. Between August 1980 and August 1982, Respondent had a history of 50 paid violations of 30 C.F.R. 75.1403, 2 violations of 30 C.F.R. 75.601, 66 violations of 30 C.F.R. 75.400, no violations of 30 C.F.R. 75.1106-4, 8 violations of 30 C.F.R. 75.606, and 11 violations of 30 C.F.R. 75.1722(a). This is a moderate history of previous violations and penalties otherwise appropriate should not 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 designated 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.

8. All of the contested violations were abated promptly and in good faith.

9. The subject mine is a gassy mine and liberates over one million cubic feet of methane in a 24-hour period. Methane ignitions have occurred at the subject mine.

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CITATION NOS. 2012062, 2012064 AND 2012073

Each of the above citations charged a violation of 30 C.F.R. 75.1403 (notice to provide safeguards) because of inoperativ or empty sanding devices on haulage equipment in the subject mine. On September 14, 1978, a notice was issued requiring that each self propelled personnel carrier should be provided with well maintained sanding devices. On April 30, 1980, a notice was issued requiring that all track mounted self-propelled personnel carriers and locomotives be equipped with properly installed and well-maintained sanding devices, except that personnel carriers (Jitneys) which transport not more than 5 persons need not be so equipped.

Citation No. 2012062, issued August 4, 1982, charges that on a mantrip, three sanders were empty and one was plugged with wet sand. (There are four sanders on the mantrip - one for each wheel). The mantrip had been used to transport the nine person crew into the section prior to the citation being issued. The rails were damp in some places, there was a slight grade in some areas, and people were working on the haulage. At times the rails may be wet. The mantrip had a maximum speed of 12 to 14 miles per hour. It has a hand operated mechanical brake, and can also be stopped by reversing the directional controller.

Citation No. 2012064, also issued on August 4, 1982, charges that the sanders on another mantrip were inoperative. This mantrip had been operated on wet track for about 400 feet because of a broken water line. Seven miners were transported on this mantrip.

Citation No. 2012073, issued on August 5, 1982, charges that sanders in a seven person mantrip were empty. Although different mantrips were involved, the section foreman in charge of the crew being transported was the same section foreman involved in Citation No. 2012062.

The purpose of requiring operating sanding devices on haulage vehicles is to give better traction to facilitate stopping and to round curves and climb grades at a safe speed. Although the equipment is operated a low speed, a sudden stop may be necessary for many reasons, e.g., persons or objects on the track, a switch with a defective reflector signal. Wet tracks or ascending or descending grades may require sand for proper traction. The failure to have operative sanding equipment is likely to result in injuries of a reasonably serious nature. The violations are significant and substantial. The violations were serious and resulted from Respondent's negligence. The violation charged in Citation No. 2012073 was the result of aggravated negligence. Based on the criteria in section 110(i) of the Act, I conclude that appropriate penalties for the violations are \$200, \$200, and \$300.

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CITATION NO. 2012065

This citation, issued August 4, 1982, charges a violation of 30 C.F.R. 75.601 because the disconnecting devices for the trailing cables on a shuttle car and a continuous miner were not properly identified or tagged to correspond with the receptacles at the load center. The mandatory standard, which is a statutory provision, requires that "disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected." The hazard resulting from the violation is that someone could contact an energized cable thinking it was disconnected, or could inadvertently plug in the wrong cable. The plugs for the continuous miner cable and the shuttle car cable are very different in size and appearance, and could not be confused with one another. However, there were other shuttle cars and the disconnecting device for the shuttle car cables could be confused if one was not properly marked and identified. The load center at the subject mine has a keying system which is a physical means to prevent a plug from being inserted in the wrong receptacle. However, the keys are often taken off the cables, and it is not known whether keys were present on the day the citation was issued. Mechanics who work on cables are instructed to lock out the cable. If a break occurs in a power lead, the power would be cut by the ground continuity check. However, it is possible to have a bare wire not cut, without interrupting the continuity.

The question whether this violation is significant and substantial is a close one, but considering the large number of cables and power conductors in the mine, and the severe consequences which might ensue (electrocution), I conclude that the violation was significant and substantial. It was a serious violation, and should have been known to Respondent. Therefore, Respondent was negligent. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$250.

CITATION NO. 2012066

This citation, issued August 4, 1982, charges a violation of 30 C.F.R. 75.400 because of an accumulation of dry coal, float coal dust, oil and grease in the operator's compartment, behind the electric motors for the cutting head and around the electric cables on a continuous mining machine. The machine was being trammed into a working place in the No. 4 entry at the time the citation was issued. The hazard created by this violation is that these accumulations are combustible and could propagate a mine fire. The methane monitor and the water sprays on the miner were working properly. However, the coal that was packed around the

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motors would prevent the water sprays from reaching the motors in case of a fire. The accumulation in the operator's compartment was approximately 3 inches deep. The accumulation around the motor was packed and not easily measured. It would have taken several shifts to accumulate. The area of the mine in which the citation was issued recorded a maximum of 0.2 percent methane on the day in question. The continuous miner motor is water cooled and has thermal strips designed to shut off the motor if it overheats.

Accumulation of combustible materials in a coal mine is likely to contribute to a mine fire or explosion in a mine that liberates methane. The violation was significant and substantial. It was a serious violation and resulted from Respondent's negligence. I conclude that an appropriate penalty for this violation is \$300.

CITATION NO. 2012074

This citation, issued August 9, 1982, charges a violation of 30 C.F.R. 75.1106-4 because two compressed gas cylinders were standing along the shuttle car roadway without being secured from falling.

The hazard created by this violation is that the valve could be broken or the cylinders ruptured, releasing the compressed gas causing the cylinders to become as missiles. The section was preparing to begin a new shift. Both cylinders were in bags. The oxygen cylinder was capped and the acetylene cylinder had a recessed valve. I conclude that the cylinders could have been knocked over by a shuttle car, or other force, and could have been ruptured. If one or both were ruptured, serious injuries would likely occur. I conclude that the violation was significant and substantial. It was a serious violation and was caused by Respondent's negligence since it was evident to visual inspection. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$200.

CITATION NO. 2012075

This citation, issued August 9, 1982, charges a violation of 30 C.F.R. 75.606 because the trailing cable for a construction miner was not adequately protected to prevent damage by mobile equipment. There was evidence that the cable had been run over, but there was no visual evidence of damage to the cable and a continuity check showed no damage to the power conductors. The cable was not energized. The cable had apparently fallen from hangers along the rib.

Petitioner stated that the violation was not significant and substantial. I conclude that it was not serious. It should have been observed by Respondent, however, on a preshift examination. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$50.

ORDER

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

1. Citation Nos. 2012062, 2012064, 2012073, 2012065, 2012066, 2012074 are AFFIRMED as properly charging significant and substantial violations.
2. Citation Nos. 2011904 and 2012075 charge violations not properly designated as significant and substantial.
3. Citation No. 2011908 is VACATED and the penalty petition is dismissed with respect to it.
4. Respondent shall within 30 days of the date of this order pay the following penalties for violations found herein to have occurred:

Citation	Penalty
2011904	\$ 20
2012062	200
2012064	200
2012073	300
2012065	250
2012066	300
2012074	200
2012075	50
Total	\$1,520

James A. Broderick
Administrative Law Judge