

CCASE:  
SOL (MSHA) V. HELVETIA COAL  
DDATE:  
19831005  
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 81-157  
A.C. No. 36-00917-03092

v.

Lucerne No. 6 Mine

HELVETIA COAL COMPANY,  
RESPONDENT

DECISION

Appearances: David T. Bush, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner William M. Darr, Esq., Helvetia Coal Company, Indiana, Pennsylvania, for Respondent

Before: Judge Fauver

This proceeding was brought by the Secretary of Labor under Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., for assessment of a civil penalty for an alleged violation of a mandatory safety standard. The case was heard at Pittsburgh, Pennsylvania.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times Helvetia Coal Company (Respondent) operated an underground coal mine known as Lucerne No. 6 Mine, which produced coal for sale or use in or substantially affecting interstate commerce.

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2. On February 27, 1981, MSHA Inspector William R. Collingsworth and his supervisor, John L. Daisley, conducted an inspection at Lucerne No. 6 Mine. As they prepared to go underground, Inspector Collingsworth noticed a discrepancy between the lamps in the lamp rack and the metal tags on the check-in board used to indicate who was underground. After an investigation, the inspector and his supervisor determined that twelve miners were underground although the check-in tags corresponding to their lamp numbers were still on the check-out board. They also found that twenty miners were not present on the mine property although check-in tags on the check-in board indicated they were underground.

3. The inspector determined that the check-in/out boards constituted the established check-in, check-out system.

4. He also determined that mine management knew or should have known of the errors in the check-in/out boards system because they were readily observable and he observed six mine foreman enter or leave the mine without using the boards.

5. The inspector issued an order of withdrawal under section 104(d) (2) of the Act, charging the operator with a violation of 30 CFR 75.1715, alleging that:

The posted established check-in check-out system was not being properly used to provide a positive identification of every person underground.

The order was terminated on March 5, 1981, after the individuals who were listed in the order were reinstructed as to the proper use of the check-in, check-out system.

#### DISCUSSION WITH FURTHER FINDINGS

The main issue is whether the check-in, check-out boards were subject to the requirements of 30 CFR 75.1715, which states:

Each operator of a coal mine shall establish a check-in and check-out system which will provide positive identification of every person underground and will provide an accurate record of the persons in the mine kept

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on the surface in a place chosen to minimize the danger of destruction by fire or other hazard.

Respondent contends the lamp records were the primary check-in/out system and that the check-in, check-out boards were merely a backup for the records kept by the lamp man and, as such, were not subject to the above regulation. This contention is not supported by the evidence. The inspector observed at least six signs in the lamp house, each signed by the mine foreman, which stated: "All employees, be sure to use the check-in and check-out board before you enter the mine and after you arrive outside." The evidence shows that the check-in, check-out boards and metal tags were the primary means of identifying miners who were underground.

The lamp records might have served as a partial check-in/out system, but its primary purpose was to keep an accurate account of the miners for payroll purposes. The abbreviation "A" was written on the lamp records to indicate that a miner was "absent" for the day, and not to indicate that he was not underground. If the lamp records had been the primary identification system, the system would have been in violation of 30 CFR 75.1715, since these records did not identify all of the individuals who were underground. The lamp records dealt only with miners who reported at the beginning of a shift; they did not record individuals who entered or left the mine after a shift began. Also, the lamp records did not record management personnel who exited the mine.

I hold that Respondent violated 30 CFR 75.1715 by its improper use of the check-in, check-out boards and metal tags. A civil penalty of \$370.00 is proper in light of the statutory criteria set forth in Section 110(i), including Respondent's size and compliance history and the factors of negligence, gravity and abatement. Respondent was negligent in that the violation could have been prevented by the exercise of reasonable care. The gravity of the violation is serious. Improper use of the check-in, check-out boards and tags could result in unnecessary delays and confusion in a mine rescue attempt and contribute to death or injury to mine rescuers or persons caught in a mine disaster. Respondent showed good faith in promptly abating the condition after notice of the violation by MSHA.

CONCLUSIONS OF LAW

1. The undersigned judge has jurisdiction over this proceeding.

2. At all pertinent times, Respondent's Lucerne No. 6 Mine was subject to the provisions of the Act.

3. Respondent violated 30 CFR 75.1715 as alleged in Order No. 1042037.

Proposed findings and conclusions inconsistent with the above are rejected.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay a civil penalty of \$370.00 within 30 days from the date of this decision.

William Fauver  
Administrative Law Judge