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SOL (MSHA) V. U.S. STEEL MINING
DDATE:
19831006
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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 82-299
A.C. No. 36-00970-03502

v.

Maple Creek No. 1 Mine

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

DECISION

Appearances: Thomas A. Brown, Esq., and 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 six alleged violations of mandatory safety standards. Each of the citations alleging the violations was denominated significant and substantial. Pursuant to notice, the case was heard in Uniontown, Pennsylvania, on June 22, 1983. William R. Brown, James L. Potiseck, and Alvin R. Shade testified for Petitioner; Dan Basile, John Pacsko, Walter J. Franczyk, and Joseph Ritz testified for Respondent. Petitioner made a motion on the record to withdraw Citation No. 1250103 after testimony was taken concerning it. I ordered the citation vacated and will dismiss the penalty petition with respect to that citation. Petitioner also moved to vacate Citation No. 1250106 because of insufficient evidence to establish the violation charged. I ordered the citation vacated and will dismiss the penalty petition with respect to that citation. Each party has filed a posthearing brief. Based on the entire record and considering the contentions of the parties, I make the following decision.

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FINDINGS AND CONCLUSIONS COMMON TO ALL VIOLATIONS

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. 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. The subject mine produces 541,835 tons of coal annually. Respondent produces 15,000,000 tons of coal annually. 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. In the 24-month period prior to the issuance of the citations involved herein, Respondent had a total of 673 assessed violations. Of these, 11 were violations of 30 C.F.R. 75.515, 5 of 75.1003, 3 of 75.302 and 13 of 75.516. 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. The subject mine is classified as a gassy mine. It liberates more than one million cubic feet of methane in a 24-hour period.

8. Whether a cited violation is properly labelled 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 NO. 1250104

This citation, charging a violation of 30 C.F.R. 75.511, was issued when the inspector observed a shuttle car operator changing a light bulb on his shuttle car. The citation alleges that the shuttle car operator was not qualified to perform electrical work and that he failed to lock out and tag the disconnecting device when performing the work. Changing the bulb required the removal of the lens and the insertion of the bulb having two prongs into a socket having two holes. This seems to be a rather elementary task, but it clearly is electrical work. The inspector (and apparently

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the shuttle car operator) interpret the term "qualified person" to mean one who has had electrical training and has obtained his "electrical papers." This interpretation was not rebutted by Respondent's witnesses. It is clear that the disconnecting device was not locked out and tagged. The power switch on the shuttle car was turned off however. No bare wires were exposed when the lens was removed. The system carries 32 volts, AC. I conclude that a violation was shown. I further conclude, however, that an injury was not likely to occur, and that a serious injury was extremely unlikely. Following the test in the National Gypsum decision, I conclude that the violation was not significant and substantial. The violation was not serious. There is no evidence that Respondent was aware of the violation as it occurred, or that it was deficient in its training program. Therefore, the violation was not the result of negligence. I conclude that an appropriate penalty for this violation is \$30.

CITATION NO. 1205105

This citation, charging a violation of 30 C.F.R. 75.1003, was issued because a mantrip stopped and discharged miners at an area beyond the station where the trolley bar and wire were not guarded. The trolley wire was about 6-1/2 feet above the floor. The standard requires that trolley wires be guarded at man-trip stations. The inspector stated that the mantrip went approximately 100 feet past the regular station before stopping. Respondent's assistant mine foreman testified that it did not go beyond the station, but did admit that the mantrip may have gone "a foot or two, the length of the portal bus" beyond the station, but "I don't think the operator himself went beyond the unguarded portion." (Tr. 92). I accept the testimony of the inspector that the mantrip stopped beyond the regular mantrip station to discharge miners. I conclude that the standard is intended to prohibit such an occurrence. The hazard posed by this violation is that the trolley operator was likely to contact the energized uninsulated trolley wire. The operator had to stand to "dog" the pole, and the wire was head high. The violation was reasonably likely to result in a serious injury. Therefore, the violation was significant and substantial. It was a serious violation. The evidence does not show that the violation was the result of Respondent's negligence. I conclude that an appropriate penalty for the violation is \$150.

CITATION NO. 1249389

This citation, charging a violation of 30 C.F.R. 75.302-1(a), was issued because Respondent mined a full cut of coal - 15 feet - without extending the line curtain. The standard requires that line brattice be installed at a distance of no greater than 10 feet from the area of deepest penetration. Respondent was conducting retreat mining at the time. The methane monitor on the continuous miner was working properly as were the water sprays. The area was well rockdusted. The inspector found 6,200 cubic feet of air at the face, 1,200 more than the minimum required by the ventilation plan.

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The failure to advance the line curtain to within 10 feet of the face causes inadequate face ventilation. In the event of a methane liberation, an ignition and mine explosion could occur. In a gassy mine, such an event is reasonably likely. The violation was significant and substantial. The inspector testified that the mining machine operator told him that it was Respondent's practice when the last cut was involved to go 12 feet in by the curtain. The assistant mine foreman testified that the machine operator told him that he misjudged the position of the curtain. I conclude that moderate negligence was involved. I conclude that \$250 is an appropriate penalty for this violation.

CITATION NO. 1249546

This citation, charging a violation of 30 C.F.R. 75.516, was issued because an energized power wire was hung on a wire nail affixed to a wooden post. The wire was insulated. There was no tension on the wire, and the insulation did not appear to be damaged. The wire carried 560 to 600 volts of direct current. The inspector stated that vibrations could damage the insulation and bare the wire, which could cause a short circuit. I find, however, that there was little or no tension on the wire and that damage to the insulation where the wire rested on the nail was unlikely. I conclude that there was a violation, but it was not significant and substantial. The inspector had cited Respondent for similar conditions previously. Therefore, I conclude that the violation, while not serious, was the result of Respondent's negligence. An appropriate penalty for this violation is \$75.

ORDER

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

1. Citation Nos. 1250103 and 1250106 are VACATED, and the penalty petition is DISMISSED with respect to such citations.
2. Citation Nos. 1250104 and 1249546 are AFFIRMED but the violations were not significant and substantial.
3. Citation Nos. 1205105 and 1249389 are AFFIRMED as issued and the violations were significant and substantial.
4. Respondent shall, within 30 days of the date of this decision, pay the following civil penalties for the violations found herein to have occurred:

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Citation	Penalty
1250104	\$ 30
1250105	150
1249389	250
1249546	75
Total	\$505

James A. Broderick
Administrative Law Judge