

CCASE:
SOL (MSHA) V. U.S. STEEL MINING
DDATE:
19831011
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 PROCEEDINGS Docket No. PENN 82-300 A.C. No. 36-03425-03501
v.	Docket No. PENN 83-44 A.C. No. 36-03425-03506
U.S. STEEL MINING COMPANY, INC., RESPONDENT	Docket No. PENN 82-322 A.C. No. 36-03425-03504 Maple Creek No. 2 Mine

DECISION

Appearances: Thomas A. Brown, 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

The above dockets were heard separately but are hereby consolidated for the purpose of this decision. They all involve the Maple Creek No. 2 Mine. Two citations are involved in Docket No. PENN 82-300, two in PENN 83-44, and four in PENN 82-322. Pursuant to notice, the cases were heard in Uniontown, Pennsylvania, on June 22 and June 23, 1983. Alvin L. Shade and Francis E. Wehr, Sr. testified on behalf of Petitioner; David Coffman, Ronald Hartzell and Paul H. Shipley testified on behalf of Respondent. Both parties filed posthearing briefs. Based on the entire record and considering the contentions of the parties, I make the following decision.

FINDINGS AND CONCLUSIONS COMMON TO ALL DOCKETS

1. At all times pertinent to these proceedings, Respondent was the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 2 Mine.

~1789

2. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in its operation of the Maple Creek No. 2 Mine, and the undersigned Administrative Law Judge has jurisdiction over the parties and subject matter of these proceedings.

3. The subject mine has an annual production of 872,848 tons of coal. Respondent has an annual production of 15,046,082 tons. Respondent is a large operator.

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

5. The subject mine had a total of 530 assessed violations for the 24 months prior to the issuance of the citations involved herein. Ninety one were violations of 30 C.F.R. 75.503, 20 of 75.516, 72 of 75.200, 11 of 75.515 and 47 of 75.1403. An unknown number of the violations of 75.516 had the significant and substantial designation removed after their issuance, and Respondent objects to their being included in the history of prior violations.

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.

DOCKET NO. PENN 82-300

The two citations involved in this docket both charge permissibility violations (30 C.F.R. 75.503). In one case, the conduit was pulled away from the packing gland on the headlight to the continuous mining machine and the junction box was loose. In the other, the conduit was pulled away from the packing gland on the switch for the deenergizing bar. Both citations were issued charging significant and substantial violations, but at the hearing, counsel for the Secretary moved to delete the significant and substantial designation from both citations. No bare wires were seen, but if the wire is pulled from the conduit, it could be struck or cut to create a spark. However, the headlight is guarded and such an occurrence is unlikely. The same is true of the conduit on the deenergizing bar. The violations were not serious. Respondent has been cited for this violation on a number of occasions. Therefore, I conclude that the violations resulted from its negligence. I conclude that an appropriate penalty for each of these violations is \$50.

1. Citation No. 2011263, issued August 20, 1982, charges a violation of 30 C.F.R. 75.516 because the energized wire to a signal light was not supported on insulators, but in one instance was hung on a wire nail and was in contact with wooden cribs. It appears that the nail had been part of an insulated hook from which the insulation had been broken off or had worn off. The wire was not bare or damaged. The mine was idle and had been idle for about 2 months when the citation was issued. The system is protected by a 10 ampere fuse. I conclude that the violation was unlikely to cause an injury. Therefore, it was not significant and substantial. Respondent had been cited for this same condition previously, and should have been aware of it. I conclude that an appropriate penalty for this violation is \$50.

2. Citation No. 2011267, issued September 9, 1982, charges a violation of 30 C.F.R. 75.504 because the conduit was pulled out of the packing gland on the continuous miner headlight. The citation originally charged a significant and substantial violation, but at the hearing, Petitioner moved to delete the significant and substantial designation. The inspector testified that a hazard was unlikely. I conclude that the violation was not serious. Respondent has been cited for this violation on many occasions and therefore, I conclude that the violation resulted from its negligence. I conclude that an appropriate penalty for this violation is \$50.

1. Citation No. 829652, issued June 18, 1982, charges a violation of 30 C.F.R. 75.200, in that two roof bolts were missing in an area along the track haulage. The bolts had been installed but apparently had fallen out of the roof. There was a slip in the roof and the roof was loose and drummy. The roof bolts were not on the floor when the citation was issued, leading to the conclusion that they might have been out for a period of time. The inspector testified that one missing bolt was on the "tight" side over the trolley wire and the other over the center of the track. The section foreman testified that both had been located on the tight side. In any event, there was an area of unsupported roof, making a roof fall reasonably likely. Such an occurrence would likely result in serious injuries to miners. I conclude that the violation was significant and substantial. The condition should have been known to Respondent despite the fact that it is permitted to do the preshift examination by jeep which makes it difficult to spot all the roof areas. Therefore, the violation was caused by Respondent's negligence. I conclude that an appropriate penalty for this violation is \$200.

~1791

2. Citation No. 829653, issued June 18, 1982, charges a violation of 30 C.F.R. 75.515, in that an insulated bushing was not provided where the insulated wires entered the control box for a water pump. The insulation on the wires was not broken or damaged. The water pump's electrical system was protected by two fuses - one a 30 amp fuse on the cable, and one a 10-30 amp control fuse inside the box. When it is operating, the pump vibrates, and the vibration could cause a cut in the insulation of the wire in the absence of bushing. This could result in the pump to become the ground and, if the circuit protection failed, anyone touching the pump could be shocked or electrocuted. I conclude that the violation made such an occurrence reasonably likely. Therefore, it was significant and substantial. Respondent had been cited several times for similar violations. I conclude that this violation was the result of its negligence. I conclude that an appropriate penalty for this violation is \$125.

3. Citation Nos. 829654 and 829656 were issued on June 18 and June 21, 1982. Each charges a violation of 30 C.F.R. 75.1403 (notice to provide safeguards) because track haulage switches were not provided with reflectors to show the alignment of the switch.

The hazard caused by the absence of a reflector on a switch is that the operator of a haulage vehicle might mistake the position of the switch, and by going in the "wrong" direction, jostle the occupants in the vehicle or derail the vehicle. Because low-speed haulage equipment was in use in the subject mine, the injuries would not be nearly as serious as would be the case where high speed haulage equipment was involved. This limits the weight to be accorded Government's Exhibit No. 6, the Report of a Fatal Coal Mine (Haulage) Accident, which involved high speed haulage. Nevertheless, a derailment could result in injuries of a reasonably serious nature. I conclude that the violations were significant and substantial. They were moderately serious, and the condition was known or should have been known to Respondent. I conclude that appropriate penalties for each of these violations is \$100.

ORDER

1. Citation Nos. 1249544, 1249549, 2011263, and 2011267 charge violations not properly designated as significant and substantial.

2. Citation Nos. 829652, 829653, 829654, and 829656 are AFFIRMED as properly charging significant and substantial violations.

~1792

3. Respondent shall, within 30 days of the date of this decision, pay the following penalties for the violations found herein to have occurred:

CITATION	PENALTY
1249544	\$ 50
1249548	50
2011263	50
2011267	50
829652	200
829653	125
829654	100
829656	100
Total	\$725

James A. Broderick
Administrative Law Judge