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SOL (MSHA) V. U.S. STEEL MINING
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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 83-52
A.C. No. 36-05018-03507

v.

Cumberland Mine

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

DECISION

Appearances: Thomas A. Brown, Jr., 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 case involves a single citation issued September 9, 1982, alleging a violation of 30 C.F.R. 75.200 because Respondent failed to comply with its approved roof control plan. Respondent does not deny that the violation occurred, but denies that it was significant and substantial, and contests the amount of the penalty. Pursuant to notice, the case was heard in Uniontown, Pennsylvania, on June 22, 1983. Steve Yurkovich testified on behalf of Petitioner; Don Laurie and Rudy Juracko testified on behalf of Respondent. Both parties have filed posthearing briefs. 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 Greene County, Pennsylvania, known as the Cumberland Mine.

2. The subject mine produces in excess of 1 million tons of coal annually. Respondent produces in excess of 15 million tons of coal annually. Respondent is a large operator.

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3. In the 24 months prior to the violation alleged herein, the subject mine had 32 assessed violations of 30 C.F.R. 75.200. This history of prior violations is not such that a penalty otherwise appropriate should be increased because of it.

4. The imposition of a penalty in this case will not affect Respondent's ability to continue in business.

5. The approved roof control plan in effect at the subject mine at all times pertinent to this proceeding required that in all track haulage intersection spans a minimum of one crib or two posts be installed as supplementary roof supports in one or more of the inactive approaches (Government Exh. 2).

6. On September 9, 1982, supplementary roof supports were not present in either of the approaches to the track haulage road at the intersection of the No. 3 entry and the 21st crosscut in the 63 Face South section of the subject mine. Citation No. 2011731 was issued charging a violation of 30 C.F.R. 75.200.

7. The roof in the cross cut was "potted out" in an area of about 80 or 90 square feet. The roof was split in by the intersection and starting to break.

8. Ten roof bolts had been installed in the potted out area, which apparently occurred during the mining cycle when the miner operator cut higher than normal. The ten bolts were three or four more than called for in the roof control plan. The mining of this area took place about 14 weeks prior to the issuance of the citation.

9. Header blocks were added to the bolts in the potted out area to catch loose material around the bolt.

10. The violation was abated September 9, 1982, by the installation of two posts in the right side of the intersection. They were later replaced by cribs in October or November of 1982.

ISSUES

1. Was the violation 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 the violation?

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 I have jurisdiction over the parties and subject matter of this proceeding.

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2. The condition described in Finding of Fact No. 6 was a violation of the approved roof control plan and therefore of 30 C.F.R. 75.200.

3. The violation referred to above was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

DISCUSSION

The roof control plan requires additional supports at track haulage intersections to help prevent roof falls along the haulage roads. Not all roof control plans have such a requirement, and the MSHA Inspector admitted that such a requirement is not necessary for haulage intersections unless the roof conditions are bad. However, the intersection in question had a large potted out area and was beginning to break. The inspector described the roof in the intersection as "bad." In such a place, he believed that additional supports were necessary to prevent a roof fall. I conclude that a roof fall was reasonably likely to occur as a result of the violation and, if it occurred, it would likely cause serious injuries to miners. This judgment must be made considering the conditions present at the time the citation was issued. The fact that the roof has not fallen and the cribs are apparently not bearing weight as of the hearing date is not determinative of the question.

4. The violation was serious. Roof falls are the most common cause of fatalities in the nation's mines.

5. The violation was obvious. Respondent should have been aware of it. It resulted from negligence.

6. 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. Citation No. 2011731, including its designation as significant and substantial, is AFFIRMED.

2. Respondent shall, within 30 days of the date of this order, pay the sum of \$250 for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge