

CCASE:
SOL (MSHA) V. U.S. STEEL MINING
DDATE:
19831025
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 83-47
A.C. No. 36-03425-03507

v.

Docket No. PENN 83-63
A.C. No. 36-03425-03509

UNITED STATES STEEL MINING
COMPANY, INC.,
RESPONDENT

Maple Creek No. 2 Mine

DECISION

Appearances: David A. Pennington, 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 docket numbers were consolidated for hearing and decision since they involve citations issued in September and October 1982, at the same mine. Two citations are included in Docket No. PENN 83-47, and three are involved in PENN 83-63. Pursuant to notice, the case was heard in Pittsburgh, Pennsylvania, on August 30, 1983. Francis E. Wehr, Sr., Alvin Shade, and Okey Wolfe testified on behalf of Petitioner; William K. Schlaupitz, Paul Shipley, Robert C. Tishman and Paul Gaydos 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 AND CONCLUSIONS COMMON TO BOTH DOCKET NUMBERS

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.

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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 these proceedings.

3. The subject mine has an annual production of more than 800,000 tons of coal. Respondent produces more than 15 million tons of coal annually. 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. In the 24-month period prior to the issuance of the citations involved herein, there were 498 assessed violations at the subject mine, 440 of which were designated significant and substantial. Of these, 47 were violations of 30 C.F.R. 75.400, 88 were violations of 75.503. This history of prior violations 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 has been classified as a gassy mine. It liberates more than 1 million cubic feet of methane in a 24-hour period.

8. 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 83-47

1. Citation No. 2011340, issued September 8, 1982, charges a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal along a belt line. The accumulation varied from 1 to 35 inches deep, was approximately 75 feet long and 12 to 36 inches wide. There is no dispute as to the existence of the accumulation, but the evidence is conflicting as to its nature. The inspector testified that it was wet on top but beneath the top layer there were layers of dry coal and coal dust. He also testified that the mine floor was dry. The assistant mine foreman testified that the accumulation was called muck, that it was "soupy" and could not be shovelled without being dried out. He also testified that the mine floor was wet. In order to abate the violation, rock dust had to be applied to soak up the water, before the accumulation could be handled by shovels. I find that there was an accumulation and that it was of combustible material. I further

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find, however, that the accumulation was so wet that the likelihood of it contributing to a mine fire was low. I conclude that a violation was shown which was not significant and substantial. The condition should have been observed during the preshift examination and cleaned up. I conclude that an appropriate penalty for this violation is \$50.

2. Citation No. 2011268, issued September 10, 1982, charges a violation of 30 C.F.R. 75.503 because the conduit was pulled out of the packing gland on power wires on a shuttle car. The inspector testified that a permissibility hazard was unlikely because of the location of cable. The violation was originally designated as significant and substantial, but this designation was removed at the hearing. I conclude that a violation occurred which was not significant and substantial. The violation was not serious. Since Respondent has been cited for this condition on a number of occasions previously, I conclude that it resulted from negligence. I conclude that an appropriate penalty for this violation is \$50.

DOCKET NO. PENN 83-63

1. Citation No. 2010997, issued October 4, 1982, charges a violation of 30 C.F.R. 75.400, because of an accumulation of loose coal on the mine floor along the rib of the 48 room entry, and in the crosscut between 47 and 48 room along the inby rib. The accumulation was present along the entire entry and the entire crosscut. The accumulation averaged 18 inches wide and 20 inches deep. It had been left by the previous shift. The coal was damp. The roof bolter was in the crosscut and the other mining machinery had been in the area and would return to the area. The subject mine is gassy and has experienced face ignitions. Because of these factors, and the extent of the accumulation, I find that the violation was reasonably likely to contribute to a mine fire. It was a significant and substantial violation and was serious. The extent of the accumulation (80 feet) leads me to conclude that Respondent was negligent in not cleaning it up earlier. I conclude that an appropriate penalty for this violation is \$250.

2. Citation No. 2010998, issued October 4, 1982, charges a violation of 30 C.F.R. 75.503, because of a loose bolt on the headlight of a shuttle car. The bolt was one of four holding the headlight lens assembly to the body of the headlight. The hazard presented by this permissibility violation is that a methane ignition in the compartment could escape to the mine atmosphere and cause a fire or explosion. Mining was not occurring at the time. The ventilation was sufficient on the section. Sparking occurs within the headlight. Normally the shuttle car does not approach within 20 feet of the face. I conclude that this permissibility violation was reasonably likely to cause an injury. It was significant and substantial. The violation was serious. There is

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no evidence that it resulted from Respondent's negligence. I conclude that an appropriate penalty for this violation is \$100.

3. Citation No. 2011000, issued October 7, 1982, charges a violation of 30 C.F.R. 75.400 because of an accumulation of loose coal on the mine floor from rib to rib up to 3 feet deep and 8 feet wide in the 50 room entry. The accumulation had apparently been bulldozed up into a pile at the end of a prior shift. An idle shift followed and the accumulation was not cleaned up. The accumulation was more than is normally associated with one cut. The coal was dry with a layer of rock dust on top. The continuous mining machine had broken down while in the process of cleaning the accumulation during the last previous operating shift. I conclude that a violation of the standard was shown. This was an accumulation of combustible material. The hazard presented was that it could contribute to a mine fire. The accumulation was substantial and I conclude that the violation was significant and substantial because it was reasonably likely to result in serious injury. The violation was serious. Petitioner has not established that it was caused by Respondent's negligence. I conclude that an appropriate penalty for this violation is \$100.

ORDER

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

1. Citation Nos. 2011340 and 2011268 are AFFIRMED, but the significant and substantial designations are REMOVED.

2. Citation Nos. 2010997, 2010998 and 2011000 are AFFIRMED as issued. They charge significant and substantial violations.

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

CITATION	PENALTY
2011340	\$ 50
2011268	50
2010997	250
2010998	100
2011000	100
Total	\$550

James A. Broderick
Administrative Law Judge