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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. WEVA 83-138
A.C. No. 46-02557-03504

v.

Jerry Run Surface Mine

THOMPSON COAL & CONSTRUCTION,
INC.,
RESPONDENT

DECISION

Appearances: Thomas A. Brown, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsyl-
vania, for Petitioner Charles G. Johnson, Esq.,
Johnson & Johnson, Clarksburg, West Virginia,
for Respondent

Before: Judge Melick

Hearings were held in this case on September 22, 1983, in
Clarksburg, West Virginia. A bench decision was thereafter
rendered and appears below with only non-substantive changes.

The case before me today is based upon the Petition for
Assessment of Civil Penalty filed by the Secretary of
Labor, Mine Safety and Health Administration (MSHA).
One violation of the standard at 30 CFR Section 41.20
is alleged and charges the Thompson Coal & Construction
Company, Inc. (Thompson), with failing to file an
updated "Form 2000-7" with the MSHA District Manager
listing the operating officials and principal officer
in charge of safety at the Jerry Run Mine. The
standard at 30 CFR Section 41.20 requires that "Each
operator of a coal or other mine shall file
notification of legal identity and every change thereof
with the appropriate District Manager of the Mine
Safety and Health Administration by properly
completing, mailing, or otherwise delivering Form
2000-7 'legal identity report' which shall be provided
by the Mine Safety and Health Administration for this
purpose."

The general issue before me, of course, is whether there was indeed a violation as alleged, and, if so, what is the appropriate civil penalty to be assessed. The specific issue before me is whether on December 8th, 1982, the date this citation was issued and the violation cited, the mine operator had failed to file a modification of his legal identity report as required. The evidence in this case shows that as of March 15, 1982, the operator had filed a proper legal identity report (Form 2000-7), and there is no dispute over that (Exhibit G-2). At that time, Richard L. Bryant was identified as mine superintendent and in charge of health and safety. The evidence shows that when MSHA Inspector Alonzo Curry appeared on December 8, 1982, for a spot inspection at Thompson's Jerry Run Mine, Bryant was not present and that Larry Reall represented to the inspector that he was then in charge of health and safety and was mine superintendent. It is not at all clear, however, how long Mr. Reall had been in charge, either as superintendent or in charge of health and safety matters, and it appears that there was a transitional period around this time; that is, transition from Mr. Bryant's being superintendent and in charge of health and safety and turning those responsibilities over to Mr. Reall.

Now, Section 41.20 of the regulations does not set forth any time limit within which the operator must file his notification of changes in his legal identity. However, 30 CFR 41.12 gives the operator thirty days after the occurrence of any change to file the information required and the Secretary has acknowledged in this case that the operator would indeed have thirty days from the date of any change to file any corresponding modification to his legal identity report.

Under the circumstances of this case it is not known precisely when the change in job responsibilities actually occurred. There is absolutely no evidence on that point so as of December 8th, when the citation was drawn, it is not known whether Mr. Reall had been acting as superintendent and in charge of health and safety for one day, five days, twenty days, thirty days, forty days, or whatever. Under the circumstances, it is impossible to determine whether the operator failed to

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file within 30 days of the change in management. Accordingly, I cannot find a violation of the cited standard, and I am going to vacate the citation.

I think in spite of this ruling that Mr. Thompson does recognize the significance of filing these reports even though, in this case, it appears that there is no question that there was someone in charge, whether it was Bryant or Mr. Reall. If MSHA is unable to maintain a current roster of who is responsible for the operation of a mine and who is going to be in charge of health and safety, some less responsible operators would certainly use that to their advantage in not complying with health and safety matters and perhaps would not even have someone in charge of health and safety. So, although there is not that situation in this case, I think the operator would have to recognize that there is a valid reason for this regulation to be on the books, and it is essential that it be complied with.

ORDER

Citation No. 2020854 is hereby vacated and this case is dismissed.

Gary Melick
Assistant Chief Administrative Law Judge