

CCASE:  
VESTA MINING V. SOL (MSHA)  
DDATE:  
19831215  
TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

VESTA MINING COMPANY,  
CONTESTANT

CONTEST PROCEEDINGS

v.

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
RESPONDENT

Docket Nos:	Citations
PENN 83-171-R	2104356
PENN 83-172-R	2104357
PENN 83-173-R	2104358
PENN 83-174-R	2104359
PENN 83-175-R	2104360
PENN 83-176-R	2104632
PENN 83-177-R	2104633
PENN 83-178-R	2104634
PENN 83-179-R	2104635
PENN 83-180-R	2104636
PENN 83-181-R	2104637
PENN 83-182-R	2104638
PENN 83-183-R	2104639
PENN 83-184-R	2104640
PENN 83-185-R	2104648
PENN 83-186-R	2104649
PENN 83-187-R	2104650
PENN 83-188-R	2104651
PENN 83-189-R	2104652
PENN 83-190-R	2104653
PENN 83-191-R	2104654
PENN 83-192-R	2105121
PENN 83-193-R	2105122
PENN 83-194-R	2105123
PENN 83-195-R	2105124
PENN 83-196-R	2105125
PENN 83-215-R	2105330

Vesta Mine

DECISION

Appearance: Michael T. Heenan, Esq., Smith, Heena, Althen and Zanolli, Washington, DC, for Contestant  
Mary Lu Jordan, Esq., United Mine Workers of America, Washington, DC, Intervenor Robert A. Cohen, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Respondent

Before: Judge Moore

~2110

These cases were heard in the Commission's Falls Church hearing room on September 20, 1983. Representatives of the government, the company, and the United Mine Workers of America all presented evidence and the government and company filed briefs. There was a prehearing conference at which the United Mine Workers of America was not represented. At that conference certain drawings were presented, and while there are minor differences the photographic and sketch material attached to Vesta's answer to the government's motion to dismiss and the exhibit presented at the pre-trial conference and government Exhibit R-4 all describe the electrical connections used in Vesta's transformers. In the testimony, these transformers are sometimes referred to as power centers or load centers, or in one case, as rectifiers. This last term was a misnomer as a rectifier is a device which converts alternating current into direct current.

The knife switch referred to hereinafter is sometimes referred to in the testimony as a "load brake switch" or as a "visible disconnect switch".

Because of the electrical configuration of the transformers, which will be described later, MSHA first issued a citation as to one of those transformers. It later decided that there was no violation and vacated that first citation. MSHA then issued 26 citations, being one for each transformer. Notices of contest were filed with a request for an expedited hearing.

Shortly after the conference mentioned earlier, and because MSHA believed there had been procedural errors in the way the 26 citations were issued, it vacated those citations and moved to dismiss the notices of contest. Vesta objected to the dismissals because it contended it had a right to a decision on the merits but stated that if I did dismiss the cases it should be with prejudice against MSHA issuing citations concerning the particular transformers involved. The United Mine Workers of America then intervened and objected to the vacation of the citations and pointed out that I did not have to approve that action.

Shortly thereafter MSHA decided that Vesta was not being cooperative and issued another citation covering all 26 transformers. Vesta then filed another notice of contest with a request for an expedited hearing and a request that all of the cases be consolidated.

Vesta's response to the Secretary's motion to dismiss the first 26 notices of contest contains an affidavit of Julian Guthrie which has attached diagrams and pictures of one of the 26 transformers. A drawing of that transformer was presented at the afore-mentioned prehearing conference

~2111

and there is no dispute as to the essential facts regarding that transformer. The transformers in question convert high voltage alternating current into low voltage alternating current. At the high voltage or outby end of the transformers there is a visible disconnect knife-type switch that clearly shows whether the transformer is energized or not. At the low voltage end of the transformers there are two circuit breakers, (not counting 110-V circuits) one of which is used in connection with the solid power line to the belt motors and the other is in connection with an auxiliary plug which can sometimes be used for other equipment such as a belt vulcanizing device. Any equipment hooked up to the auxiliary plug is either plugged in or not, so there is no question that the disconnect device assures a visual check. In a circuit breaker, on the other hand, the disconnect is inside of the housing and there is no way to visually check and be sure that a circuit is disconnected. The solid connection going to the belt drive motors on the low voltage side contains only the circuit breaker as a means of disconnecting the transformer from the motors.

The question is whether the standard allows the type of arrangement described. 30 C.F.R. 75.903, a statutory provision, provides

"disconnecting devices shall be installed in conjunction with the circuit breaker to provide visual evidence that the power is disconnected."

Vesta's transformers clearly contain the knife-switch on the high voltage end which provides visual evidence that the transformer itself, is disconnected. At the low voltage end however, only the auxiliary plug provides visual evidence of a disconnection.

While I have stated that there is no substantial disagreement as to the electrical connections in and around the transformers some of the witnesses did not interpret government exhibit R-4 in the same way. Mr. Lester, MSHA's top electrical expert, thought there was a circuit breaker controlling the belt drive motor that is not shown on the drawing. Other witnesses said that the box marked "breaker main low side" controlled the belt drive motor. One witness said that the "breaker main low side," when disconnected, would also disconnect the vulcanizing plug which has its own circuit breaker as shown on government exhibit R-4. Mr. Paine, the vice president of Vesta, testified that all of the transformers had been modified so that the vulcanizing plug and its circuit breaker were hooked into the outby side of the "breaker main low side" box. He said that this had been done before the hearing. His testimony, taken together with the testimony of Mr. Carnathan, an electrician at the Vesta

~2112

mine, shows that at the time the citations were issued at least some of the transformers were connected internally in such a way that the vulcanizing plug could not be used if the main lowside breaker was disengaged. The vulcanizing plug was being used on occasions at the time the citations were issued, to vulcanize the belt. Vulcanization of a belt is not electrical work and there is no requirement that a visual disconnect be provided. There is a requirement, however, that the power be taken off of the belt drive motor when non-electrical work is being done and as I understand government exhibit R-4 as amplified by Mr. Carnathan and Mr. Paine, that could not be done with respect to at least some of the transformers. If the vulcanizing (auxiliary) plug circuit is hooked to the inby side of the motor circuit breaker you could not have power in the vulcanizer and no power on the drive motor circuit. It could be done now, according to Mr. Paine. But whether there was a violation of some other standard is not the question before me. A step-down transformer, such as the one involved in these cases, contains 2 physically separate windings or coils. High voltage electricity passing through the primary winding, by the process known as electro-magnetic induction, causes low voltage current in the secondary or low voltage coil. It is the government's position, as expressed by its leading electrical inspector, that the low voltage side is a separate circuit, and thus requires its own visual disconnect blade. When Mr. Lester was on the stand, he mentioned the two breaker boxes, one designated a belt starter and the other merely designated breaker box on the lower of the two rectangles depicted on government exhibit R-4. The lower rectangle is designated Westinghouse, and there is no explanation as to what that means. Since Mr. Lester did not indicate that a visual disconnect was necessary with respect to the "breaker box" and the "belt starter box" it is obvious that the government is not contending that there need be a visual disconnect with respect to each circuit breaker. The government's contention insofar as Mr. Lester is concerned, is that since the high voltage circuit in the transformer and the low voltage circuit are separate circuits, that each needs its own visual disconnect switch. Counsel, by questions and arguments indicated that it was also a matter of the physical distance between the visual disconnect switch on the high voltage side of the transformer and the breaker box on the low voltage side. The distance in fact, was about twenty feet but there were questions concerning whether one hundred feet would be close enough or several hundred feet.

Mr. Blackburn, the president of Tee Engineering Company is an electrical engineer and formerly worked under Mr. Lester as the district electrician for MSHA's Pikeville district. He has designed power centers that are similar to the one depicted in government exhibit R-4. It is his opinion, directly contrary to that of his former boss, Mr.

~2113

Lester, that the power center depicted in government exhibit R-4 is in full compliance with 30 C.F.R. 75.903(FOOTNOTE 1) Vice president Paine, also an engineer, but not electrical, is of the same opinion.

When qualified experts disagree to the extent they have in this case, a close question is presented. Before getting to the basis of my decision I will announce that I have consolidated all these cases for hearing, I reaffirm my refusal to grant MSHA's motion to dismiss the first 26 cases and I admit in evidence the documents attached to Vesta's opposition to MSHA's motion to dismiss those 26 cases. While admitting the drawings and photographs referred to above, I am basing this decision primarily on government's exhibit R-4. In this respect the two wires leading from the "breaker main low side"-one designated fire suppression and the other designated pilot check cable-are 110-V circuits single-phase power and have nothing to do with the requirements of 30 C.F.R. 75.903. In questioning Mr. Lester, I asked him, MSHA's leading electrician, whether the system would be in compliance if the two 110-volt lines were eliminated and if the vulcanizer plug and its breaker box were eliminated. His answer was No. He said the high voltage side of the transformer was a separate circuit from the low voltage side and that the visual disconnect switch on the high voltage side did not satisfy the regulation.(FOOTNOTE 2) In the simplified hypothetical that I was asking about there would be 7200 volts going into the high voltage side of the transformer and there would be a visual disconnect switch at that point. There would be a breaker box on the low voltage side of the transformer and through that box, 480 volts would go to the belt drive motor. In my view, even though it is 20 feet away, the visual disconnect switch is "in connection with" the breaker, even though there is no physical connection between the high voltage side of the transformer and the low voltage side.

I do not think the safety arguments made by the parties affect this result. On the one hand, the argument is that with a visible disconnect plug such as the vulcanizer plug on government exhibit R-4, you could easily verify that the circuit is broken. The other argument is that in a dark and wet mine mistakes in tracing lines are made and it is much easier to simply go to the transformer and use the visual disconnect switch knowing that everything downstream of that

~2114

switch would be safe to work on. I can not say which safety argument has the most weight, but I can say that if MSHA wants the visual disconnect switch on the low voltage side of the transformer or if it wants a visual disconnect switch for every circuit breaker box, it can so state in its standard. It is obvious from this record that the MSHA electrical inspectors have not all agreed with Mr. Lester.

I hereby VACATE all 27 citations. These cases are DISMISSED.

Proposed findings not included herein are REJECTED.

Charles C. Moore, Jr.  
Administrative Law Judge

FOOTNOTES START HERE-

1 I am not giving consideration to the affidavit attached to the government's brief. If the government thinks it has evidence of perjury it should consult the United States Attorney's Office.

2 Without objection Mr. Heenan altered government exhibit R-4 to show that the "breaker main low side" controlled the power to belt drive motor.