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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 PROCEEDINGS

Docket Nos. PENN 82-218  
PENN 82-219

v.

A.C. Nos. 36-00970-03122  
36-00970-03125

UNITED STATES STEEL MINING  
COMPANY,  
RESPONDENT

Maple Creek #1 Mine

DECISION

Before: Judge Fauver

These proceedings were brought by the Secretary of Labor under Section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., for assessment of civil penalties for alleged violations of mandatory safety standards. The cases were consolidated and heard in Pittsburgh, Pennsylvania.

Having considered the contentions of the parties and the record as a whole, I find that the preponderance of the reliable, probative, and substantial evidence establishes the following:

FINDINGS OF FACT

1. At all pertinent times, Respondent operated an underground coal mine, known as Maple Creek No. 1, in Pennsylvania, which produced coal for sales in or substantially affecting interstate commerce.

Citation No. 1145282  
Docket No. PENN 82-218

2. On February 25, 1982, Federal Mine Inspector Francis Wehr issued to Respondent Citation No. 1145282, under Section 104(a) of the Act, charging a violation of 30 CFR 75.1405. That section provides, in pertinent part:

All haulage equipment... shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment.

3. Inspector Wehr issued the citation because two locomotives were coupled to a personnel car with safety chains in addition to automatic couplers. Personnel were required to reach between the ends of the cars to connect or disconnect the chains. The couplers and chains are indicated in the drawings (Joint Exhibits 1 and 1-A) reproduced at page 3.

4. The automatic couplers coupled on impact. They were uncoupled by a hand-lever near the top of the wall of the locomotive (which was pulling or pushing the personnel car). MSHA approved use of the hand-lever for uncoupling.

5. The chain had to be worked to uncouple. Depending on the tightness of the links or the strength of the miner, one or two hands were required to uncouple. Also, depending on the size, skill, and strength of the miner, the percentage of body exposure between the cars would vary. A window in the personnel carrier wall, as shown in the drawings at page 3, could be used for access to the chain, in connecting or disconnecting it, but personnel might also connect or disconnect the chain from outside the cars.

6. MSHA did not approve use of the safety chains, which were manually connected and disconnected by reaching in between the cars.

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7. When reaching through the window to connect or disconnect the chain, personnel had a risk of hand and arm injuries in the event the cars were moved. If miners reached in from the sides of the cars to connect or disconnect the chain, more of the body was exposed to risk of injury.

8. In the mining industry, serious injuries and deaths have occurred because miners were reaching in between cars to couple or uncouple them when the train was inadvertently moved.

9. Respondent did not use safety chains on non-personnel haulage cars. It used them on the personnel train because of the risk of injury to passengers in the event of accidental uncoupling of the personnel car. The grade in the mine was an average of about 2%, and ranged up to about 10%. The personnel car had its own braking system, which could slow down the car but not bring it to a full stop in the event of an accidental uncoupling.

10. Since the first use of the chains at this mine, in 1959, there have been no reported injuries of miners who were connecting or disconnecting the safety chains.

Citation No. 1145239  
Docket No. PENN 82-219

11. On March 31, 1982, Federal Inspector Alvin Shade issued to Respondent Citation No. 1145239, charging a violation of 30 CFR 75.1725(a), which provides:

(a) Mobile and stationary equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately.

12. Inspector Shade issued the citation because continuous miner No. 7761 would not turn to the right. When the operator tried to operate the right tram, the circuit breaker would trip, de-energizing the whole machine. This condition had been called to Inspector Shade's attention by the continuous miner operator, who said the tram had not been working right for about two weeks.

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13. Inspector Shade inspected the continuous miner about 2 coal blocks from the face. The machine had been parked there around the beginning of the shift. They were tramping it to the face, but when it would not tram right, they backed it up about 50 feet and parked it. It was energized when Inspector Shade inspected it. Under his observation, they tried to tram it to the right and the circuit breaker tripped, de-energizing the machine.

14. Respondent had frequent problems with the tramping system on this machine from the time of its purchase, in 1980. The problem was the micro-switches in the tramping circuit. At times the circuit breaker would trip several times a shift. There are about 12 micro-switches in the circuitry of the machine, and any one might fail at any time. Respondent made repeated efforts to have the manufacturer test the switches and supply reliable ones, but as of March 31, 1982, and even at the time of this hearing (December, 1982), no fully reliable equipment or maintenance program had been developed to avoid this problem. On the day of the inspection and citation a new micro-switch had been installed on the previous shift.

#### DISCUSSION WITH FURTHER FINDINGS

##### The Safety Chains

Respondent combines automatic couplers with safety chains on its personnel train. The couplers couple on impact; they are uncoupled by a hand-lever that MSHA has approved; the safety chains, to be connected or disconnected, require that an employee reach in between the ends of cars. MSHA has not approved the chains and charges a safety violation.

I conclude that Respondent's use of the safety chains violates the safety standard, 30 CFR 75.1405, which requires "automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends [of the cars]." By adding safety chains, Respondent has modified its coupling system so that it cannot meet the requirements of the mandatory safety standard. Several cases have held a violation in similar circumstances. See, e.g., Pittsburgh Coal Company v. Secretary of Labor, 1 FMSHRC 1468 (1979); and Mathies Coal Company v. Secretary of Labor, 2 FMSHRC 1661 (Judge Melick, 1981).

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Respondent contends that this application of the standard will diminish safety by requiring abandonment of the safety chains. But this argument does not address other feasible means of supplementing automatic couplers on personnel cars, e.g., chains or wire ropes on the sides of cars, which would not violate 75.1405. Moreover, it is addressed to the wrong forum. Petitions for modification of the application of a safety standard should be filed with the Labor Department, under section 101(c) of the Act.

I find that Respondent was negligent, in that the violation condition was known by Respondent and could have been prevented by the exercise of reasonable care. I also find that this is a serious violation. There is a risk of serious injury or death in the event a person is handling the chain or reaching in between the cars when the train is inadvertently moved. Considering these factors, and Respondent's size, history of compliance and prompt, good-faith abatement of the violation, I find that a civil penalty of \$195 for this violation is appropriate.

#### The Continuous Miner

Inspector Shade testified that one of the dangers of operating the continuous miner with a defective tram was that the operator could not move out of the way of roof-falls in retreat mining. With a defective micro-switch, when the operator tried to tram to the right the circuit breaker would trip, and the whole machine would be de-energized. This defective condition could endanger the operator. He could retain the protection of the canopy if he could tram the machine away from falling roof, but would probably be tempted to run if the machine would not move, thus exposing himself to greater danger from the roof.

Moving equipment that cannot be steered properly is not in safe operating condition.

Respondent argues that MSHA cited a violation simply because Respondent could not guarantee that a new switch would not fail, and the safety standard does not require that the mine operator guarantee that a repair will last for any specific period.

Respondent misconstrues the purpose and application of the safety standard. The standard requires that equipment be "maintained in safe operating condition" and if it is "in unsafe condition it shall be removed from service immediately." When the circuit breaker tripped, soon after

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the beginning of the shift, Respondent knew that the continuous miner could not tram to the right. That is why the machine was backed up and left 2 blocks from the face. I find that the defective condition (inability to tram to the right and causing de-energizing of the whole machine by attempting to tram to the right) was an "unsafe" operating condition. Respondent was required to remove the machine from service until the switch could be replaced or adjusted. This could have been done by de-energizing the machine and tagging it out of service pending repairs. However, Respondent left it parked and energized, so that another machine operator might operate the machine in a defective condition.

I find that Respondent was negligent, in that the unsafe condition was known by Respondent and the violation could have been prevented by removing the machine from service pending repairs. This was a serious violation, because of the risk of serious injury if the machine were operated with a defective trammng system. Considering these factors and Respondent's size, compliance history, and prompt, good-faith abatement of the violation, I find that a civil penalty of \$100 for this violation is appropriate.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of the above proceedings.
2. Respondent violated 30 CFR 75.1405 as charged and is ASSESSED a civil penalty of \$195 for this violation.
3. Respondent violated 30 CFR 75.1725(a) as charged and is ASSESSED a civil penalty of \$100 for this violation.

Proposed findings of fact or conclusions of law inconsistent with the above are rejected.

#### ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the above assessed civil penalties, in the amount of \$295.00, within 30 days from the date of this decision.

William Fauver  
Administrative Law Judge