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HELVETIA COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

HELVETIA COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. PENN 83-117-R
Order No. 2015555; 2/28/83

Lucerne No. 8 Mine

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

V.

HELVETIA COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 83-153
A.C. No. 36-04597-03511

Lucerne No. 8 Mine

DECISION

Appearances: William M. Darr, Esq., Indiana, Pennsylvania, for
Contestant/Respondent;
David T. Bush, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Respondent/Petitioner.

Before: Judge Broderick

STATEMENT OF THE CASE

The above proceedings have been consolidated for the purposes of hearing and decision, because the order contested in the contest proceeding charges a violation of a mandatory safety standard for which the Secretary seeks a penalty in the penalty proceeding.

At the hearing, the parties stipulated that the violation charged in Order of Withdrawal No. 2015555 occurred, that it was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard, and that it was based on an underlying citation properly issued under section 104(d)(1) of the Act.

Pursuant to notice, the case was heard in Indiana, Pennsylvania, on December 20, 1983. Roy Craver, Thomas Grove and Harry Losier testified for the Secretary of Labor; David Duplin, Albert Cribbs and Robert D. Anderson testified for Helvetia. The parties waived their right to file posthearing briefs, and each made oral argument on the record at the conclusion of the hearing. Based on the entire record and considering the contentions of the parties, I make the following decision.

ISSUES

1. Was the violation of 30 C.F.R. 75.200 charged in Order No. 2015555 caused by an unwarrantable failure of the operator to comply with the mandatory standard in question?

2. What is the appropriate penalty for the violation?

FINDINGS OF FACT

1. At all times pertinent hereto, Helvetia owned and operated the subject mine from which it extracted coal.

2. Helvetia produced 2,579,824 tons of coal annually, of which the subject mine produced 533,139 tons. Companies affiliated with Helvetia produced an additional 3,994,031 tons annually.

3. In February 1983, a large caved area existed in the 6 Butt intake escapeway of the subject mine. The area was 14 feet wide and almost 20 feet long. The cave height was more than 69 inches, whereas the coal seam averaged approximately 48 inches high.

4. The cave-in had occurred 1 year or more prior to February 28, 1983. There was a fault condition running through the roof in the area.

5. The roof in the area had been supported by 4 foot resin bolts.

6. On February 25, 1983, at about 4:30 p.m., assistant mine foreman Albert Cribbs examined the intake escapeway in the 6 Butt section of the subject mine from outby in, and traversed the cave area. He placed his initials on both the outby and inby side of the cave and noted in the weekly air course inspection book that the area was in a safe and lawful condition.

7. On February 27, 1983, Federal Mine Inspector Roy Craver commenced an inspection at the subject mine. He entered the mine at approximately 11:45 p.m. The crew working on the 6 Butt section entered the mantrip at about 12:01 a.m., February 28, 1983.

8. The inspector went to the 6 Butt intake escapeway with the miners' representative and walked 300 to 400 feet to the cave area. He noted the initials A.C. and the date February 25, 1983. The inspector also noted four treated timbers lying along the right rib inby the cave, and two loose timbers in the cave area, also lying along the right rib.

9. The inspector found unsupported roof in the cave area measuring approximately 14 feet by 20 feet. There was loose overhanging rock on the outby end of the cave, but the roof itself was solid. Only two timbers were set along the side and they were 20 feet apart. Coal was not being mined at the time. The last coal producing shift was Friday afternoon, February 25.

10. I find that at the time of Cribbs' weekly aircourse examination on February 25, 1983, the six posts found lying on the floor February 28, appeared to be properly set in the cave area. The escapeway was not more than 6 feet wide between supports, and the posts were set on 5 foot centers. No hazardous conditions were observable in the roof at that time.

DISCUSSION

The Secretary takes the position that it would not have been possible for the posts to have fallen out between Friday night and Monday morning, under the circumstances present in this mine where the roof had been bolted with resin bolts and the cave-in had taken place more than 1 year earlier. While I concede that settling or shifting of the caved area is unlikely under the circumstances, I accept the testimony of Mr. Cribbs as to his examination on February 25. I find no possible motive for him to have made a false report of such a highly dangerous condition. To have falsified the report would have jeopardized his job and reputation. More importantly, it would have jeopardized miners' lives including his own. The record does not permit me to conclude that he was that reckless. Cribbs testified, and I find, that there was loose material on the floor of the cave which may have made it difficult to obtain solid footing for the posts. I find that the posts were dislodged over the weekend by natural causes.

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11. The condition was abated by the setting of six timbers in the cave area. Two additional timbers were also set. The order was terminated at 2:30 a.m., February 28, 1983.

CONCLUSIONS OF LAW

1. Helvetia was subject to the provisions of the Federal Mine Safety and Health Act of 1977, in the operation of its Lucerne No. 8 Mine.

2. The violation charged in Order of Withdrawal No. 2015555 issued February 28, 1983, did in fact occur.

3. Helvetia is a large operator. There is no evidence concerning Respondent's history of prior violations. The penalty assessed herein will reflect my conclusion as to Helvetia's size. It will not be increased on the basis of prior history.

4. The violation was abated in a timely fashion, and Helvetia demonstrated good faith in achieving rapid compliance.

5. The violation was extremely serious. It could have resulted in fatal injuries and compromised the miners' escapeway. It was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

6. The violation was not caused by an unwarrantable failure to comply with the standard in question. This conclusion is based on my finding (Finding of Fact No. 9) that at the time of Cribb's examination, the posts appeared to be properly set. I infer, however, that they were not set adequately for the floor conditions and this caused them to become dislodged. Such would not necessarily be evident to visual examination. Helvetia's negligence is based on improper setting of the posts, and is not great.

7. Considering the criteria in section 110(i) of the Act, I conclude that the appropriate penalty for the violation is \$900.

ORDER

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

1. Order No. 2015555 is VACATED as a withdrawal order and MODIFIED to a citation charging a significant and substantial violation of 30 C.F.R. 75.200. As modified, the citation is AFFIRMED.

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2. Within 30 days of the date of this decision, Helvetia shall pay the sum of \$900 as a civil penalty for the violation found herein to have occurred.

James A. Broderick
Administrative Law Judge