

CCASE:  
SOL (MSHA) V. U.S. STEEL MINING  
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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 PROCEEDING

Docket No. PENN 83-95  
A.C. No. 36-00970-03515

v.

Maple Creek No. 1 Mine

U.S. STEEL MINING COMPANY, INC.,  
RESPONDENT

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

This case involves three citations alleging violations of mandatory safety standards. Pursuant to notice, it was heard in Washington, Pennsylvania, on November 29, 1983. William R. Brown testified on behalf of Petitioner; Joseph D. Ritz and Ira W. Seaton, Jr. 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 OF FACT

1. At all times pertinent to this proceeding, Respondent was the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 1 Mine.

2. Respondent is a large operator.

3. The assessment of civil penalties in this proceeding will not affect Respondent's ability to continue in business.

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4. In the 2-year period preceding the issuance of the citations involved herein, there were 484 assessed and paid violations at the subject mine, 430 of which were designated as significant and substantial. This history of prior violations is not such that penalties otherwise appropriate should be increased because of it.

5. In the case of each citation involved herein, the violation was abated promptly and in good faith.

6. The intake air escapeway in the 1 Main 8 Flat section was not examined between October 10, 1982 and October 20, 1982. This escapeway was the primary escapeway for two sections. Citation No. 2011054 was issued on October 20, 1982, under section 104(d)(1) of the Act, charging a violation of 30 C.F.R. 75.1704 caused by the unwarrantable failure of Respondent to comply with the standard. The violation was designated as significant and substantial.

7. Respondent's failure to examine the escapeway was caused by a mixup in assignments when the person who would normally make the examination was assigned to other tasks.

8. The roof in the escapeway was good. There is no history of falls in the area. The floor was wet in some places, dry in others. There were no falls or blockages. Coal was being produced on the day the citation was issued.

9. Citation No. 2014004 was issued November 3, 1982, charging a significant and substantial violation of 30 C.F.R. 75.517 because in the 7 Flat 5 Room section of the subject mine, there were exposed bare power wires in the trailing cable of the continuous mining machine. The case was submitted on the basis of the following stipulations (Findings of Fact Nos. 10 through 16).

10. All current-carrying conductors on the trailing cable were fully insulated.

11. The trailing cable carries 440 volts of power to the continuous mining machine.

12. Under Pennsylvania state law the cable must be checked before the machine is energized.

13. The cut in the cable was approximately 2 to 4 inches long. It had been taped but the tape was frayed.

14. At the time the citation was issued, the condition did not present a hazard to miners.

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15. The cable has phase to phase and phase to ground protection as well as a ground fault system.

16. The condition was cited "pursuant to MSHA's policy that the Inspector should assume that the condition will not be corrected."

17. On November 16, 1982, in the 8 Flat, 56 Room of the subject mine, the roof bolters failed to check the torque on the roof bolts after they were installed. Citation No. 2014007 was issued alleging a significant and substantial violation of 30 C.F.R. 75.200.

18. The approved roof control plan required that the roof bolter check the torque with a torque wrench on the first bolt installed in the first row, and thereafter check the torque on 10 percent of the bolts.

19. Resin roof bolts were used in the area. They are installed by drilling a hole in the roof, inserting resin tubes into the hole and inserting a resin rod into the tube. The rod is then spun for 20 to 25 seconds to permit the resin and catalyst to mix and harden. The resin "laminates" the roof, that is, it binds the strata in the roof together.

20. By checking the torque on the bolts, the bolter can determine whether the resin is hardening properly. Torquing with a torque wrench is the only safe and effective way to determine whether the resin is hardening.

21. The roof bolters did not believe that torquing was necessary in the case of resin bolts, and the foreman agreed with them. However, the foreman was not aware that the bolts were not being torqued.

#### ISSUES

1. Whether the violations cited were of such nature as could significantly and substantially contribute to the cause and effect of mine safety or health hazards?

2. What are the appropriate penalties for the violations?

#### CONCLUSIONS OF LAW

1. The failure to examine the intake air escapeway described in Finding of Fact No. 6 was a violation of the mandatory standard contained in 30 C.F.R. 75.1704-2(c).

DISCUSSION

The citation in question charged a violation of 30 C.F.R. 75.1704, which is the statutory standard requiring that escapeways be provided and maintained. Respondent argues that since the citation charged a violation of 30 C.F.R. 75.1704 and not of 30 C.F.R. 75.1704-2, it should be dismissed. To accept this argument is to exalt form over substance. There was no doubt, there is no doubt as to the nature of the violation charged. And there is no doubt that the violation occurred.

2. The violation referred to above was caused by Respondent's unwarrantable failure to comply with the standard.

DISCUSSION

The meaning of the term unwarrantable failure has not, so far as I am aware, been discussed in any Commission decision. The Board of Mine Operations Appeals in Zeigler Coal Company, 7 IBMA 280 (1975), analyzing the term in the light of the legislative history, stated that a violation is caused by unwarrantable failure if the operator "has failed to abate the conditions or practices constituting such violation, conditions or practices the operator knew or should have known existed or which it failed to abate because of a lack of due diligence, or because of indifference or lack of reasonable care." This definition was specifically approved by the Senate Committee which reported out S. 717 which became in large measure the Federal Mine Safety and Health Act of 1977. "The Committee approved the recent decision of the Board of Mine Operations Appeals in Zeigler Coal Co. which liberalized the interpretation of the term 'unwarrantable failure.'" S.Rep. 95-181, 95th Cong., 1st Sess., at 32 (1977), reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2nd Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 620 (1978). The term unwarrantable failure is thus equated with negligence, rather than recklessness, and I conclude that Respondent was negligent in failing to see that the required examination was performed.

3. The violation referred to above was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

DISCUSSION

The issue is whether failure to examine an escapeway in accordance with the mandatory safety standards is likely to result in serious injuries. It is imperative that escapeways be maintained in underground coal mines in a manner that they

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may be available and usable to escape from hazardous situations. The only way to ensure that they are so maintained is to conduct regular examinations. The fact that no roof falls or other blockages had previously occurred in this area, and that the escapeway would likely have been examined in 2 days does not address the seriousness of the failure to comply with the examination requirements. Failure to examine escapeways is a practice likely to result in serious injuries to miners.

4. Considering the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for this violation is \$300.

5. The condition described in Finding of Fact No. 9 constituted a violation of 30 C.F.R. 75.517 since the wires on the trailing cable were not adequately insulated.

6. Since the parties have agreed that at the time the citation was issued it did not present a hazard to miners, I conclude that the violation was not significant and substantial, nor was it serious.

7. There are no facts from which I could conclude that the violation was the result of Respondent's negligence, and therefore I conclude that it was not.

8. I conclude that an appropriate penalty for this violation is \$30.

9. The condition or practice described in Finding of Fact No. 16 constituted a violation of the approved roof control plan and therefore of 30 C.F.R. 75.200.

10. The violation referred to above was of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard.

#### DISCUSSION

There is a difference of opinion as to the necessity and value of torquing resin bolts. The Federal inspector stated that checking the torque with a torque wrench is the only safe and adequate way to determine whether the resin is hardening properly. Respondent, and apparently its roof bolters, do not agree. Since the approved roof control plan, which was prepared and submitted for approval by Respondent, requires that resin bolts be torqued, I am accepting the opinion of the inspector. Failure to determine whether the resin has hardened is likely to result in serious injuries to miners.

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11. There is no evidence that Respondent knew of the practice in question, but I conclude that it should have known of it in view of the reaction of the roof bolters to the citation.

12. I conclude that an appropriate penalty for this violation is \$200.

ORDER

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

1. Citation Nos. 2011054, 2014004 and 2014007 are AFFIRMED, but the significant and substantial designation is removed from Citation No. 2014004.

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

CITATION NO.	PENALTY
2011054	\$300
2014004	30
2014007	200
Total	\$530

James A. Broderick  
Administrative Law Judge