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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. KENT 84-24
A.C. No. 15-11065-03518

v.
SHAMROCK COAL COMPANY, INC.,
RESPONDENT

No. 10 Mine

DECISION

Appearances: Carole M. Fernandez, Esq., Office of the
Solicitor, U.S. Department of Labor,
Nashville, Tennessee, for Petitioner;
Neville Smith, Esq., Manchester, Kentucky,
for Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq., the "Act" for one violation of the regulatory standard at 30 C.F.R. 75.302(a). The general issue before me is whether Shamrock Coal Company, Inc. (Shamrock) has violated the cited regulation as alleged and if so what is the appropriate penalty to be assessed.

The one citation at bar, No. 2193845, alleges inadequate ventilation in the numbers 1, 2, and 3 working places on the 004 section of Shamrock's No. 10 Mine. In particular, it alleges as follows:

Line brattice were not installed adequately to provide perceptible air movement to the faces of such places. The brattices were installed but they ended forty to seventy feet outby the faces and did not extend out into the last open crosscut to deflect any air into the places.

The cited standard reads as follows:

Properly installed and adequately maintained line brattice or other approved devices shall be continuously used from the last open crosscut of an entry or room of each working section to provide adequate ventilation to the working faces for the miners, and to remove flammable, explosive, and noxious gasses, dust, and explosive fumes, unless the Secretary or his authorized representative permits an exception to this requirement, where such exception will not pose a hazard to the miners. When damaged by falls or otherwise, such line brattice or other devices shall be repaired immediately.

Shamrock appears to argue that the so-called Nos. 1, 2 and 3 "working places" were not "working faces" within the meaning of the regulations and therefore there was no violation. "Working face" is defined in the regulations as "any place in a coal mine in which work of extracting coal from its natural deposit in the earth is performed during the mining cycle." 30 C.F.R. 75.2(g)(1).

The mining cycle at Shamrock's No. 10 Mine includes the sequential preparation and extraction of coal in six entries numbered 1-6. The actual extraction and loading is performed with a continuous miner. The newly mined area is then immediately bolted and other work such as cleaning up, erecting brattice, testing for methane and taking site lines may then take place before the cycle is repeated in each of the six entries. The continuous miner usually performs its phase of the cycle in 20 to 30 minutes and a complete cycle in all six entries will usually take between 2 and 4 hours.

Within this framework it is apparent that although the continuous miner was not operating in working places Nos. 1-3 and no other work was then being performed in any of those places when the citation was issued those places were nevertheless places in which work of extracting coal was performed during the mining cycle. Those places were accordingly "working faces."

Shamrock next appears to argue that even if the cited areas were indeed "working faces" there was sufficient line brattice in place at the Nos. 1, 2 and 3 places to provide adequate ventilation to remove "flammable, explosive or noxious gasses, dust or explosive fumes." The credible evidence does

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not, however, support the argument. MSHA Inspector James Brashear testified without contradiction that there was no perceptible movement of air when he cited the working places. While he acknowledged there had not been a history of methane at the subject mine and that there was generally "good air" in the working sections, it is apparent that there was then insufficient ventilation to have removed coal dust or other gases and fumes from the face areas. It appears to be the intent of the standard to provide continuing ventilation of lingering coal dust, methane and other flammable and/or noxious gases in areas in which miners may continue to be working throughout the mining cycle. Accordingly, I find that the violation is proven as charged.

I accept the testimony of MSHA Inspector Brashear that the hazard in this particular case was minimal in that there has been no history of dangerous methane levels at this mine, that there was minimal dust at the faces, and that there is customarily "good air" in the cited section. I note that while the operator has been previously cited for the same violation the citations have all been contested for the purpose of having the issue presented for determination by an administrative law judge. The citation at bar is apparently the first to reach hearing. Under the circumstances, I find low negligence. The operator is of medium size and has a moderate history of violations. Accordingly, I find that a penalty of \$50 is appropriate.

ORDER

Shamrock Coal Company, Inc., is ordered to pay a civil penalty of \$50 within 30 days of the date of this decision.

Gary Melick
Assistant Chief Administrative Law Judge