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SOL (MSHA) V. U.S.STEEL
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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
v.
U.S. STEEL MINING CO. INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 82-311
A.C. No. 36-03425-03502

Maple Creek No. 2 Mine

DECISION

Appearances: Howard K. Agran, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner;
Louise Q. Symons, Esq., United States Steel Corporation, Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Melick

This case is before me upon the petition for assessment of 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 nine alleged violations of regulatory standards. The general issues before me are whether the U.S. Steel Mining Company, Inc. (U.S. Steel) has violated the cited regulatory standards and, if so, whether those violations are "significant and substantial" as defined in the Act and as interpreted by the Commission in Secretary v. Cement Division, National Gypsum Company, 3 FMSHRC 822 (1981). If it is determined that violations have occurred, it will also be necessary to determine the appropriate penalty to be assessed for those violations. Evidentiary hearings were held in this case in Washington, Pennsylvania.

Citation Nos. 1145289, 1249704, and 1249705 allege violations of the regulatory standard at 30 C.F.R. 75.200. That standard provides in part that the "roof and ribs of all active underground roadways, travelways, and working places shall be supported or otherwise controlled adequately to protect persons from falls of the roof or ribs." The standard also requires the operator to adopt a roof control plan and violations of the plan have been held to be violations of the standard. See e.g. Secretary v. Southern Ohio Coal Co., 4 FMSHRC 1459 (1982).

Citation No. 1145289 more particularly charges as follows:

> There was a dislodged roof bolt in the No. 16 split in No. 15 room of the eight flat five RM section MMV 011. The area of unsupported mine roof was approximately 6 1/2 feet by 7 1/2 feet of mine roof. The roof was loose and drummy at this location.

According to the Secretary, the manner in which the roof was inadequately supported also violated the following specific provisions of the operator's roof control plan: 1

> All resin-grouted rods shall be used with bearing plates approved for use at the mine. Bearing plates shall be installed tight against the roof, header blocks, crossbars, or other bearing surface material after resin is cured. Tight against the roof means that the plate cannot be rotated 360 degrees using normal hand pressure. (Exhibit P-12, page nine, paragraph 2b).

MSHA Inspector Francis Wehr testified that on April 6, 1982, during the course of a regular inspection of the Maple Creek No. 2 Mine, he observed a dislodged roof bolt hanging (FOOTNOTE ONE)

from the roof in the cited area. As he later clarified, the bolt itself was intact but its 6 inch square bearing plate was loose and could be turned a full 360. The roof surrounding the dislodged bearing plate was admittedly "loose and drummy" thus indicating to Wehr that an unsafe condition existed. Although the mine was not then in production, supervisory personnel were working in the immediate vicinity of the dislodged bearing plate. Wehr opined that it was reasonably likely that material would fall from the roof surrounding the loose bearing plate, thereby injuring and possibly killing mine personnel.

Samuel Cortis, Respondent's district chief mine inspector, disagreed about the hazard associated with the loose bearing plate. According to Cortis, the bearing plate holds only the loose material around the plate itself and provides no additional support for the roof bolt. Even assuming that Cortis is correct, it is undisputed that the bearing plate does protect from debris falling from the area in close proximity to it. Accordingly, I find that a violation of the roof control plan and the general provisions of 30 C.F.R. 75.200 has occurred as charged and that it was "significant and substantial" and a serious hazard. National Gypsum, supra; Secretary v. Consolidation Coal Co., 6 FMSHRC ---, (January 13, 1984).

According to Wehr, the bearing plate had been dislodged by a nearby continuous mining machine.2 He reasoned that since the mine had been in a nonproducing status for several days, the condition had existed for that period of time and should have been discovered during interim preshift examinations. This analysis is not disputed and accordingly supports a finding of negligence.

Citation No. 1249704 also alleges a violation of the standard at 30 C.F.R. 75.200 and states as follows: "There was a violation of the approved roof control plan in the No. 47 RM just inby split 39 of the two flat 47 room section (FOOTNOTE 2)

MMDOO4 in that two of the three temporary supports (roof jacks) were more than four feet from the first row of temporary supports. The left jack was five feet eight inches and second jack on right side was five feet away from the first temporary support installed in the working place. This condition was left from 12:00 a.m. to 8:00 a.m. shift." More specifically, it was alleged at hearing that the cited conditions violated the roof control plan at Page 14, Drawing No. 2. (Ex. P-12).

The evidence supporting this violation is undisputed. According to Paul Gaydos, assistant mine foreman, two of the temporary jacks were admittedly out of compliance. Gaydos disagreed, however, with the probability assessment of a roof fall under the circumstances. He opined that you could not determine that a violation was "significant and substantial" where two of the jacks were placed only about a foot out of position.

Inspector Wehr did not appear to disagree that the temporary supports were misplaced by only 6 inches to a foot but he nevertheless maintained that because of the existence of a slip in a clay vein in the nearby roof, additional support should have been provided. The credibility of this position suffers, however, by the fact that Wehr did not require such additional support for the abatement of the violation. He required only that the temporary support be repositioned. Under the circumstances, I find that the Secretary has failed in his burden of proving that the violation was "significant and substantial". I further must conclude that the hazard was only of moderate gravity. The facts in Secretary v. Consolidation Coal Company, supra., are clearly distinguishable. I agree with Inspector Wehr, however, that the preshift examiner should have seen the cited condition and corrected it. Under the circumstances, the operator was negligent.

Citation No. 1249705 also alleges a violation of the roof control plan charging in particular that "in the sixth flat right straight section MMV012 * * * the diagonal distance of three intersections (1) at four room 33 split exceeded 32 feet for one diagonal distance (33 feet 9 inches) (2) at 32 split in a track entry exceeded 32 feet for one diagonal distance (34 feet) (3) at split 30 in C entry exceeded 32 feet for one diagonal distance (34 feet 6 inches) and posts or cribs were not installed to reduce the one diagonal distance to 32 feet or less as required by the plan."

Inspector Wehr observed that slips, weakened strata, and a cavity with cracks or separations also appeared in the roof within the cited areas. The hazard was serious in his opinion because of the existence in each of the cited intersections of these weakened roof conditions and based on his experience that roof falls tend to occur more frequently in intersections. It is undisputed that the intersections were frequently travelled by miners.

According to Samuel Cortis, the operator's district chief mine inspector, there is no "magical formula" for establishing the maximum safe diagonal distance in intersections. Cortis observed that the roof control plans at this mine were originally approved by MSHA to allow a sum-of-the-diagonals at 64 foot but there had been some intersection failures at that length and MSHA required a shortening of the distance to 58 feet. He claims that based on his experience there has been no difference in intersection failures between 58 foot and 64 feet sum-of-the-diagonal distances. This testimony does not, however, address the situation faced in this case. These violations concern excess distances on one leg of the diagonal. The testimony of Inspector Wehr regarding the hazards associated with the excess diagonal distance accordingly remains unrebutted. Under the circumstances, I find that a serious hazard existed herein and that the violation was "significant and substantial". I also find that the operator was negligent in failing to detect and correct what was an easily discoverable violation. The condition was abated in a timely manner when posts and cribs were installed in all the cited locations thereby reducing the diagonals in the cited intersections to within the prescribed distance.

Citation No. 1249706 alleges a violation of the standard at 30 C.F.R.   75.514 and specifically charges as follows: "suitable connectors were not used in the power wiring going to the off and on switch for the stammer coal feeder crusher in the six flat right straight section MMV012. There were two places where the wires were cut in [two] and the wires were just twisted together and taped up."

The standard at 30 C.F.R.   75.514 provides as follows: "All electrical connections or splices in conductors shall be mechanically and electrically efficient, and suitable connectors shall be used. All electrical connections or splices in insulated wires shall be reinsulated at least to the same degree of protection as the remainder of the wire."

There is no dispute that the wires were twisted together as charged and that no connectors were used. According to

Inspector Wehr, the cable was continually subject to being pulled apart and was located in a busy area. Wires could heat up in the case of a defective connection and because of the dampness of the area, miners could be expected to suffer electrical shock in the vicinity of the splice. Wehr pointed out that "stakon" connectors are regularly used at the cited mine and are considered to be "suitable" connectors.

While not disputing the factual testimony of Inspector Wehr, Assistant Mine Foreman Joseph Stout opined that the splice was nevertheless "nice looking". He testified, moreover, that all employees are told not to touch areas of the wire not properly insulated and that the wire here cited was hanging about 6 feet above the mine floor. I find that the testimony of Inspector Wehr is not rebutted in material respects and that indeed the hazard of electrical shock was reasonably likely under the circumstances. I accordingly find that the violation was serious and "significant and substantial". I also find that the operator was negligent in allowing splices to be made without connectors. The condition was abated in a timely manner when the wire was respliced with connectors.

Citation No. 1249710 charges a violation of the standard at 30 C.F.R. 75.515 and specifically charges that "the power cable entering the metal frame to the junction box of the No. 122 sump pump located at 44 chute on B track Cherokee was not passing through a proper fitting". It was further alleged that the pump was then energized. The cited standard requires that: "cable shall enter metal frames of motors, splice boxes, and electrical compartments only through proper fittings [and that] when insulated wires other than cables pass through metal frames, the hole shall be substantially bushed with insulated bushing."

The facts as alleged in the citation are not in dispute. According to Wehr, the cable entering the hole in the metal junction box had nothing to prevent its wires from being pulled from the box. While Wehr conceded that the insulation on the wire was intact where it passed through the box, he nevertheless observed that a sharp edge on the metal box could readily break the insulation, thereby creating a potential short circuit. Wehr pointed out that if the circuit breaker or pump fuse also failed, then a serious electrical shock hazard existed. I accept Inspector Wehr's assessment that electrical shock would be reasonably likely to occur under the circumstances. The hazard was therefore serious and "significant and substantial". Because the violation also existed in an area of high visibility, I also find the

operator negligent for failing to locate and correct it. The violation was corrected in a timely manner after it was cited.

Citation No. 1249711 also alleges a violation of the standard at 30 C.F.R.   75.514, specifically charging as follows: "The No. 10 cable serving power to the No. 122 sump pump located at Chute 44 on 1 B 1 track haulage on Cherokee had been cut into and suitable connectors were not used to make connection of the severed wires. The wires were twisted together."

The cited allegations are not in dispute. Wehr observed that the outer insulation was taped over the wires that had been twisted together without a connector. The splice was therefore subject to being separated in a wet environment. The 550 volt direct current system would be sufficient to kill a person exposed to the shock hazard. Accordingly, I find that the violation was "significant and substantial" and a serious hazard. The failure of the operator to use suitable splice connectors under the circumstances shows a clear lack of supervision over its electrical work and this constitutes negligence. The record shows that the condition was abated in a timely manner after it was cited.

Citation No. 1249717 was withdrawn by the Secretary at hearing on the basis that the evidence admittedly did not support a violation of the cited standard. The undersigned agrees with the Secretary's assessment and approves of the withdrawal. The citation is accordingly vacated. Commission Rule 11, 29 C.F.R. 2700.11.

Citation No. 1250082 also alleges a violation of the standard at 30 C.F.R.   75.515 and specifically charges as follows: "The power cable entering metal frame to battery charger located in the No. 13 room between 10 to 11 crosscut in the eight flat five room section MMV011 was not passing through a proper fitting. The cable was rubbing the metal and the charger was energized at the time." According to Inspector Wehr, the clamp that had been in position had pulled out and slid down the cable. He observed that the cable had already been pulled out a few inches and that if the ground wire had pulled all the way out, there was a potential for shock. Wehr conceded that the insulation on the wires entering the charger was intact and that the circuit breaker would ordinarily cut power to the charging unit to prevent shock, however, if the breaker should fail, a miner coming in contact with the charging unit could suffer electrical shock and indeed could be electrocuted or

severely burned. The violation was therefore "significant and substantial" and serious. The condition of the wires was obvious and therefore should have been observed during the course of preshift examinations. The operator was accordingly negligent. The condition was abated in a timely fashion.

Citation No. 1249383 alleges a violation of the standard at 30 C.F.R. 75.503 and more particularly by reference to 30 C.F.R. 18.46(b). Section 18.46(b) requires that headlights "shall be protected from damage by guarding or location." The citation here specifically charges as follows: "The No. 39 shuttle car serial No. 1802 approval No. 2F1490A43 in six flat eleven room section was not maintained in permissible condition as the headlight opposite the operator was not securely fastened to frame of shuttle car."

It is not disputed that the headlight was loose and only one bolt was holding it in position. Under the circumstances, I find that the light was not adequately protected from damage and the violation is proven as charged. According to MSHA Inspector Alvin Shade, there also existed the reasonable likelihood that the bouncing light might break or tear out its wiring, thereby causing an arc. If methane were present under the circumstances, there existed a hazard of an explosion. Although it is undisputed that at the time the violation was discovered, methane levels were within permissible nonexplosive limits, there is always the danger, according to Shade, of a sudden inundation of methane. According to Shade, there have been in the past explosive accumulations and ignitions of methane at the subject mine. Within this framework, I conclude that the violation was indeed "significant and substantial" and of high gravity. I further find that the headlight in the condition cited should have been discovered by the operator and that accordingly it was negligent in failing to discover and correct the condition. The violation was abated in a timely manner.

In assessing the violations noted below, I have also taken into consideration that the operator is large in size and that a significant history of violations exists.

ORDER

Citation No. 1249717 is vacated. U.S. Steel Mining Company, Inc., is ordered to pay the following penalties within 30 days of the date of this decision:

Citation No. 1249383	$150
Citation No. 1145289	170
Citation No. 1249704	170
Citation No. 1249705	200
Citation No. 1249706	140
Citation No. 1249710	120
Citation No. 1249711	120
Citation No. 1250082	130

Gary Melick
Assistant Chief Administrative Law Judge

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~FOOTNOTE_ONE

1 Respondent argues in its posthearing brief that the citation did not allege a violation of its roof control plan. It did not, however, contend at hearing that it did not receive sufficient notice of the violation to prepare its defense and did not request a continuance for such purpose. Moreover, the citation does allege facts which if true could constitute a violation of the operator's roof control plan and refers on its face to the standard alleged to have been violated. The citation herein accordingly comports with section 104(a) of the Act, which requires that "each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Act, standard, rule, regulation, or order alleged to have been violated." I find, moreover, that adequate notice was provided within the framework of Constitutional due process. See S.S. Kresge Company v. NLRB, 416 F.2d 1225 (6th Cir.1969); NLRB v. United Aircraft Corporation, 490 F.2d 1105 (2nd Cir.1973). Finally, the evidence herein supports a violation of the cited standard for inadequate roof support independent of the roof control plan.

~FOOTNOTE_TWO

2 Respondent also argues in its brief that since the bearing plate became dislodged sometime after it was installed, the evidence does not show a violation of that part of the roof control plan requiring that bearing plates be installed tight against the roof. The suggested construction is, however, too narrow. It is implicit in the language of the plan that the bearing plates must continue to be tight against the roof even after the initial installation. There was in any event as previously noted a violation of section 75.200 for inadequate roof support independent of the roof control plan.