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

MONTEREY COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. LAKE 84-19-R
Citation No. 2319275; 10/20/83

Docket No. LAKE 84-20-R
Order No. 2319279; 10/26/83

Docket No. LAKE 84-42-R
Order No. 2319279-03; 12/22/83

No. 1 Mine

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

v.

MONTEREY COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-31
A.C. No. 11-00726-03545

Monterey No. 1 Mine

DECISION

Appearances: Carla K. Ryhal, Esq., Houston, Texas, for
Contestant/Respondent;
Deborah A. Persico, Esq. and Robert A. Cohen, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Arlington, Virginia, for Respondent/Petitioner.

Before: Judge Broderick

STATEMENT OF THE CASE

Contestant, Monterey Coal Company ("Monterey"), filed notices contesting Citation No. 2319275 issued October 20, 1983 and Order No. 2319279 issued October 26, 1983. It also filed a motion to consolidate the cases and to expedite proceedings. The contested order was subsequently modified and Monterey contested the modification. The Secretary of Labor ("Secretary") filed a civil penalty petition seeking penalties for the violations alleged in the citation and order.

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Pursuant to notice, the cases were heard in St. Louis, Missouri, on January 26 and 27, 1984. The cases were ordered consolidated for the purposes of hearing and decision. Paris O. Webb, Arthur Boeck, and Edward J. Lubrant testified on behalf of the Secretary. Jeffrey Thomas Padgett, Jack Lehmann, Lennis Isenberg, Richard Mottershaw, Ollie Cox and Charlie Pate testified on behalf of Monterey. 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. Monterey was the operator of Mine No. 1, an underground coal mine in Macoupin County, Illinois.

2. Monterey is a large operator. The subject mine employed approximately 650 miners.

3. The subject mine had a prior history of 378 paid violations within the 24 months prior to the alleged violations contested herein. This history included 23 violations of 30 C.F.R. 75.200 and one violation of 30 C.F.R. 75.516. No violations of 30 C.F.R. 75.900-1 were shown on the history. I do not consider this history such that penalties otherwise appropriate should be increased because of it.

4. The alleged violations were abated by Monterey promptly and in good faith.

5. The assessment of civil penalties in this case will not affect Monterey's ability to continue in business.

CITATION NO. 2319275

6. On October 20, 1983, a Federal coal mine inspector issued a citation under section 104(d)(1) of the Act, charging that the main trolley wire was not supported on well installed insulators and was in contact with a metal overcast and two roofbolt plates. A violation of 30 C.F.R. 75.516 was charged.

7. On October 20, 1983, there were numerous missing and broken insulated hangers supposed to insulate and support the main trolley wire in the subject mine. The trolley wire sagged in some locations because of missing hangers.

8. The trolley wire referred to above was in contact with a metal overcast at the No. 1 West entry of the Main North track. It was also in contact with roof bolt plates at about the 109 crosscut. This caused arcing when the trolley pole passed these areas.

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9. The hazard created by the conditions described in Findings No. 7 and 8 is that the arcing could cause a fire in contacting combustible materials or could cause an explosion in the presence of methane or float coal dust in suspension.

10. There was no evidence of methane or float coal dust in the area cited at the time the citation was issued.

11. The condition of the trolley wire described in Findings No. 7 and 8 had existed for some days. Monterey should have been aware of it as a result of its preshift examinations and weekly hazard examinations.

ORDER NO. 2319279

12. On October 26, 1983, Inspector Webb issued a withdrawal order under section 104(d)(1) of the Act for an alleged violation of 30 C.F.R. 75.900-1. The condition cited was a hazardous roof condition in the Number 66 crosscut off the 4 East track entry which contained the transformer-rectifier including a circuit breaker, making operation, inspection, examination and testing of this equipment unsafe.

13. On December 22, 1983, the order referred to above was amended to show that it also charged a violation of 30 C.F.R. 75.200.

14. On October 26, 1983, the roof in the Number 66 crosscut off the 4 East track entry appeared to be sagging. There were cracks in the roof and rashing on both ribs. One roof bolt was missing.

15. The Number 66 crosscut contained the transformer-rectifier equipment designed to convert alternating current into direct current. This equipment included circuit breakers.

16. The roof in question consisted of limestone 7 to 8 feet thick. There were two slip fractures in the roof between the limestone roof and the shale. Geologic tests performed subsequent to the order showed no instability in the roof itself.

17. To abate the order, rock was scaled from the roof and from the ribs. Sixteen posts and six crossbars were installed to support the area.

18. The condition described in Finding No. 14 posed the hazard of a roof or rib fall to any miner entering the crosscut.

19. The condition described in Finding No. 14 was obvious, had existed for some time and should have been known to Monterey.

STATUTORY PROVISION

Section 104(d)(1) of the Act provides:

If, upon any inspection of a coal or other mine, an authorized representative of the Secretary finds that there has been a violation of any mandatory health or safety standard, and if he also finds that, while the conditions created by such violation do not cause imminent danger, such violation if of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard, and if he finds such violation to be caused by an unwarrantable failure of such operator to comply with such mandatory health or safety standards, he shall include such finding in any citation given to the operator under this Act. If, during the same inspection or any subsequent inspection of such mine within 90 days after the issuance of such citation, an authorized representative of the Secretary finds another violation of any mandatory health or safety standard and finds such violation be also caused by an unwarrantable failure of such operator to so comply, he shall forthwith issue an order requiring the operator to cause all persons in the area affected by such violation, except those persons referred to in subsection (c) to be withdrawn from, and to be prohibited from entering, such area until an authorized representative of the Secretary determines that such violation has been abated.

REGULATORY PROVISIONS

30 C.F.R. 75.516 provides: "All power wires (except trailing cables on mobile equipment, specially designed cables conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-insulated insulators and shall not contact combustible material, roof, or ribs."

30 C.F.R. 75.900-1 provides: "Circuit breakers used to protect low-and medium-voltage circuits underground shall be located in areas which are accessible for inspection, examination, and testing, have safe roofs, and are clear of any moving equipment used in haulageways."

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30 C.F.R. 75.200 provides in part:

Each operator shall undertake to carry out on a continuing basis a program to improve the roof control system of each coal mine and the means and measures to accomplish such system. 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

. . .

ISSUES

1. Whether the violations charged in the citation and order occurred as alleged?

2. If so, whether the violations were of a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard?

3. If the violations occurred, whether they were caused by Monterey's unwarrantable failure to comply with the mandatory standards?

4. If the violations occurred, what is the appropriate penalty for each of them?

CONCLUSIONS OF LAW

1. Monterey is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the No. 1 Mine, and I have jurisdiction over the parties and the subject matters of these proceedings.

2. The conditions described in Findings of Fact No. 7 and 8 constitute a violation of the mandatory safety standard in 30 C.F.R. 75.516.

DISCUSSION

There is no real dispute concerning the inspector's allegation that the trolley wire was not properly supported on well-insulated insulators. The management representative who accompanied the inspector admitted as much (Tr. 218-19). I also conclude that the fact that the trolley wire was in contact with a metal overcast and roof bolt plates constituted a violation of the standard, since these are part of the "roof." The fact that the overcast and roof bolt plates are not combustible does not establish that the standard was not violated. The term "combustible" in the standard does not modify "roof."

3. The conditions found in Findings No. 7 and 8 created the hazard described in Finding No. 9. The arcing could cause a mine fire or explosion. This hazard was reasonably likely to result in an injury of a reasonably serious nature. Therefore, it was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

4. The violation referred to in Conclusion No. 2 resulted from the unwarrantable failure of Monterey to comply with the safety standard in question.

DISCUSSION

The conditions cited were obvious to observation and had clearly existed for a long period of time. Monterey knew or should have known that the conditions existed and failed to abate them because of lack of reasonable care. See Zeigler Coal Company, 7 IBMA 280 (1977).

5. The violation was serious and resulted from Monterey's negligence. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$900.

6. The condition found in Findings No. 14, 15 and 16 constituted violations of 30 C.F.R. 75.900-1 and of 30 C.F.R. 75.200.

DISCUSSION

There is little doubt but that the roof conditions in the crosscut No. 66, in which the transformer-rectifier equipment was present, were unsafe. The only genuine issue raised by Monterey was the seriousness of the hazard. There were cracks in the roof, and a large rock was scaled down in the abatement. The ribs were rashing and substantial amounts of material were taken from the ribs.

7. The violations referred to above in Conclusion No. 6 were serious. The hazard to which they contributed was reasonably likely to result in an injury of a reasonably serious nature. The fact that the roof was solid limestone, and was unlikely to massively fall does not establish that a fall of some size would not have occurred. The scaling down of rock from the roof and removing substantial material from the ribs in the abatement process is strong evidence that a fall resulting in injury was likely. The violation was of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

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8. The violations referred to in Conclusion No. 6 above resulted from the unwarrantable failure of Monterey to comply with the safety standards in question.

DISCUSSION

Monterey argues that the failure of mine examiners to record the conditions demonstrates that Monterey had no reason to know of them. Since the conditions were obvious and longstanding, the failure only demonstrates that Monterey's examination program was seriously deficient.

9. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for these two violations is \$2,000, or \$1,000 for each violation.

ORDER

Based upon the above Findings of Fact and Conclusions of Law, IT IS ORDERED

1. Citation No. 2319275 issued on October 20, 1983, is AFFIRMED and the Notice of Contest is DENIED.

2. Order No. 2319279 issued October 26, 1983, is AFFIRMED and the Notice of Contest is DENIED.

3. Order No. 2319279-03 issued December 22, 1983, modifying Order No. 2319279, is AFFIRMED and the Notice of Contest is DENIED.

4. Monterey shall within 30 days of the date of this decision pay the following civil penalties for the violations of mandatory standards found herein to have occurred.

CITATION/ORDER	30 C.F.R. STANDARD	PENALTY
2319275	75.516	\$ 900
2319279	75.900-1	1,000
2319279-3	75.200	1,000
	Total	\$2,900

James A. Broderick
Administrative Law Judge