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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.

MONTEREY COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. LAKE 84-30
A.C. No. 11-00726-03544

No. 1 Mine

SUMMARY DECISION

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, seeking a "single penalty" assessment of \$20 for an alleged violation of mandatory safety standard 30 CFR 75.1403-5(g), as cited in a section 104(a) citation, No. 2201219, issued on November 3, 1983, by MSHA Inspector George J. Cerutti.

Respondent filed a timely answer to the proposal denying that a violation occurred, and asserting that the cited standard does not apply to the facts presented in this case. At the same time, the respondent filed a motion to consolidate this case with six previously consolidated cases involving these same parties. Those cases involved similar facts and identical issues as those presented in the instant case. Petitioner did not object to the motion to consolidate. However, since the hearings in the prior cases had been concluded, and the decisions were about to be issued, this case was not included among those disposed of by my previous decisions.

In view of the foregoing, I conclude that this case should be disposed of by the application of the Commission's summary decision rule 64, 29 CFR 2700.64.

Discussion

Citation No. 2201219, describes the following "condition or practice":

A clear travelway at least 24 inches wide wasn't provided along the Main North Belt Conveyor on the east side. Rock and coal was present at the following locations 112 to 108 crosscuts, 106 to 103, 101 and 102, 99 to 94, 86 to 85, 82 to 81, 75 to 72, 69 to 59, 57 to 51, 44 to 39, 36 to 28, 24 to 25, 15 to 12.

A notice to provide a safeguard was issued 9-4-75. 1 WHW.

On February 23, 1984, I issued decisions in Monterey Coal Company v. MSHA and MSHA v. Monterey Coal Company, Dockets LAKE 83-68-R, etc., in which I vacated several citations under the same factual circumstances which are presented in the instant case. In my prior decisions, I concluded that the statutory and regulatory intent of section 30 CFR 75.1403-5(g), is to address hazardous conditions connected with belt conveyors which transport men and materials other than coal, and that any logical interpretation of this section necessarily excludes coal as a "material" within the scope of the cited regulatory criteria (decision, pg. 35).

I take note of the fact that MSHA has not sought review of my decisions pursuant to Commission Rule 29 CFR 2700.70. My decisions became final 30 days after their issuance on February 23, 1984, and since they were not appealed, they are final and controlling in the instant case.

Conclusion

The facts and issues in this case are identical to those presented in my previous dispositive decisions. I incorporate by reference my previous findings and conclusions concerning the interpretation and application of mandatory standard section 75.1403-5(g), including my reasons for vacating the citations in those cases. Under the circumstances, I conclude and find that the citation issued in this case must also be vacated.

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Order

IT IS ORDERED that Citation No. 2201219, November 3, 1983,
IS VACATED, and this case is dismissed.

George A. Koutras
Administrative Law Judge