

CCASE:
SOL (MSHA) V. U.S.STEEL
DDATE:
19840522
TTEXT:

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 COMPANY,
INC.,

RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. PENN 83-115
A.C. No. 36-03425-03518

Docket No. PENN 83-116
A.C. No. 36-03425-03519

Docket No. PENN 83-148
A.C. No. 36-03425-03525

Docket No. PENN 83-155
A.C. No. 36-03425-03526

Docket No. PENN 83-156
A.C. No. 36-03425-03527

Docket No. PENN 83-157
A.C. No. 36-03425-03528

Maple Creek No. 2 Mine

DECISION

Appearances: Thomas A. Brown, 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

These cases are before me upon the petitions for civil penalty filed by the Secretary 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 violations of regulatory standards. The general issues before me are whether U.S. Steel Mining Company, Inc., (U.S. Steel), has violated the regulations as alleged, and, if so, whether those violations are of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard i.e. whether the violations are "significant and substantial." If violations are found, it will also be necessary to determine the appropriate penalty to be assessed.

~1370

Docket No. PENN 83-115. The one citation in this case, No. 2013930, charges a violation of the standard at 30 C.F.R. 75.701-5 and specifically alleges as follows:

Separate clamps were not provided for the electrical and frame grounds to attach the grounds to the DC grounding medium (mine rail), which were serving the two Ricks water pumps located along the Cherokee haulage at 40 split; the pumps were receiving power from the energized 550 volt DC trolley system. All four ground wires were attached to one clamp.

The cited standard provides as follows: "The attachment of grounding wires to a mine track or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection."

Respondent does not dispute that a violation occurred as charged, but argues that the violation was not "significant and substantial." In order to establish that a violation of a mandatory safety standard is "significant and substantial" the Secretary must prove: (1) the underlying violation of a mandatory safety standard, (2) a discrete safety hazard--that is, a measure of danger to safety--contributed to by the violations, (3) a reasonable likelihood that the hazard contributed to will result in an injury, and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature. Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984).

According to Inspector Okey Wolfe of the Federal Mine Safety and Health Administration, (MSHA), the cited ground wires were attached to a single clamp which was, in turn, attached to the rail. Wolfe observed that such clamps may loosen from normal rail traffic and that in the event of a derailment would easily separate. He observed that should the clamp come off of the rail, the frames of both water pumps would become energized and an individual could be shocked or electrocuted. The hazard was increased by the wet conditions in the vicinity of the pumps.

Gary Stevenson, an electrical engineer for U.S. Steel testified that so long as all of the grounds were connected, there would be no hazard, but conceded that if any of those connections came loose, there would indeed be a hazard. Within this framework of evidence, I have no difficulty concluding that the violation meets the "significant and

~1371

substantial" criteria set forth in the Mathies decision. Accordingly, I find the violation was "significant and substantial" and constituted a serious hazard.

Inasmuch as it required an affirmative act to connect the wires onto one clamp, and that this type of violation had been previously cited at this mine, I find that the operator was also negligent.

Docket No. PENN 83-116. Two citations were brought within this docket. Citation No. 2000148 charges a violation of the standard at 30 C.F.R. 75.503 and specifically alleges as follows:

Changes required to be made on six service machine 115 V.8.C. single phase control cable connector to maintain permissibility for the longwall mining system have not been made. A letter from Service Machine Company dated June 28, 1982, was sent to the mine advising them of the changes to be made. It cannot be verified whether management received notification or not.

MSHA Inspector James Potiseck conceded that he could not verify that the mine operator had received notice of the necessary modification either from MSHA or from the Service Machine Company prior to the issuance of his citation. Indeed, Potiseck admitted that the letter in evidence (Government Exhibit No. 9) supposedly informing U.S. Steel of the required changes was sent to the wrong address. The district electrical engineer for U.S. Steel, Gary Stevenson, testified that after receiving the citation, he had been unable to locate anyone who had received the noted letter.

Within this framework of evidence, it is clear that U.S. Steel did not receive notice of the change in the permissibility requirements for the cited longwall mining unit. Without such prior notice, there can be no violation. Accordingly, the citation is vacated.

Citation No. 2102668 alleges a violation of the standard at 30 C.F.R. 75.517 and charges specifically as follows:

The trailing cable serving the Fletcher twin boom roof bolter at the 6 Flat 19 room section (ID013) was not adequately insulated and fully protected. There had been damage to the cable and the outer jacket had been cut open for a distance of 23 inches of which

~1372

4 inches was not taped at all and the remainder of the area had four places where the tape had deteriorated and the ground wires were exposed.

The cited standard requires, as here relevant, that power wires and cables shall be insulated adequately and fully protected. According to Inspector Okey Wolfe, the ground wires could be seen inside of the cable jacket for the 4 inches that had not been taped. In addition, within the taped area, one of the phase wires was exposed. The tape itself had also deteriorated exposing the ground wires. According to Wolfe, the wires carried 440 volts alternating current and posed a shock hazard to persons handling the cable. Ordinarily, it would be necessary for a person to handle the cable as the roof bolter is moved to a new entry.

According to U.S. Steel electrical engineer Gary Stevenson, no hazard exists so long as the inner insulation is intact. He also pointed out that the ground wires alone, even if exposed, posed no hazard. Stevenson conceded, however, that he did not know whether the inner insulation in the exposed area was in fact intact. Under the circumstances I accept the testimony of Inspector Wolfe, who actually observed the exposed wires and the deteriorated condition of the trailing cable and I accordingly find that there was a "significant and substantial" violation of the cited standard. Mathies, supra. The testimony of Inspector Wolfe that the condition was not difficult to observe is undisputed and accordingly, I also find that the operator was negligent in failing to detect and correct the violation.

Docket No. PENN 83-148. U.S. Steel does not challenge the existence of the violations charged in the two citations at issue in this case, but contests only the "significant and substantial" findings associated therewith. Citation No. 2011291 charges a violation of the operator's ventilation plan under the standard at 30 C.F.R. 75.316. The citation reads as follows:

There was a violation of the approved ventilation, methane, and dust control plan in No. 29 room of 6 Flat 28 room section. There were no jacks or boards and posts installed behind the canvas check in 29 room. The check (temporary stopping) was loose and not reasonably air tight and was not directing all of the air to the working face of No. 31 room.

~1373

The cited provisions of the operator's roof control plan provide as follows: "Approved brattice cloth spadded or nailed to the roof and sides with supporting framework consisting of brattice, boards, posts, two by fours, or roof jacks [shall be] used to direct air towards the working places." Samuel Cortis, U.S. Steel's district chief mine inspector, conceded that the cited temporary stopping was not supported as required by the plan and that some air was indeed escaping under the canvas curtain. He observed, however, that 8,400 cubic feet per minute of air was reaching the working face of the No. 31 room when only 5,000 cubic feet per minute was required by the ventilation plan.

MSHA Inspector Robert Swarrow conceded that although air was leaking through the cited stopping, more than the legally required amount of air was ventilating the working faces. Swarrow further conceded that any temporary stopping will leak some air and that stoppings are not required to be airtight. He nevertheless concluded that the violation was "significant and substantial" because "you might not get sufficient ventilation to clear the faces of methane gas." Methane testing at the time revealed no more than .5 percent methane present.

While there was admittedly a violation of the ventilation plan, since the amount of air reaching the working faces exceeded the requirements of the plan by 3,400 cubic feet per minute, I cannot find that the violation was either serious or "significant and substantial." If indeed more than 8,400 cubic feet per minute of air is deemed to be necessary for ventilating the working faces, then MSHA should require that the ventilation plan be amended to require that amount of air. The failure of the mine operator to have detected and corrected this violation during preshift examinations, demonstrates, however, that it was negligent.

Citation No. 2104283 alleges a violation of the standard at 30 C.F.R. 75.503 and reads as follows: "The Kersey battery powered tractor at the 6 Flat 28 room section (ID002) was not being maintained in permissible condition. Locks were not being used to prevent the plugs from coming loose from the battery case." The parties stipulated and agreed at hearing that the facts concerning this alleged violation were nearly identical to the facts relating to a violation charged in another case pending before the undersigned judge (Docket No. PENN 83-166, Citation No. 2102678) and that the decision in that case should govern the disposition of the instant citation. The determination in that case that the violation was "significant and substantial"

~1374

and caused by the operator's negligence is accordingly incorporated herein by reference.

Docket No. PENN 83-155. Citation No. 2103162 charges a violation of the standard at 30 C.F.R. 75.516 and alleges as follows: "The power wires serving power to the car spotter at 2 Flat tipple A track were in contact with combustible material as they were hung on wooden header blocks and wooden cribs [and were] also in contact with coal ribs and wires were energized." Respondent does not dispute that a violation occurred as charged but argues that it was not "significant and substantial."

According to MSHA Inspector Alvin Shade, there were no breaks in the wire insulation and no tension in the wire. There was, in addition, about 3 feet of clearance between the rail cars and the roof where the wire was strung. According to U.S. Steel District electrical engineer Gary Stevenson, the insulation on the wire was rated for 600 volts, whereas the wire itself was carrying only 120 volts. In addition, according to Stevenson, there was such low current in the wire that even assuming that the insulation had been removed, the heat generated would be about the same as an ordinary light bulb and therefore would be unlikely to ignite either coal or wood. This evidence is not disputed by MSHA and, accordingly, I find that the hazard associated with the admitted violation was minimal. The violation was not "significant and substantial." Mathies, supra. I find, however, that the mine operator was negligent since the violation required an affirmative act and was plainly visible to a preshift examination.

Citation No. 2103073 alleges a violation of the standard at 30 C.F.R. 75.503 and, more particularly, charges as follows: "The chain drive conveyor for the longwall in the 6 Flat 11 room section MRV001 was not maintained in permissible condition. There was an opening in excess of .005 in present between the plain flange joint of junction box for the electrical drive motor of the chain drive conveyor." The Respondent again does not dispute that a violation occurred as charged but argues that the violation was not "significant and substantial."

According to the undisputed testimony of MSHA Inspector Francis Wehr, there was indeed an opening in the junction box in excess of .005 of an inch. The box was located 8 to 10 feet from the longwall shear. According to his undisputed testimony, the Maple Creek No. 2 Mine is classified as a "gassy mine" because it emanates 1,000,000 cubic feet of methane over a 24-hour period. With the cited opening in the junction box, methane could leak inside and, assuming an

~1375

arc or spark, could explode. At the time of the citation, there was ample intake air in the area and only .1 percent of methane detected. No mining operations were being performed at the time.

Mine foreman and longwall coordinator Joseph Hann testified for the operator that ordinarily 18,000 to 20,000 cubic feet of air per minute flushes the cited area of any methane. In addition, according to Hann, there had never been any methane reported at the cited location. He also pointed out that if the ventilation fan would fail, the longwall machinery would stop automatically.

In essential respects the testimony of Inspector Wehr is not disputed. It is clear that the existence of methane is unpredictable and that the cited mine was considered to be "gassy." The hazard of an explosion or fire and associated injuries under the circumstances, was therefore reasonably likely. The violation was accordingly, "significant and substantial" and serious. Mathies Coal Company, supra. I further find that the operator was negligent in failing to detect the violation.

Citation No. 2103078 alleges a violation of the standard at 30 C.F.R. 75.200 and more particularly charges as follows:

There were three 6 foot conventional [roof bolts] along the B track haulage road of Cherokee that were missing or dislodged. (1) Between 61-62 chute a[n] 8 foot by 8 foot area of unsupported roof that was loose and drummy, (2) At 47 chute an area of unsupported mine roof of 6 feet by 8 1/2 feet of mine roof that the roof was loose and drummy, (3) At 47 chute an area of 6 feet by 9 1/2 feet of unsupported mine roof that was solid when tested."

The cited 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 Respondent again does not dispute that a violation occurred as charged but argues that the violation was not "significant and substantial."

Indeed, the facts as alleged in the citation are not disputed. According to MSHA Inspector Francis Wehr, the roof in two of the cited areas was loose and drummy sounding and this indicates that the roof strata is not tightly

~1376

laminated and there may be gaps in the strata. According to Wehr, loose conventional roof bolts allow the strata to separate and create a hazard roof falls. The cited roof conditions were in the busy haulage area.

According to Wayne Croushore, mine foreman, it was unlikely that the roof would fall "right away." He observed that he and the inspector stood beneath the cited conditions to take measurements and that accordingly, he thought the condition was not unsafe. Croushore also pointed out that the preshift examination is performed while moving on a jeep and it is therefore difficult to see loose and/or missing roof bolts.

Within this framework, I conclude that the violation was "significant and substantial" Mathies, supra. I also find the operator to have been negligent in failing to detect the cited conditions. It is no defense that the conditions were difficult to observe while moving in a jeep. The proffered defense only points out the need for a more thorough preshift examination.

Citation No. 2104446 alleges a violation of the standard at 30 C.F.R. 75.701-5 and charges as follows: "Separate clamps were not provided for the frame ground and the electrical return ground for the lights in the dinner hole of the 8 Flat 6 RN section 001. Both wires were on same clamp." The cited standard provides as follows: "The attachment of ground wires to a mine track or other grounded power conductor will be approved if separate clamps, suitable for such purpose, are used and installed to provide a solid connection."

The Respondent again does not dispute that a violation occurred as charged but argues that the violation was not "significant and substantial." According to Inspector Wehr, if the clamp separates from the rail, either from a derailment or vibration, there is a potential for shock, electrocution or burns to miners touching metal baskets in the dinner hole. According to electrical engineer Gary Stevenson, there would be no hazard if the wires attached to the clamp became separated. In his opinion, if there were a derailment, the wires would most likely separate or break. Stevenson did not, however, deny that there would be a shock hazard should the wires remain connected upon the separation of the clamp. Under the circumstances, I find that the violation was "significant and substantial" and serious. Mathies, supra. Based on the undisputed testimony of Inspector Wehr that the cited condition was highly visible and that it required an affirmative act to place both wires on a single clamp, I also find that the operator was negligent.

~1377

Citation No. 2104449 alleges a violation of the standard at 30 C.F.R. 75.503 and charges more particularly as follows:

The Joy continuous mining machine SNJM274 was not maintained in permissible condition in the 6 Flat 28 room section MNV002. One of the left headlights was not securely fastened to frame of the machine and the other headlight was provided with a locking device, but did not lock the screw type lens cover in place.

Respondent again does not dispute that a violation occurred as charged but alleges that the violation was not "significant and substantial." The hazard associated with the violation was described by Inspector Wehr as allowing the lens to loosen through vibration and allow methane into the light compartment. The methane could explode from an arc or spark inside the compartment and allow the flame path to escape. Clearly such an explosion could cause fatalities. Wehr also observed that high levels of methane have been liberated in the vicinity of the area cited and indeed the operator had previously been cited for an "imminent danger" having 1.5 percent levels of methane in the No. 28 room section. Wehr also observed that it is not unusual for arcing and sparking to occur within the light compartments because of vibration from the continuous mining machine. Wehr pointed out that although he charged two separate violations in the citation, he was asserting that only the loose lens was "significant and substantial" and that only it presented an explosion hazard.

The mine foreman did not dispute Wehr's assessment of the hazard and conceded that the continuous mining machine has "quite a bit of vibration while mining coal." According to electrical engineer Gary Stevenson, there "should be" no arcing or sparking in the headlights of the continuous miner because there is ordinarily a "firm and tight connection." Stevenson admitted, however, that if the lens cover did back off and there was arcing in the presence of methane at combustible levels, there would indeed be a hazard.

Within this framework of evidence, I conclude that the violation was indeed "significant and substantial" and a serious hazard. I agree, moreover, with the undisputed testimony of Inspector Wehr that the cited condition should have been discovered during the required electrical examinations. Accordingly, I also find the operator negligent.

~1378

Docket No. PENN 83-156. Citation No. 2103100 alleges a violation of the standard at 30 C.F.R. 75.503 and more particularly charges as follows: "The Kersey battery powered tractor Serial No. 76158 at the 6 Flat 19 room section (ID013) was not being maintained in a permissible condition. Locks were not provided to prevent the plugs from coming loose from the battery box receptacles."

At hearing the parties agreed and stipulated that the facts surrounding this alleged violation were nearly identical to another violation presently before the undersigned judge in Docket No. PENN 83-166, Citation No. 2102678. The parties further agreed that the determination in that proceeding should be incorporated by reference and be determinative of the disposition of this citation. Since I have found that the violation charged in Citation No. 2102678 was "significant and substantial" and caused by the operator's negligence those findings are likewise incorporated herein by reference.

Docket No. PENN 83-157. At hearing, the Secretary requested to withdraw Citation No. 2104224 based on the discovery that a suitable lifting jack had indeed been provided for the No. 65 eight ton locomotive being operated at the 105B track and that accordingly, there was no violation of the standard at 30 C.F.R.

75.1403. Based on the Secretary's representation, the undersigned approved of the withdrawal. Accordingly, Citation No. 2104224 is vacated.

The Secretary also moved at hearing for a settlement of Citation No. 2104225 and the operator agreed to pay the proposed civil penalty of \$91 in full. Based on the representations and documentation presented at hearing, I find that the proposal for settlement is in accord with the provisions of section 110(i) of the Act, and, accordingly, I approve the settlement.

In determining the appropriate penalties to be assessed in the various cases before me, I am also considering the evidence that the operator abated all of the cited conditions in a timely manner and in good faith, that the operator is large in size, and that the operator had a fairly substantial history of violations, including violations of a number of the standards cited herein.

ORDER

The U.S. Steel Mining Company, Inc., is ordered to pay the following civil penalties within 30 days of the date of this decision:

~1379

Docket No. PENN 83-115

Citation No. 2013930 \$ 250

Docket No. PENN 83-116

Citation No. 2000148 vacated
Citation No. 2102668 250

Docket No. PENN 83-148

Citation No. 2011291 100
Citation No. 2104283 206

Docket No. PENN 83-155

Citation No. 2103162 126
Citation No. 2103073 400
Citation No. 2103078 400
Citation No. 2104446 126
Citation No. 2104449 400

Docket No. PENN 83-156 206

Docket No. PENN 83-157

Citation No. 2104224 vacated
Citation No. 2104225 91

\$2,555

Gary Melick
Assistant Chief Administrative Law Judge