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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	CIVIL PENALTY PROCEEDINGS Docket No. PENN 83-151 A.C. No. 36-00970-03520
v.	Docket No. PENN 83-166 A.C. No. 36-00970-03518
U.S. STEEL MINING COMPANY, INC., RESPONDENT	Docket No. PENN 83-167 A.C. No. 36-00970-03523
	Maple Creek No. 1 Mine

DECISION

Appearances: Thomas 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.

DOCKET NO. PENN 83-151. As amended at hearing, Citation No. 2102679 charges a violation of the standard at 30 C.F.R. 75.1714-2(c) and specifically alleges as follows: "Gary Gamon shuttle car operator was observed on the seven flat eight room section ID014 without the 1 hour filter type self-rescue device which was determined to be approximately 140 feet away." The cited standard provides as follows: "Where the wearing or carrying of the self-rescue device is hazardous to the person, it shall be placed in a readily

accessible location no greater than 25 feet from such person."

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 violation; (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).

Inspector Okey Wolfe of the Federal Mine Safety and Health Administration (MSHA) testified that during the course of his inspection of the Maple Creek No. 1 Mine on January 24, 1983, he observed the shuttle car operator, Gary Gamon, 140 feet from his shuttle car without his one-hour-filter-type-self-rescue device. Gamon had left it on the shuttle car. It is not disputed that under the cited standard the self-rescue device could properly have been removed from the miner's belt and placed on the shuttle car (because of its potential for bruising the miner while working the shuttle car) so long as the device remained within 25 feet of the miner. The violation was "significant and substantial" according to Wolfe, because of the hazard to the miner of suffocation from carbon dioxide resulting from fire and smoke. He thought it reasonably likely that a fire could occur anywhere outby the cited section from sources such as coal, pumps or trolley wires and noted that protective measures must be taken quickly in the presence of carbon dioxide.

Joseph Ritz, ventilation foreman, accompanied Wolfe during this inspection. Ritz thought it "highly unlikely" for fire or smoke to occur at the mine. According to Ritz, the shuttle car operator left his machine to assist with line brattice and could be expected to have been away from his equipment for only 10 minutes. Ritz opined, moreover, that it would have taken the operator only 10 to 15 seconds to return to his shuttle car for his self-rescue device and that would have been as fast as retrieving it from his belt.

Even assuming, however, that the miner could have sprinted the 140 feet to his shuttle car as fast he could have removed the self-rescuer from its container on his belt, it is reasonably likely that, as a result of an explosion, fire or dense smoke the miner's path to his shuttle

car could very well be obstructed. Under these circumstances, the failure to have his self-rescuer readily accessible could prove fatal. Under all the circumstances, I find that the violation was "significant and substantial."

According to Inspector Wolfe, Respondent had never previously been cited for a violation of the cited standard and in his opinion, the individual miner had forgotten to take his self-rescuer with him. Wolfe's determination of relatively low negligence is accordingly appropriate.

CITATION NO. 2103095. The operator does not dispute that the cited violation did in fact occur. The parties agreed and stipulated at hearing that the same hazard existed concerning this citation as existed with respect to Citation No. 2102678 in Docket No. PENN 83-166. Since I have found infra that the latter violation was indeed "significant and substantial" the violation herein is also "significant and substantial" and constituted a serious hazard. Relying upon the negligence findings relating to Citation No. 2102678 I find correspondingly that the operator was also negligent herein.

DOCKET NO. PENN 83-166

CITATION NO. 2012691. At hearing, the Secretary requested to withdraw and vacate this citation because the inspector who cited the conditions had died and alternative evidence was deemed insufficient to support the citation. Under the circumstances, the request was granted and the citation is accordingly vacated.

CITATION NO. 2102678. The operator does not dispute the existence of the violation cited herein, and challenges only the "significant and substantial" findings associated therewith. The citation charges a violation of the standard at 30 C.F.R. 75.503 and more particularly alleges as follows: "The Kersey battery powered tractor, serial No. 76-153, approval No. 26-2213-11 was not being maintained in a permissible condition at the seven flat eight room section ID014. The plugs to the battery tray were not locked to prevent the plugs from coming loose."

The cited standard requires that the "operator of each coal mine shall maintain in permissible condition all electric face equiment required by sections 75.500, 75.501, 75.504 to be permissible which is taken into or used inby the last open crosscut of any such mine." The Secretary contends, and the operator does not dispute, that the provisions of 30 C.F.R 18.41(f) are incorporated by reference into this citation. Section 18.4(f) states as follows:

"For a mobile battery-powered machine, a padlock to the receptacle will be acceptable in lieu of an interlock provided the plug is held in place by a flouted ring or an equivalent mechanical fastening in addition to the padlock. A connector within a padlock enclosure will be acceptable."

MSHA Inspector Okey Wolfe testified that during the course of his inspection of the No. 1 Mine, on January 24, 1983, he observed the cited battery-powered tractor without the padlock specified in the cited regulation. Wolfe observed that if the threaded plugs powering the tractor had become unthreaded, the 250 volt cable could pull out of the machine thereby creating an arc. He noted that the No. 1 Mine was subject to section 103(i), spot inspections under the Act because of its high liberation of methane. Wolfe accordingly opined that there was a reasonable likelihood for such an arc to result in a methane explosion.

The operator's witness Don Basile, conceded that if the plug connection should become loose while the equipment was operating under load, then an arc could indeed occur. He thought, however, that since the arc would have to travel 6 or 7 inches before entering the outside atmosphere, the chances of an explosion were remote. Basile further stated that he had never seen a sleeve or collar loosen sufficiently to permit the plug to become disconnected.

Particularly in light of the gassy classification of the Maple Creek No. 1 Mine, I find that the arcing hazard presented by the unsecured plug was quite serious and constituted a "significant and substantial" violation. I find that I must also agree with Inspector Wolfe's assessment of negligence in this case, inasmuch as it was obvious in this case that the padlocks had not been secured in an appropriate manner and that this was a frequent type of violation at this mine.

DOCKET NO. PENN 83-167

CITATION NO. 2104362. This citation alleged a violation of a safeguard notice issued pursuant to 30 C.F.R. 75.1403 on July 31, 1973. It charges that "the No. 31 eight ton locomotive being operated by Bill Wiles on the eight flat 56 room track was not provided with a suitable lifting jack." The specific safeguard notice dated July 31, 1973, (Government Exhibit No. 2) stated in part that a 13-ton locomotive was not equipped with a suitable lifting jack and bar in the eight flat section and that all locomotives in the mine shall be equipped with suitable lifting jacks and bars. It is not disputed that the locomotive cited in this case did not in fact have a suitable lifting jack or bar.

According to MSHA Inspector Francis Wehr, Sr., the locomotive and rail cars used in the No. 1 Mine frequently derailed. Individual rail cars weighed 2 or 3 tons empty and up to 12 tons loaded. He observed that in the event of a derailment and the absence of an available jack and bar, a person pinned beneath a car or the locomotive could not readily be rescued. Wehr observed that although a "rerailer" was available on the locomotive, it is necessary to move the cars and locomotive for it to operate. With a jack and bar, it is not necessary that the locomotive or cars be moved horizontally--an important distinction. The jack in this case was located about 1,000 feet from the locomotive. Wehr opined that even if the location of the jack were known, it would have taken at least 10 minutes to have retrieved it.

According to transportation foreman, Ira Seaton, the miner assigned to the locomotive told him that the jack was only five blocks away (estimated at 425 feet). The miner said he had used the jack at that location and intended to retrieve it after loading coal.

Particularly in light of the frequent derailments at the No. 1 Mine, and the grave dangers posed by the heavy equipment used on the track, I find the cited violation to be "significant and substantial." Particularly in light of the history of derailments and other similar violations at this mine, I find that the operator was negligent in failing to enforce its policy of requiring jacks and bars on the locomotives.

CITATION NO. 2011298. This citation alleges a violation of the standard at 30 C.F.R. 75.503 and specifically charges as follows: "The Fletcher roof bolting machine operating in nine flat left straight was not maintained in permissible condition in that the hose conduit and the outer jacket for the fluorscent lights was damaged, exposing the insulated power wire securing electrical power to the lights." It is not disputed that to meet the "permissibility" requirements of the cited standard the operator must maintain the cited equipment in compliance with the standards set forth in 30 C.F.R. Part 18.

In this case the cited roof bolter had been the subject of an MSHA approved field modification under 30 C.F.R. 18.81. (Operator's Exh. No. 1). These modifications must conform to the requirements of Subpart B of Part 18 of the regulations. See 30 C.F.R. 18.81(b). Subpart B of Part 18, and specifically section 18.39 (i.e. 30 C.F.R. 18.39) requires in part that "hose conduit shall be provided for

mechanical protection of all machine cables that are exposed to damage." Apparently in keeping with that requirement, U.S. Steel requested, and MSHA approved, in the field modification the use of "MSHA approved conduit" (Operator's Exh. No. 1, p. 5) for the power cable between the junction box and the light here cited. According to the undisputed evidence, however, the hose conduit for that power cable had been damaged thereby exposing the insulated power wire inside. Since the required hose conduit was not being maintained in a "permissible" condition a violation of 30 C.F.R. 503 therefore existed.

I must agree, however, with the Secretary's position at hearing, that the violation was not "significant and substantial." It is undisputed that the entire illumination system on the roof bolter was deemed "intrinsically safe" by MSHA. Accordingly, even should the cable become severed, there was no capability of a methane ignition. The violation is accordingly also of low gravity. I find that the operator was, however, negligent in failing to detect the violation in light of the undisputed evidence that the condition had existed for at least a week.

In determining the appropriate penalties to be assessed in this case, I am also considering evidence that the operator abated all of the cited violations in a timely manner, that the operator is large in size, and that the operator had a fairly substantial history of violations, including violations of several of the standards cited.

ORDER

Citation No. 2012691 is vacated. The U.S. Steel Mining Company, Inc., is ordered to pay the following civil penalties within 30 days of the date of this decision:

DOCKET NO. PENN 83-151	
Citation No. 2102679	$ 200
Citation No. 2103095	220
DOCKET NO. PENN 83-166	
Citation No. 2102678	220

DOCKET NO. PENN 83-167

Citation No. 2011298	100
Citation No. 2104362	250
	$ 990

Gary Melick
Assistant Chief Administrative Law Judge