

CCASE:
SOL (MSHA) V. U.S.STEEL
DDATE:
19840703
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 83-96
A.C. No. 36-03425-03516

Docket No. PENN 83-97
A.C. No. 36-03425-03517

Maple Creek No. 2 Mine

DECISION

Appearances: David A. Pennington, Esq., and Thomas A. Brown, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner; Louise Q. Symons, Esq., Pittsburgh, Pennsylvania, for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The above cases involve alleged safety violations in the same mine cited during inspections in December 1982. The cases were consolidated for the purposes of hearing and decision. A total of eight citations are involved in the two dockets, and the parties have proposed to settle three of them. Pursuant to notice, the cases were called for hearing in Washington, Pennsylvania, on November 29 and 30, 1983. Because of the unavailability of a government witness, the cases were continued to April 24, 1984, when the hearing was completed. Alvin Shade, Okie Wolfe and Francis E. Wehr testified on behalf of Petitioner; Paul Gaydos, Brian Howarth and Wayne Croushore testified on behalf of Respondent. Both parties have filed posthearing briefs. Based on the entire record and considering the contentions of the parties, I make the follow decision.

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PROPOSED SETTLEMENT

Citation No. 2013974

This citation charged a violation of 30 C.F.R. 75.503 because a conduit was out of the packing gland on the left headlight and on the methane monitor of the continuous miner. The violation was originally assessed at \$136 and was designated significant and substantial. By the settlement agreement, the parties agreed that the violation was not significant and substantial and proposed to settle for a payment of \$50. Because of the construction of the headlight, it was not possible for the condition to cause a safety hazard. I accept the representations in the motion and will approve the settlement agreement.

Citation No. 2013976

This citation charged a violation of 30 C.F.R. 75.1105 because a battery charging station was not vented directly into return air. The violation was originally assessed at \$136. The parties propose to settle for \$100. Respondent had attempted to vent to the return by knocking holes in nearby stoppings but the inspector required a check curtain at the charging station. I accept the representations in the motion and will approve the settlement.

Citation No. 2102667

This citation charged a violation of 30 C.F.R. 75.1403 because a locomotive being operated on track haulage was not equipped with a suitable lifting jack and bar. The violation was originally assessed at \$98. The parties propose to settle for \$50. Subsequent investigation disclosed that the locomotive was trammed to the motor barn and would have reached that destination in about 5 minutes and would have been provided with a lifting jack and bar before leaving the barn. I accept the representations in the motion and will approve the settlement agreement.

FINDINGS OF FACT COMMON TO ALL VIOLATIONS

1. At all times pertinent to this proceeding, Respondent was the owner and operator of an underground coal mine in Washington County, Pennsylvania, known as the Maple Creek No. 2 Mine.

2. Respondent is a large operator, producing in excess of 15 million tons of coal annually.

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3. In the 2-year period prior to the issuance of the citations involved herein, the subject mine had 469 paid violations of mandatory safety and health standards, 394 of which were designated as significant and substantial. This history is not such that penalties otherwise appropriate should be increased because of it.

4. The imposition of penalties in this proceeding will not affect Respondent's ability to continue in business.

5. The violations involved in this case were abated timely and in good faith.

DOCKET NO. PENN 83-96

Citation No. 2013973

6. On December 9, 1982, Federal Coal Mine Inspector Francis E. Wehr issued Citation No. 2013973 alleging a violation of 30 C.F.R. 75.503 because the battery covers on a scoop tractor being operated at the last open crosscut were not secured to the frame of the battery.

7. On December 9, 1982, the battery covers were not locked or bolted to the frame of the battery compartment on a Kersey scoop tractor used in the last open crosscut in the subject mine. The covers consisted of four separate lids made of one-quarter inch steel plate. They fit over the battery compartments "like the top of a shoe box fits over the shoe box." Two of them weighed about 80 pounds each; the other two weighed about 50 pounds each. There was a 1-inch lip around the outside edges of the compartment. Each lid has insulating material on the undersurface. The lids are approximately 1 to 1 1/4 inches from the battery terminals.

8. The subject mine liberates more than one million cubic feet of methane in a 24-hour period.

9. Devices were provided on the lids to lock the battery covers in place, but the bolts needed to secure them were missing.

10. When the scoop is in use, the batteries are normally recharged each shift. When they are recharged, the lids have to be lifted to help ventilate the battery.

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11. Citations have been issued at the subject mine for the same condition as described in this citation.

12. In the normal operation of a scoop tractor, battery covers can be jarred. However, there is a lip of 1 inch on the lids and a tongue in the back that fits through the lids. Therefore, in order for the lid to pick up from its place, it would have to bounce up at least an inch and then slide back.

Citation No. 2102601

13. On December 14, 1982, Federal Coal Mine Inspector Alvin L. Shade issued Citation No. 2012601 alleging a violation of 30 C.F.R. 75.1003 because the energized trolley feeder wire on a track haulage switch was not guarded.

14. On December 14, 1982, the trolley feeder wire on the track haulage switch in the 6 Flat 1 chute was not guarded. Miners were required to travel under this switch regularly. The wire was approximately 5 and 1/2 feet from the mine floor. It was not insulated and carried 550 volts of direct current. The section was not producing coal, but cars and supplies were stored in the area.

15. The guard boards which normally guarded the trolley wire at the switch had been dislodged and were lying on the ground when the citation was issued.

16. The area is preshift examined daily. A "shopped" mine car was parked in the chute at the time the citation was issued.

Citation No. 2102602

17. On December 15, 1982, Inspector Shade issued Citation No. 2102602 charging a violation of 30 C.F.R. 75.516 because eight energized power wires were in contact with combustible material.

18. On December 15, 1982, eight energized power wires supplying power to signal lights and an electric switch on track haulage in the subject mine were hung on wooden planks bolted to the roof and were not insulated. The wires were also touching the coal roof.

19. The wires carried 550 volts of direct current. The area was subject to preshift examinations. The area was damp. There was no tension on the wires at the time the citation was issued.

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DOCKET NO. PENN 83-97

Citation No. 2013980

20. On December 14, 1982, Inspector Wehr issued Citation No. 2013980 charging a violation of 30 C.F.R. 75.400 because of an accumulation of combustible material around the track dusting machine.

21. On December 14, 1982, there was an accumulation of approximately 53 empty rock dust bags at No. 23 room along the 2 Flat main haulage room in the subject mine. The bags were piled in and around the track rock dusting machine.

22. The bags had apparently been left by the prior shift. The rock duster has an electric motor and its power is supplied by a cable. The cable was fully insulated. Rock dust was present on the mine floor, approximately 16 inches deep.

23. There were energized trolley wires and trolley feeder wires approximately 20 feet from the area of the empty bags. The rock duster was not operating at the time the citation was issued.

24. Respondent has a verbal clean up program which provides that the crew using the bags pick them up before they leave the mine, place them on a supply truck and park it on a side chute until the next supply crew picks up the truck and takes it to the outside.

25. Respondent has been cited for this same condition several times in the past.

Citation No. 2102666

26. On December 15, 1982, Federal Coal Mine Inspector Okey H. Wolfe issued Citation No. 2102666 charging a violation of 30 C.F.R. 75.1106 because stored oxygen and acetylene cylinders were not properly secured.

27. On December 15, 1982, there were four oxygen and two acetylene cylinders stored in a block building at the mouth of No. 5 flat belt in the subject mine, which cylinders were not secured to prevent being accidentally tipped over. The cylinders were pressurized.

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28. The storage area for the cylinders was subject to preshift examination.

29. The tanks were standing upright. The oxygen bottles contained metal caps. A chain bolted to the wall was provided to hold the cylinders but was not secured around them.

APPLICABLE REGULATORY PROVISIONS

30 C.F.R. 75.503 provides as follows:

The operator of each coal mine shall maintain in permissible condition all electric face equipment * * * which is taken into or used in by the last open crosscut of any such mine.

30 C.F.R. 18.44(c) provides as follows: "Battery-box covers shall be provided with a means for securing them in a closed position."

30 C.F.R. 75.1003 provides in part as follows:

Trolley wires, trolley feeder wires, and bare signal wires shall be insulated adequately where they pass through doors and stoppings, and where they cross other power wires and cables. Trolley wires and trolley feeder wires shall be guarded adequately:

- (a) At all points where men are required to work or pass regularly under the wires;
- (b) On both sides of all doors and stoppings; and
- (c) At man-trip stations.

30 C.F.R. 75.516 provides as follows:

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.

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30 C.F.R. 75.400 provides as follows: "Coal dust, including float coal dust deposited on rock-dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein."

30 C.F.R. 75.1106-3 provides in part as follows:

(a) Liquified and nonliquified compressed gas cylinders stored in an underground coal mine shall be

* * * * *

(2) [P]laced securely in storage are as designated by the operator for such purpose, and where the height of the coalbed permits, in an upright position, preferably in specially designated racks or otherwise secured against being accidentally tipped over.

ISSUES

With respect to each citation the issues are (1) whether the cited violation occurred; (2) if it did, whether it was significant and substantial; and (3) if it did, what is the appropriate penalty.

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the Maple Creek No. 2 Mine, and I have jurisdiction over the parties and subject matter of this proceeding.

2. The condition described in Findings of Fact Nos. 7 through 12 did not constitute a violation of 30 C.F.R. 75.503.

DISCUSSION

Two Administrative Law Judges have considered similar alleged violations of 75.503 and ruled that the lip around the covers and the tongues on the covers constituted means for securing the battery box covers in a closed position. Secretary v. U.S. Steel, 6 FMSHRC 155 (1984) (ALJ). Secretary v. U.S. Steel, --- FMSHRC ---- (June 8, 1984)

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(ALJ). Since the issue here was decided in these prior proceedings involving the same parties, the prior decisions are res judicata. See Secretary v. U.S. Steel 5 FMSHRC 1334 (1983) (ALJ). Therefore, I conclude that the condition cited was not a violation of the mandatory standard.

3. The condition described in Findings of Fact Nos. 14 through 16 constituted a violation of 30 C.F.R. 75.1003. Respondent does not contest the finding that the trolley feeder wire in question was not guarded.

4. The violation was significant and substantial. Miners travelled in the area regularly and could receive electric shocks if they touched the bare wire. Reasonably serious injuries would likely result from the violation.

5. The violation was serious. Respondent should have been aware of it. An appropriate penalty for this violation is \$200.

6. The condition described in Findings of Fact Nos. 18 and 19 constituted a violation of 30 C.F.R. 75.516. The energized electric power wires going to the signal lights and electric switch had been placed on top of a wooden plank bolted to the roof. They were also in contact with the coal roof. Apparently some of the coal had potted out and the insulated hooks which held the wires had fallen down and the wires were placed on the plank.

7. The hazard created by the above violation was the possibility of a mine fire in the event of a short in the wire and a failure or melting of the fuse. I conclude that the violation was significant and substantial.

8. The violation was moderately serious. Respondent should have been aware of the condition and should have corrected it. I conclude that an appropriate penalty for the violation is \$150.

9. The condition described in Findings of Fact Nos. 21 to 25 constituted a violation of 30 C.F.R. 75.400. The rock dust bags which are combustible had been permitted to accumulate.

10. The hazard created by the violation was a mine fire. The likelihood of such an occurrence was remote. The violation was not significant and substantial.

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11. The violation was not serious. The negligence was slight--consisting in permitting the bags to be strewn on and against the rock dusting machine. Except for that, the clean up plan was being followed. I conclude that an appropriate penalty for this violation is \$50.

12. The condition described in Findings of Fact Nos. 27 to 29 constituted a violation of 30 C.F.R. 75.1106. The oxygen and acetylene tanks were not properly secured although they were in a storage area.

13. The hazard created by this violation is that the cylinders could be knocked over and the valve broken or the cylinder ruptured. Such an occurrence is less likely in a storage area than in a roadway, compare Secretary v. U.S. Steel, 5 FMSHRC 1728, 1732 (1983) (ALJ), but it is nevertheless reasonably likely. The violation was significant and substantial.

14. The violation was serious and since it should have been known by Respondent, was caused by its negligence. I conclude that an appropriate penalty for this violation is \$125.

ORDER

Based on the above Findings of Fact and Conclusions of Law, it is ORDERED

1. Citation No. 2013973 is VACATED.

2. Citation Nos. 2013976, 2102601, 2102602, 2102667, 2012666 are AFFIRMED as properly charging significant and substantial violations.

3. Citation Nos. 2013974 and 2013980 charge violations not properly designated as significant and substantial.

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

CITATION	PENALTY
2013974	\$ 50
2013976	100
2102601	200
2102602	150

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2102667	50
2102666	125
2013980	50

Total \$ 725

James A. Broderick
Administrative Law Judge