

CCASE:
SOL (MSHA) V. ZAPATA COAL
DDATE:
19841116
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER
v.
ZAPATA COAL CORPORATION,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 84-122
A.C. No. 46-03138-03513

Docket No. WEVA 84-123
A.C. No. 46-03138-03514

Docket No. WEVA 84-149
A.C. No. 46-03138-03515

Monclo Prep. Plant
Boone No. 2 Prep. Plant

ZAPATA COAL CORPORATION,
CONTESTANT
v.

CONTEST PROCEEDINGS

Docket No. WEVA 84-17-R
Citation No. 2139599; 10/17/83

Docket No. WEVA 84-18-R
Citation No. 2139587; 10/6/83

Docket No. WEVA 84-19-R
Citation No. 2139593; 10/11/83

Docket No. WEVA 84-20-R
Citation No. 2139597; 10/12/83

Docket No. WEVA 84-21-R
Citation No. 2271717; 10/12/83

Docket No. WEVA 84-22-R
Citation No. 2139563; 10/18/83

Docket No. WEVA 84-23-R
Citation No. 2139600; 10/18/83

Docket No. WEVA 84-24-R
Citation No. 2139561; 10/18/83

Docket No. WEVA 84-25-R
Citation No. 2271718; 10/19/83

Docket No. WEVA 84-26-R
Citation No. 2271719; 10/19/83

Docket No. WEVA 84-27-R
Citation No. 2271720; 10/19/83

Docket No. WEVA 84-28-R
Citation No. 2271722; 10/19/83

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

Docket No. WEVA 84-29-R
Citation No. 2271726; 10/20/83

Docket No. WEVA 84-36-R
Citation No. 2139562; 10/18/83

Docket No. WEVA 84-37-R
Citation No. 2271724; 10/20/83

Monclo Prep. Plant
Boone No. 2 Prep. Plant

DECISION

Appearances: Covette Rooney, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner/Respondent;
Laura E. Beverage, Esq., Jackson, Kelly, Holt
and O'Farrell, Charleston, West Virginia, for
Respondent/Contestant.

Before: Judge Broderick

STATEMENT OF THE CASE

The mine operator (Zapata) filed proceedings contesting the validity of citations issued by MSHA. The Secretary has filed penalty proposals for the violations of mandatory standards alleged in the contested citations. The proceedings were consolidated by Order of May 11, 1984, for the purposes of hearing and decision. With respect to certain of the violations, the parties submitted prior to the hearing and at the hearing, settlement proposals. Pursuant to notice, the consolidated cases were heard on the merits in Charleston, West Virginia, on September 18 and 19, 1984. Federal Mine Inspectors Ernest Thompson and Clinton Lewis testified on behalf of MSHA. J. Richard Dillon, Monty Boytek, and Hershel Aylshire testified on behalf of Zapata. The parties waived their rights to file posthearing briefs. Based on the entire record, and considering the contentions of the parties, I make the following decision.

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FINDINGS AND CONCLUSIONS APPLICABLE TO ALL CITATIONS

1. At all times pertinent to these proceedings, Zapata Coal Corporation, also known as Dal-Tex Coal Corporation, was the owner of mining facilities in Logan County, West Virginia, known as the Monclo Prep. Plant, also known as Boone No. 2 Prep. Plant.

2. At the time of the alleged violations contested in these proceedings, the annual production of the subject mine was 557,122 tons of coal. The operator is therefore of moderate size.

3. In the 24-months prior to the alleged violations contested herein, the operator had a history of 66 violations of mandatory standards. This is a relatively favorable history.

4. The imposition of penalties in these proceedings will not affect the operator's ability to continue in business.

5. All of the violations involved herein were abated promptly and in good faith.

6. The operator herein is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

SETTLEMENT MOTION

The Secretary proposed to settle certain of the alleged violations contained in the above dockets. Written motions were filed on July 2, 1984, and August 27, 1984, and were amended by statements made on the record on September 19, 1984. The following citations were included in the motions:

Docket No. WEVA 84-122

Citation No. 2271720

This citation charged a violation of 30 C.F.R. 77.400(b) because of the absence of a guard on a walkway under the conveyor belt. The hazard was deemed minimal and the operator's negligence moderate. The violation was originally assessed at \$20 and the parties proposed to settle for \$40. I approved the settlement agreement.

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Citation No. 2271722

This citation charged a violation of 30 C.F.R. 77.204 because handrails and toeboards were inadequate or were missing under the rotary dump, on the bottom floor transfer building, and around the second floor of the shaker. The hazard was deemed moderate as was the operator's negligence. The violation was originally assessed at \$136, and the parties proposed to settle for \$136. I approved the settlement agreement.

Docket No. WEVA 84-123

Citation No. 2139561

This citation charged a violation of 30 C.F.R. 77.204 because of openings caused by deteriorated metal on the first floor of the preparation plant. The hazard was deemed moderate as was the operator's negligence. The violation was originally assessed at \$105 and the parties proposed to settle for \$105. I approved the settlement agreement.

Citation No. 2139562

This citation charged a violation of 30 C.F.R. 77.1607(c) because the unguarded walkway along the belt conveyor was not equipped with emergency stop devices or cords. The hazard was deemed unlikely to occur, but the operator's negligence was deemed moderate. The violation was originally assessed at \$20, and the parties proposed to settle for \$40. I approved the settlement agreement.

Citation No. 2271726

This citation charged a violation of 30 C.F.R. 77.400 because the equipment guard for the V-belt pulley was inadequate. The gravity of the hazard was deemed moderate, but the operator's negligence was deemed low. The violation was originally assessed at \$105, and the parties proposed to settle for \$90. I approved the settlement agreement.

Docket No. WEVA 84-149

Docket No. 2139587

This citation charged a violation of 30 C.F.R. 71.805 because a noise survey showed excessive noise in the environment of one miner. The gravity of the violation was deemed low and the operator's negligence minimal. The violation was originally assessed at \$98 and the parties proposed to settle for \$69. I approved the settlement agreement.

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Citation No. 2139593

This citation charged a violation of 30 C.F.R. 77.1104 because of an accumulation of combustible material along a portion of the mine floor. The condition had recently occurred, consisted of wet material and was not a serious hazard. The violation was originally assessed at \$20, and the parties proposed to settle for \$40. I approved the settlement agreement.

Citation No. 2139563

This citation charged a violation of 30 C.F.R. 77.207 because of insufficient illumination along a number of walkways. No miners worked in the area, however, and the operator's negligence was deemed low. The violation was originally for \$69. I approved the settlement agreement.

THE CONTESTED CITATIONS

Docket No. WEVA 84-122

Citation No. 2139597

This citation charged a violation of 30 C.F.R. 77.207 because of inadequate illumination along a walkway which constituted a secondary escapeway. There were lights on the primary escapeway, on the landing, and flood lights on the hill at the stockpile about 50 feet from the secondary escapeway. The operator's safety superintendent testified that all of these lights provided illumination to the secondary escapeway. The citation was written in the day-time, although the inspector testified that he had previously been in the area at night. The operator's safety superintendent testified that he frequently walked the secondary escapeway, and in his opinion it was adequately illuminated. There was debris along the walkway.

I conclude that the Secretary has not carried his burden of establishing that a violation occurred. Therefore, the notice of contest is granted, the citation is VACATED, and the penalty proposal for this violation is DISMISSED.

Citation No. 2271717

This citation charged a violation of 30 C.F.R. 77.202 because of an accumulation of float coal dust on the surface structure of a coal truck dump, on the inside of the frame of an electric heater and in the electrical control boxes

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and switch boxes. Sources of ignition were present in the electrical connections and in the cable from the pump which lacked proper bushing. The pump and heaters were not in operation at the time the citation was issued.

The inspector and the operator's plant superintendent disagreed as to whether the dust on the facilities described above was float coal dust. I accept the inspector's testimony on this issue and conclude that float dust was present in the amounts described by the inspector. The amount of dust was such that it would have taken more than one shift to accumulate. With an ignition source present, there was a substantial fire or explosion hazard. I find that coal dust in a dangerous amount was permitted to accumulate. Therefore, the cited condition was a violation of the standard in 30 C.F.R. 77.202. It was a significant and substantial violation, was serious and was caused by the operator's negligence. I conclude that \$250 is an appropriate penalty for the violation.

Citation No. 2139600

This citation charged a violation of 30 C.F.R. 77.400(c) because of an inadequate guard at the No. 9 belt conveyor flight discharge head. The inspector stated that a miner could reach in behind the guard and catch himself between the belt and the pulley. There were no miners working at the drive at the time the citation was issued, but the belt was regularly cleaned and serviced while the belt was in operation. The guard was only about 48 inches high. The distance from the top portion of the guard to the pinch point was 31 to 36 inches. It would have been somewhat difficult but not impossible for a person to reach the pinch point from behind the guard. The standard requires that guards shall extend a distance sufficient to prevent a person from reaching behind the guard and becoming caught between the belt and the pulley. The Commission recently held that this standard "imports the concepts of reasonable possibility of contact and injury; including contact stemming from inadvertent stumbling or falling, momentary inattention, or ordinary human carelessness." Secretary v. Thompson Brothers, 5 FMSHRC ---- (September 24, 1984), slip. op. page 4. I conclude that a violation of the standard was established. However, I further conclude that an injury was unlikely because of the location of the pinch point. The violation was not significant and substantial and was not serious. The condition was or should have been obvious to the operator and therefore, resulted from the operator's negligence. I conclude that an appropriate penalty for the violation is \$75.

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Citation No. 2271718

This citation charged a violation of 30 C.F.R. 77.400(a) because of inadequate mechanical equipment guards at the rotary breaker and at 4 V-belts at the pulley drive shaker. There was an opening about 18 inches wide in the screen guard at the rotary breaker which was from 6 to 7 feet high. The pinch point was about 26 inches in from the guard. The guards on the 4 V-belts did not come down to the end of the motor, leaving the belts and pinch points exposed. The area of exposure was about 4 inches high and 4 inches wide. The pinch point was 18 to 20 inches in from the guard, and about 5 1/2 feet high. The area was cleaned weekly and serviced occasionally.

I conclude that a violation of the standard (requiring that exposed moving machinery parts which may be contacted by persons and may cause injury to persons shall be guarded) was shown. See discussion of prior citation, above. I conclude that the violation was reasonably likely to cause serious injury; that therefore, it was significant and substantial. The conditions should have been known to the operator. I conclude that an appropriate penalty for the violation is \$150.

Docket No. WEVA 84-123

Citation No. 2139599

This citation charged a violation of 30 C.F.R. 77.1608(b) because of dumping of coal approximately 30 feet beyond the edge of a high wall and directly above a surge bin; and also because an end loader was trammed above the surge bin to scatter coal dumped by trucks. The standard requires that where the ground at a dumping point may fail to support the weight of a loaded dump truck, trucks shall be dumped a safe distance back from the edge of the bank. The evidence is conflicting as to whether the ground was such that it could support the weight of a loaded truck. There was considerable dispute as to the effect (and location) of the surge bin. I accept the judgment of the inspectors that the ground at the dumping point in question might fail to support the weight of a loaded truck. I further accept their testimony as to the evidence that trucks had backed on to such ground. The trucks belonged to and were operated by independent trucking companies. But the

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operator here controlled the dumping area, and was responsible for controlling the dumping of the coal. I conclude that the operator was properly cited for violations of the standard committed by the truckers. Therefore, I conclude that a violation was established. I further conclude, as the Secretary concedes, that the end loader's travel on to the coal pile was not a violation of the standard cited. I further conclude that the trucks did not go out over the surge bin, although they did go beyond the edge of the highwall. Respondent did not take adequate steps to prevent this occurrence and was therefore negligent in permitting the violation. I conclude that the violation was reasonably likely to result in serious injury. It was therefore properly cited as significant and substantial. I conclude that an appropriate penalty for the violation is \$150.

Citation No. 2271719

This citation charged a violation of 30 C.F.R. 77.202 because of float coal dust accumulations to a depth of 4 inches on the frame and structure of the speed reducer in the Transfer Building. The speed reducer contains an electrical motor and belt drive. The motor was energized and the belt was in operation at the time the citation was issued. The amount of dust was such that it would have taken more than one shift to accumulate. The electric motor and speed reducer do not generally get hot but run warm while in operation. The building was enclosed on three sides and open on the fourth. The only miners normally entering the area would be those assigned to grease the earings and clean up the area. I conclude that the accumulation of float coal dust was a violation of the standard cited. I further conclude that since ignition sources were present, it was reasonably likely to contribute to a fire or explosion hazard which could result in serious injury to miners, and that it resulted from the operator's negligence. I conclude that an appropriate penalty for the violation is \$135.

Citation No. 2271724

This citation charged a violation of 30 C.F.R. 77.512 because of covers not being properly secured on three breaker boxes serving the centrifugal dryers. The boxes have 480 volts of power. The power was on and the tipple in operation. The only people authorized to enter the area are certified electricians and foremen. A danger sign was present on the door warning of 480 volts of electricity. The screw locks were loose and the doors open about 2 to 3 inches. I conclude that a violation was established. The condition

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should have been known to the operator and corrected before the citation was issued. The exposure to hazard was minimal and the likelihood of injury slight. The violation was not significant and substantial. I conclude that an appropriate penalty for the violation is \$75.

ORDER

1. The following contested citation is ORDERED VACATED:

Citation No. 2139597 issued October 12, 1983

2. The following contested citations are ORDERED AFFIRMED, but MODIFIED to remove the significant and substantial designation:

Citation No. 2139600 issued October 18, 1983

Citation No. 2271724 issued October 20, 1983

3. The following contested citations are AFFIRMED as issued:

Citation No. 2271717 issued October 12, 1983

Citation No. 2271718 issued October 19, 1983

Citation No. 2139599 issued October 17, 1983

Citation No. 2271719 issued October 19, 1983

4. As part of the settlement, the operator seeks to have withdrawn its notices of contest with respect to the following citations and the contests are ORDERED WITHDRAWN and the proceedings DISMISSED:

Citation No. 2271720 issued October 19, 1983

Citation No. 2271722 issued October 19, 1983

Citation No. 2139561 issued October 18, 1983

Citation No. 2139562 issued October 18, 1983

Citation No. 2271726 issued October 20, 1983

Citation No. 2139587 issued October 6, 1983

Citation No. 2139563 issued October 18, 1983

Citation No. 2139593 issued October 11, 1983

5. Within 30 days of the date of this decision the operator is ORDERED to pay the following civil penalties for violations of mandatory standards:

CITATION	PENALTY
2271720	\$ 40
2271722	136
2139561	105
2139562	40
2271726	90

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2139587	69
2139593	40
2139563	69
2139597	0
2271717	250
2139600	75
2271718	150
2139599	150
2271719	135
2271724	75

Total	\$1,424
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James A. Broderick
Administrative Law Judge