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RUSHTON MINING V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

RUSHTON MINING COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No: PENN 85-44-R
Order No: 2255375; 11/1/84

Rushton Mine

DECISION

Appearances: Joseph T. Kosek, Esq., Rushton Mining
Company, Ebensburg, Pennsylvania for
Contestant
Robert A. Cohen, Esq., Office of the
Solicitor, U.S. Department of Labor,
Arlington, Virginia, for Respondent

Before: Judge Moore

This case was heard on an expedited basis because of Rushton's allegation that the way MSHA was requiring it to comply with its self-contained self-rescue device storage plan created a serious hazard to the miners. The case involves differences of opinion and interpretation rather than disputed facts.

Contestant's self-contained self-rescue device storage plan (Respondent's exhibit 4, consisting of eight letters) requires, among other things, that:

"the storage area for sections shall be in the designated intake escapeway or in intake air adjacent to and connected to the designated intake escapeway".

(See letter of July 6, 1982). Respondent interprets that provision as allowing it to designate as the storage area the inby end of the track in the trolley haulage entry which

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is on intake air and which is a designated escapeway. MSHA interprets the provision as requiring storage in the No. 5 entry which it argues is the main intake air entry and designated escapeway or in the No. 4 entry which is also intake air and adjacent to a designated escapeway.

Operator's exhibits 2 and 3 and Respondent's exhibit 5 are all maps of the section in question and the face area is at the tops of the maps. The No. 1 entry to the left is return air. The No. 2 entry is the trolley haulage entry for men and supplies and is also on intake air and is a designated escapeway. No. 3 entry is the belt haulage entry which is also on intake air. No. 4 and 5 entries are intake air, No. 5 being the other designated escapeway.

The mine consists of five sections and the company's method of complying with its plan is to designate the trolley haulage (or track entry) as an escapeway, arrange to have it on intake air and store the self-contained self-rescue devices in the portabus at the inby end of the track. The five sections are not identical as to which entry is the track entry, and which is the belt entry, etc. They are the same to the extent that no matter what section a miner is working in he knows that the self-contained self-rescue devices are located at the inby end of the track entry, the entry by which he reached the face at the beginning of his shift. Under MSHA's interpretation of the plan Rushton can continue to use the portabus at the inby end of the track as a storage area in three of the sections but in two of the sections including the S-3 2nd south mains, Section No. 3, the section at which the citation was issued, the storage area would have to be in a different place. The operator contends that this would cause confusion among the miners in an emergency and that removing the self-rescue self-contained device from the portabus and transporting them to the newly designated storage areas increase the chance of damaging and rendering useless these self-contained self-rescue devices. There is a red button on the device, which if hit will open it and start the gas flowing. At the end of an hour it would be useless.

The self-contained self-rescue devices involved herein, unlike the ordinary self-rescue device, is not small. It is bigger than a football and weighs about eight pounds. The coal seam is 39" high and in order to comply with the citation the miner would have to take his device off of the portabus and either have it transported by a tractor or carry or drag it several hundred feet. The only factual dispute that arose during the trial, was that the superintendent said that the inspector required that the storage location be in the second break outby the face, whereas the inspector himself said that it could be anywhere in entry No. 4 within

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a thousand feet from the face. In any event, transportation of the self-rescuing devices would be required twice on every shift. (FOOTNOTE 1).

Mine Superintendent Roeder, who has a B.S. in mining, testified that damage to the self-contained self-rescue device was more likely if it had to be removed from the portabus and transported for a certain distance in 39" coal. He testified that he would expect the men in an emergency to come out the track entry since they knew it so well and the track escapeway was clearly marked. Also, there is a telephone in that entry. Mine safety inspector Crane said the inspector made him put the storage area in the No. 4 entry near the face and that miners sometimes at quitting time forgot to go into that entry to pick them up but headed straight for the portabus.

Mr. Hollen was a roof bolter operator. He was chairman of the United Mine Workers of America mine safety and health committee and had been so for four years. He had 21 years experience in mines and approved the operator's original storage area in the portabus for the self-contained self-rescue devices. The new location required for termination of the Order No. 2255375 caused confusion, he said. In handling the device, if you bumped the red spot, the device would come open and would be no good thereafter. He also said that in the face area there was no safe place to store them where a scoop or tractor might not run over them. He also said that as an escapeway, he would prefer the track entry. Another member of the United Mine Workers of America was Mr. Davidson, a belt examiner. He had 14 years experience in mining and was vice-president of the local union and chairman of the mine committee. He did not agree with the MSHA order and thought that the less you moved the self-contained self-rescue device the better. Mr. Baker, another union member, was a motorman with 12 years experience in the mines. He preferred the former storage area in the portabus. He said that miners were concerned and confused by the storage area required by MSHA. They want to do down to the dinner hole, which is in the track entry, and escapeway but are afraid that in an emergency they will forget to go to No. 4 entry to pick up their self-contained self-rescue devices. Mr. Jury, a roof-bolter helper, has 12 years experience in the mines. He is a member of the mine safety and health committee, and he does not agree with MSHA's directions in this case.

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He said the action taken to terminate the order caused too much handling of the devices and confusion as to their location. He saw no benefit in keeping the devices closer to the face. Near the close of the hearing, the inspector was recalled to the stand and disagreed with the concerns expressed by the various miners and other witnesses for the company.

Section 75.1704 of Title 30 of the Code of Federal Regulations requires that a mine contain at least two separate escapeways one of which must be on intake air. Section 75.1707 of Title 30 CFR requires that in any working section opened after March 30, 1970, the escapeway that is required to be on intake air shall be separated from the belt and trolley haulage entries. As I interpret these sections, if one of the two required escapeways was on return air, then the escapeway on intake air could not be either a haulage track or belt haulage entry. From this, MSHA apparently, and it was not too clear at the trial, concludes that the escapeway which is not on a track entry or a belt entry, but is on intake air, is the "main" escapeway. There is no doubt that the MSHA office intended that the term "designated intake escapeway" in the July 6, 1982 letter mean an intake escapeway other than a track entry or a belt entry. But nevertheless item No. 2 in the July 6, 198s letter, states, and I will repeat "the storage area for sections shall be in the designated intake escapeway or in intake adjacent to and connected to the designated intake escapeway". In this case both designated escapeways were on intake air, and I hold that the storage area could have been in either designated intake escapeway or in intake air adjacent to and connected to a designated intake escapeway.

As to the safety of the storage area required by MSHA, it is also a matter of opinion. Four experienced miners and two experienced supervisors testified as to the preference, from a safety standpoint, for having the devices in the portabus at the end of the track in the track entry. All stated that they thought that any handling of the devices increased the chance of their being rendered inoperative. Inspector Klemick thought their fears were unfounded and he is also an experienced inspector. The miners carried normal (not self-contained) self-rescue devices at all times and these would protect them for up to one hour and would certainly last for the ten to fifteen minutes it would take to get to the portabus where the self-contained self-rescue devices were stored. There is no way of knowing who has the correct opinion, but when six experienced miners testified that a certain way of doing something is hazardous and another way of doing

