

CCASE:  
SOL (MSHA) V. H J AND H COAL  
DDATE:  
19850115  
TTEXT:

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: VA 84-4  
A/O No: 44-04920-03518

v.

No. 3 Mine

H J AND H COAL COMPANY,  
RESPONDENT

DECISION

Appearances: Sheila Cronan, Esq., Office of the  
Solicitor, U.S. Department of Labor,  
Arlington, Virginia, for Petitioner,  
John L. Bagwell, Esq., Grundy, Virginia,  
for Respondent

Before: Judge Moore

At the outset of the hearing in Bristol, Virginia, respondent's attorney, Mr. Bagwell, announced that his client no longer wished to contest the citations and moved to withdraw its contest and have judgement entered for the amount of penalties that the assessment office had arrived at. Mr. Bagwell was not accompanied by either respondent or any witnesses. The government objected on the grounds that its witness was present and it was ready to proceed and that I might wish to set higher penalties than those assessed by the assessment office. I ruled in favor of the government and allowed the trial to proceed.

The mine in question produces 120,000 tons of coal per year and employs 12 miners. A computer printout purportedly showing the history of violation was introduced and received as government exhibit GÄ8. That printout shows a total of 89 violations between October 3, 1981 and October 2, 1983, but does not show any that have been paid. Under the column headed "last action" various codes are listed and I have determined the meaning of the codes as follows: DLTR means that a demand letter was sent; FALJ means that the matter has been filed with an administrative law judge; FDST means that the matter has been filed in the District Court; DLT 2 means a second demand letter has been sent and DLT 3 means that a third demand letter has been sent.

I think it is safe to assume that demand letters would not be sent and cases would not be filed in the District

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Court unless the penalties had, by operation of law, become the final orders of the Commission. I will therefore count as past history of violations, all listed citations and penalties except those which have been forwarded to an administrative law judge. There were eight such citations and therefore the total number in the two-year period was 81 alleged violations. The total number of inspection days was 102.

Citation No. 2163514 alleging a violation of 30 CFR 75.1722.

The citation alleges that a scoop used in the mine "was not provided with a guard behind the foot controls to protect a person's foot from contacting the drive shaft." Inspector Coleman testified that the drive shaft was smooth and contained no bumps or sprockets. The standard provides for the guarding of "gears; sprockets; chains; drive, head, tail, and takeup pulley; flywheels; couplings, shafts; saw blades; fan inlets; and similar exposed moving machine parts which may be contacted by persons and which may cause injury to persons ...". I do not know what kind of shaft the promulgators of this regulation had in mind, but the standard does not require that all moving parts be guarded. A smooth drive shaft such as the one involved in this case, (smooth where it could be contacted) is entirely different from the other items referred to in the standard. All of those other items either involve a pinchpoint or a rough surface such as blades and cogs. Nevertheless there was uncontroverted testimony that the driver's foot could come in contact with the drive shaft and that it could cause injury. I therefore find that there was a violation. The drive shaft had originally been guarded and the guard had been removed and not replaced. I find the failure to replace the guard was negligence. I assess a penalty of \$30.

Citation No. 2163515 alleges a violation of Section 75.400

The citation alleges an extensive accumulation of loose coal four to nine inches in depth along the ribs of eight entries and adjoining crosscuts. The length of each accumulation was 140 feet. This was not sloughing, but coal that had been mined and not cleaned up. Such an accumulation could propagate a mine fire and one has only to read the newspaper to know how disastrous mine fires can be. I find a high degree of hazard and negligence. A penalty of \$1,000 is assessed.

Citation No. 2163516 alleges a violation of 30 CFR 75.1720.

One of the owners of the mine was 3,000 feet underground and was not wearing protective footwear. The extent of his participation in the mining process on the day in question is not clear but he fits the definition of a miner and did

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not protest when the inspector announced that he was going to cite him for not wearing protective footwear. It was negligence to not wear the protective footwear but the degree of hazard would depend on the type of work being done. A miner working along the side of a piece of mobile equipment would have more chance of having his toe run over than would the driver of the equipment, for example. I will find a moderate degree of hazard and will assess a penalty of \$50.

All violations were abated promptly.

ORDER

Respondent is accordingly ORDERED to pay to MSHA, within 30 days, a civil penalty in the total amount of \$1,080.

Charles C. Moore, Jr.  
Administrative Law Judge