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SOL (MSHA) V. JIM WALTER RESOURCES
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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 PROCEEDING

Docket No. SE 83-51
A.C. No. 01-01247-03546

v.

No. 4 Mine

JIM WALTER RESOURCES, INC.,
RESPONDENT

DECISION

Appearances: Robert W. Pollard, Esq., and R. Stanley Morrow,
Esq., Jim Walter Resources, Inc., Birmingham,
Alabama, for Petitioner;
Terry Price, Esq., Office of the Solicitor,
U.S. Department of Labor, Birmingham, Alabama,
for Respondent.

Before: Judge Fauver

The Secretary of Labor brought this action for a civil penalty under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. The case was heard in Birmingham, Alabama. Having considered the evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the following:

FINDINGS OF FACT

1. Respondent is the owner and operator of an underground coal mine, known as Mine No. 4, which produces coal for sale or use in or substantially affecting interstate commerce.

2. On March 9, 1983, Federal mine inspector Milton Zimmerman issued Order No. 2192440, citing Respondent for a violation of 30 C.F.R. 75.202, alleging that, in the No. 9 section track entry, beginning 20 feet inby spad No. 1793 and extending inby for 200 feet, the roof had broken along the ribs in places, roof bolt heads (bolt plates) had broken off because of loose hanging roof, and in several places loose rock was falling out between roof bolts. I find that there were seven or eight sheared off roof bolts, a condition indicating roof stress requiring additional support; that there was loose roof material in various places; and that there were breaks or cracks in the roof along the ribs and between roof bolts in various places. These conditions were hazardous and required immediate action to danger off the area and take corrective action of taking down loose roof material and providing additional roof support.

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3. The conditions cited by Inspector Zimmerman were abated by the Respondent in good faith and in a reasonable time, by installing additional roof support and by taking down loose roof material.

4. The hazardous roof conditions found by Inspector Zimmerman were readily observable and had existed for a substantial period before his inspection.

DISCUSSION WITH
FURTHER FINDINGS

Respondent contends that there was some "scale" in the roof, but that this was normal and was not "loose roof" within the meaning of 30 C.F.R. 75.202. The regulation provides that "Loose roof and overhanging or loose faces and ribs shall be taken down or supported." Respondent acknowledges that "scale" must be taken down or supported for the safety of the miners. I find that so-called "scale" is loose roof within the meaning of 30 C.F.R. 75.202 if there is a reasonable risk that the "scale" may work loose and fall with or without warning. I find that there was "loose roof" in the areas cited by Inspector Zimmerman. I also find that there were seven or eight broken roof bolts, with the heads sheared off. The broken roof bolts indicated roof stress requiring additional roof support. Respondent offered testimony that the stress on the roof bolts was horizontal stress rather than vertical stress, but such opinion evidence did not lessen the need to add roof support and to take down loose roof material, and to danger off the affected area while these measures were taken.

Respondent's failure to take necessary corrective action before the inspection constituted a violation of 30 C.F.R. 75.202.

The gravity of the violation was very serious because the affected area was regularly traveled by miners and a roof fall could cause death or serious injury. The violation was thus "significant and substantial" within the meaning of section 104(d) of the Act.

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Respondent knew, or with the exercise of reasonable care should have known, of the hazardous roof condition. It was therefore negligent and the violation was "unwarrantable" within the meaning of section 104(d) of the Act.

Respondent was in a "section 104(d)(2) sequence" at the time of the March 9, 1983, inspection. Before that date, Respondent had been issued a section 104(d)(1) citation, then a section 104(d)(1) order, and then a section 104(d)(2) order in every inspection following the issuance of the section 104(d)(1) order.

Respondent is a medium size operator, its history of prior violations is average, and imposition of a civil penalty would not affect its ability to continue in business.

Considering the criteria for assessing a civil penalty under section 110(i) of the Act, I find that an appropriate civil penalty for the violation in this case is \$2,000.

CONCLUSIONS OF LAW

1. Respondent's Mine No. 4 is subject to the Act and the Commission has jurisdiction in this proceeding.
2. Respondent violated 30 C.F.R. 75.202 on March 9, 1983.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay a civil penalty of \$2,000 within 30 days of this Decision.

William Fauver
Administrative Law Judge