

CCASE:

SOL (MSHA) V. G M & W COAL

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TTEXT:

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

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

v.

G M & W COAL COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 84-43
A.C. No. 36-02398-03522

Grove No. 1 Mine

DECISION

Appearances: Howard K. Agran, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for Petitioner;
James F. Beener, Esq., Barbera and Barbera,
Somerset, Pennsylvania, for Respondent.

Before: Judge Melick

In the early morning of July 11, 1983, both legs of miner Louis Sinclair were severed when a shuttle car pinned him against a rib at the GM & W Coal Company, Grove No. 1 Mine. He died of his injuries a few hours later. The evidence shows that the operator of that shuttle car had customarily operated a Joy Model 21SC but less than 2 hours before this tragic accident was transferred to a Joy Model 10SC in which the brake and tram control pedals were in reverse position. The investigators surmise that during the course of work activities the shuttle car operator suddenly became aware that his car was moving toward the deceased and attempted to engage the brake pedal. Tragically, because the brake and tram control pedals on the Model 10SC were opposite those on the shuttle car he ordinarily operated, he accidentally engaged the tram pedal rather than the brake pedal and pinned the deceased against the rib. (Footnote.1)

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Following its investigation, MSHA issued a section 104(g)(1) order on July 13, 1983 alleging a violation of the standard at 30 C.F.R. 48.7(c) and charging that the shuttle car operator had not received adequate task training for the type of shuttle car he was operating. (Footnote.2) MSHA thereafter filed the captioned civil penalty proceeding seeking civil penalties of \$3,000 for the alleged violation. At the hearing on February 28, 1985, MSHA moved for approval of a settlement agreement requiring payment of \$2,000 in penalties. It is noted in the motion that the available evidence does not conclusively prove that the accident was caused by the inadequacy of the new task training provided the shuttle car operator. It was MSHA's position that while new task training might have prevented the accident, the accident may also have been caused by human error under emergency conditions. In any event the motion sets forth adequate grounds for the proposed settlement under the criteria set forth in section 110(i) of the Act.

WHEREFORE the motion for approval of settlement is GRANTED and it is ORDERED that Respondent pay a penalty of \$2,000 within 30 days of this decision.

Gary Melick
Administrative Law Judge
(703) 756-6261

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Footnotes start here:-

~Footnote_one

1 Astonishingly there appears to be no Federal requirement that mining equipment have standardized positions for the tram and brake pedals. According to witnesses at hearing a single manufacturer may produce the same equipment with the tram and brake pedals in opposite positions. Moreover it is not uncommon for the same type of equipment to be operating in the same mine but with these critical pedals in opposite positions.

~Footnote_two

2 Section 104(g)(1) reads as follows:

If, upon any inspection or investigation pursuant to section 103 of this Act, the Secretary or an authorized representative shall find employed at a coal or other mine a miner who has not receive the requisite safety training as determined under section 115 of this Act, the Secretary or an authorized representative shall issue an order under this section which declares such miner to be a hazard to himself and to others and requiring that such miner be immediately withdrawn from the coal or other mine, and be prohibited from entering such mine until an authorized representative of the Secretary determines that such miner has received the training required by section 115

of this Act.