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CONSOLIDATION COAL v. SOL (MSHA)  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,  
CONTESTANT

CONTEST PROCEEDING

v.

Docket No. WEVA 81-620-R  
Order No. 853383/8/25/81

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

Ireland Mine

Appearances: Robert M. Vukas, Esq., Consolidation Coal  
Company, Pittsburgh, Pennsylvania, for  
Contestant;  
David T. Bush, Esq., Office of the Solicitor,  
U.S. Department of Labor, Philadelphia,  
Pennsylvania, Pennsylvania, for Respondent.

DECISION

Before: Judge Fauver

This proceeding was brought by Consolidation Coal Company under section 105(d) of the 1977 Federal Mine Safety and Health Act, 30 U.S.C. 801, et seq., to review an imminent danger withdrawal order issued by Federal mine inspectors.

Having considered the hearing 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. On August 25, 1981, Federal mine inspectors Lyle Tipton and Donald Moffett conducted a regular inspection at Consolidation Coal Company's Ireland Mine.

2. During this inspection the inspectors were accompanied by representative Robert Clark and United Mine Workers' safety representative Harold Lewis.

3. The purpose of such inspection was to inspect the haulage in the area from the portal to the rotary dump.

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4. During the inspection the inspectors and others reached an S curve in the track where they stopped to wait for an approaching train to pass.

6. The train, a locomotive pulling coal cars, passed through the S curve and over the track switch at a high rate of speed. Its rate of speed was not necessary to negotiate the curve or ascend the grade following the curve, but was an excessive and dangerous rate of speed.

7. Based upon their observation of the speed of the locomotive, the inspectors issued an imminent danger order (No. 853383), which alleged the following condition:

The No. 46 50 ton haulage locomotive operated by Leonard Parsons and pulling 37 (20 ton) loaded mine cars followed by No. 96 50 ton locomotive operated by Gary White was observed operating at an unsafe speed unreasonable for track and mine conditions around an "S" turn and through a track switch. This order will not be terminated until Norbert Becker, principal officer of Health and Safety for this mine, instructs these motormen to pull their trip through this area at a reasonable safe speed.

#### DISCUSSION WITH FURTHER FINDINGS

The inspection party was stopped short of the S curve by a motorman, because a locomotive pulling coal cars was approaching the curve. Upon observing the speed of the train, Inspector Tipton told the Company representative, Clark, that he believed the train was moving too fast and should be slowed down. Clark used a phone to order the locomotive operator to slow down the train. The train, however, did not slow down and at that point Inspector Tipton talked with Inspector Moffett and both agreed that an imminent danger existed. Inspector Tipton then instructed Clark to stop the train under a section 107(a) order.

The Union representative, Lewis, also an eye-witness, agreed that the train was traveling too fast and that an imminent danger existed. To illustrate how fast the train was moving, Lewis testified that, although he could normally count the coal cars in a moving train, this train was moving so fast that he could not count the cars. He had never seen a mine train traveling that fast in his experience.

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The S curve included a switch in the tracks. The switch, over which the train must pass, increased the danger of traveling at a high rate of speed at this location.

The term imminent danger is defined by section 3 of the Act as:

the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

In Freeman Coal Mining Company v. Interior Board of Mine Operations Appeals, 804 F.2d 741 (7th Cir.1974), the court affirmed the following test of whether an imminent danger exists:

Would a reasonable man, given a qualified inspector's education and experience, conclude that the facts indicate an impending accident or disaster, threatening to kill or to cause serious physical harm likely to occur at any moment but not necessarily immediately?

I find that the preponderance of the reliable and probative evidence establishes that Inspectors Tipton and Moffett exercised reasonable judgment in concluding that an imminent danger existed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Order No. 853383, issued by Inspectors Tipton and Moffett on August 25, 1981, was reasonably and justifiably issued based on the facts. The Secretary met his burden of proving the allegations of the order by a preponderance of the substantial, reliable, and probative evidence.

#### ORDER

WHEREFORE IT IS ORDERED that Order No. 853383, dated August 25, 1981, is AFFIRMED and this proceeding is DISMISSED.

William Fauver  
Administrative Law Judge