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SOL (MSHA) v. OLIVER COAL
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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. VA 84-40 A.C. No. 44-03506-03515
v.	No. 2 Mine
OLIVER COAL COMPANY, RESPONDENT	

Appearances: Mark Malesky, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for Petitioner;
Carl E. McAfee, Esq., Cline, McAfee & Adkins, Norton, Virginia, for Respondent.

DECISION

Before: Judge Broderick

STATEMENT OF THE CASE

Petitioner seeks a civil penalty for an alleged violation of 30 C.F.R. 75.200 charged in a withdrawal order issued under section 104(d)(1) of the Act on March 21, 1984. Respondent contends that it did not violate that mandatory safety standard charged, and that if a violation occurred, it should not have been charged in a 104(d)(1) order. Pursuant to notice, the case was heard in Abingdon, Virginia, on April 2, 1985. Larry Meade, Ewing C. Rines and Clarence Sloane testified on behalf of Petitioner. No witnesses were called by Respondent. The parties orally argued their positions at the conclusion of the hearing, and waived their right to file posthearing briefs. I have considered the entire record and the contentions of the parties in making the following decision.

FINDINGS OF FACT

1. At all times pertinent to this case, Respondent was the owner and operator of an underground coal mine in Dickenson County, Virginia, known as the No. 2 Mine.

2. Respondent is a small operator, having approximately 14 to 15 employees in one mine and producing approximately 350 tons of coal per day.

3. In the 24-months prior to the alleged violation involved herein, Respondent had 18 paid violations of mandatory standards. This history is not such that penalties otherwise appropriate should be increased because of it.

4. The imposition of a penalty in this proceeding will not affect Respondent's ability to continue in business.

5. The alleged violation involved herein was abated timely and in good faith.

6. Prior to March 21, 1984, the subject mine was engaged in pillar recovery mining. The coal seam was approximately 60 inches high. The roof consisted of fragile shale. It was described as a "slippery roof" which means that it had many slip faults. The roof conditions were generally adverse.

7. At some date prior to March 21, 1984, an unintentional roof fall occurred in the subject mine. The fall trapped the continuous-mining machine which was in the intersection outby the No. 2 and No. 3 blocks in 001 section. Respondent reported this to the local MSHA office.

8. On March 21, 1984, MSHA supervisory inspector E.C. Rines and Inspectors Larry Meade and Clarence Sloane went to the mine. While Rines and Sloane inspected the roof fall between No. 2 block and No. 3 block, Meade inspected the intersection to the right, namely that between No. 3 block and No. 4 block.

9. On March 21, 1984, the A wing of the No. 4 block had been mined out and approximately 1/3 of the B wing (the outby portion) had been mined or "pushed out." The rest of the B wing (toward the gob) was not mined. This was not in accord with the pillar recovery mining sequence prescribed in the approved roof control plan which called for the cut sequence to retreat from the gob.

10. The approved roof control plan in effect at the subject mine on March 21, 1984, required that roadways to pillar splits be limited to a maximum width of 16 feet by the installation of 2 rows of posts or timbers on 4-foot centers.

11. On March 21, 1984, Federal Mine Inspector Larry Meade issued an order under section 104(d)(1) of the Act charging a violation of 30 C.F.R. 75.200 because the approved roof control plan was not being complied with.

12. On March 21, 1984, the roadway leading to the final push out on the B wing was approximately 28 feet wide. It was approximately 24 feet deep. The distance was determined by counting the roof bolts which were on 4 foot spacing. No posts or timbers had been set. This area had been mined 1 or 2 days prior to the issuance of the citation.

ISSUES

1. Whether the facts show a violation of 30 C.F.R. 75.200.

2. If so, whether the order properly charged a significant and substantial violation under section 104(d)(1) of the Act.

3. If so, what is the appropriate penalty for the violation.

CONCLUSIONS OF LAW

1. Respondent is subject to the provisions of the Federal Mine Safety and Health Act of 1977 in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

2. The conditions cited on March 21, 1984, constitute a violation of the approved roof control plan, and therefore constitute a violation of 30 C.F.R. 75.200. The evidence shows that Respondent did pillar recovery mining without limiting the roadway to a maximum width of 16 feet, by the installation of posts or timbers.

3. The violation was very serious. The roof conditions in the mine were adverse according to the testimony and as evidenced by the unintentional roof fall occurring shortly before the inspection.

4. The condition or practice was such that a serious injury was likely to result if normal mining continued. The violation was significant and substantial.

5. The violation was obvious to visual inspection and should have been known to the operator. It resulted from Respondent's negligence.

6. Considering the criteria in section 110(i) of the Act, I conclude that a penalty of $750 is appropriate.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED that Order No. 2276618 issued March 21, 1984, is AFFIRMED as issued.

IT IS FURTHER ORDERED that Respondent pay the sum of $750 within 30 days of the date of this decision as a civil penalty for the violation found herein.

James A. Broderick
Administrative Law Judge