

CCASE:  
SOL (MSHA) v. HALF WAY  
DDATE:  
19850613  
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 PROCEEDING

Docket No. WEVA 85-15  
A.C. No. 46-06449-03525

v.

No. 1 Mine

HALF WAY, INCORPORATED,  
RESPONDENT

DECISION

Appearances: Patricia Larkin, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia,  
for Petitioner;  
William Stover, Esq., Beckley, West Virginia,  
for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for an alleged violation of Respondent's approved roof control plan, and therefore of 30 C.F.R. 75.200. The violation was charged in a citation issued under section 104(d)(1) of the Federal Mine Safety and Health Act of 1977. Respondent denies that the charged violation occurred, and contests the finding that the violation was significant and substantial. Pursuant to notice, the case was heard in Beckley, West Virginia, on April 18, 1985. James B. Ferguson, a Federal Mine Inspector, testified on behalf of the Secretary. Donald Hughes and Fred Ferguson testified on behalf of Respondent. Both parties have filed posthearing briefs. I have considered the entire record and the contentions of the parties and make the following decision.

FINDINGS OF FACT

Respondent's mine was a drift mine. It extracted coal by conventional mining methods and utilized a conveyor belt

~885

haulage. The coal seam averaged about 40 inches in height and from 36 inches to 40 inches in the area cited. Approximately 21 miners were employed at the mine.

On June 20, 1985, Federal Mine Inspector James Ferguson inspected the mine on the first day of a regular inspection. He checked the map at the mine office and noted that it indicated that mining was being done within 150 feet of the outcrop or end of the coal seam. Respondent's foreman told him that no additional supports were being used in the area in question.

Precaution No. 15 of the approved roof-control plan for the subject mine states that roof bolts shall not be used as the sole means of roof support when mining is being done within 150 feet of the outcrop. The plan requires that supplemental support shall consist of at least one row of posts on 4 foot spacing maintained up to the loading machine, limiting the roadway to 16 feet.

After examining the map, the inspector proceeded underground. The entries were being driven 20 feet wide. Room No. 9 had been driven a minimum of 150 feet and No. 8 approximately 100 feet while within 150 feet of the outcrop. No additional posts had been set. The roof had deteriorated in both rooms and mining had been discontinued. Mining was taking place in rooms 3 through 7 and they were approaching 150 feet from the outcrop. The roof consisted of sandy shale. The roof was generally firm.

The inspector issued a citation for a violation of 30 C.F.R. 75.200. It was abated by dangering off rooms 8 and 9

#### CONCLUSIONS OF LAW

The evidence clearly establishes that Respondent had performed mining within 150 feet of the outcrop as shown on the mine map. No supplemental supports had been provided. The location of the outcrop can only be determined on the basis of engineering projections. It is not possible to determine it by visual inspection underground. The condition found was proscribed by the approved roof-control plan. Therefore, a violation of 30 C.F.R. 75.200 was established.

The violation was serious. Even a stable roof is liable to deteriorate as mining approaches the end of the coal seam. That this is so was clearly shown by the deterioration of the roof in rooms 8 and 9. A serious injury or fatality would

~886

have been reasonably likely had mining continued. The violation was therefore of such nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard.

The condition or practice cited should have been obvious to the mine operator. The fact that mining was occurring within 150 feet of the outcrop could easily have been determined by reference to the mine map. The violation resulted from Respondent's negligence.

Respondent is not a large operator: 21 miners were employed and approximately 69,000 tons of coal are produced annually.

Respondent's history of prior violations is not such that a penalty otherwise appropriate should be increased because of it. The violation was promptly abated in good faith.

Considering the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation found is \$1,000.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED that Citation No. 2126393 issued June 20, 1984, is AFFIRMED as issued; IT IS FURTHER ORDERED that Respondent shall within 30 days of the date of this decision pay the sum of \$1,000 for the violation found herein.

James A. Broderick  
Administrative Law Judge