

CCASE:
SOL (MSHA) v. SHANNOPIN MINING
DDATE:
19850715
TTEXT:

~1082

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

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

v.

SHANNOPIN MINING COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 85-33
A.C. No. 36-00907-03544

Shannopin Mine

Appearances: Joseph T. Crawford, Esq., Office of the
Solicitor, U.S. Department of Labor,
Philadelphia, Pennsylvania, for Petitioner;
Jane A. Lewis, Esq., Thorp, Reed & Armstrong,
Pittsburgh, Pennsylvania, for Respondent.

DECISION

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act", for a violation of the Respondent's Ventilation System and Methane and Dust Control Plan under the regulatory standard at 30 C.F.R. 75.316. The general issue before me is whether Shannopin Mining Company (Shannopin) has violated the cited regulatory standard and, if so, whether that violation is of such a nature as could significantly and substantially contribute the cause and effect of a mine safety or health hazard i.e., whether the violation was "significant and substantial." If a violation is found, it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.(FOOTNOTE.1)

The citation at bar (number 2252689) alleges in relevant part as follows:

~1083

The ventilation system--methane and dust control plan was not being complied with in that examinations of the bleeder entries that were open around the gob area of 4A, 006 section was [sic] not being recorded and no dates were found in the area to show that examinations are being made.

It is not disputed that in accordance with Shannopin's Ventilation System and Methane and Dust Control Plan then in effect the assistant foreman or a mine examiner was required to travel and examine on a weekly basis all bleeder entries including those in the areas cited. It is further undisputed that the mine examiner was required to record the results of such examination in a book retained at the mine for such purpose and that the mine examiner was required to date and initial certain locations within the inspected area to show that the examinations in fact had been made as required.

On May 7, 1984 Inspector Joseph Koscho of the Federal Mine Safety and Health Administration (MSHA), began his examination of the right side bleeder entries around the gob area of the 4A, 006 section from point B to point C on the mine map in evidence (Joint Exhibit 1). According to Koscho no dates or other indicia existed to show that this bleeder area had been inspected within the previous 7 days. Koscho had been inspecting the Shannopin Mine since 1978 and was familiar with the practices of its mine examiners in placing dates and initials along coal ribs, posts and in other conspicuous places to show that the areas had been examined.

Upon emerging from the right side bleeders Koscho met Shannopin's General Assistant, Frank Klink, and the UMWA representative of miners, Floyd Hornick. He informed Klink of the absence of any examination record for the right side bleeder area and Klink responded by suggesting that the inspection party proceed to the left side bleeders. The group then inspected the left side bleeders from point E on the mine map, past point G to point F on said map (Joint Exhibit 1).

Although it is admitted that Klink knew the location of the "dateboards" and other sites the mine examiners used to note their examinations in the bleeder entries he was unable to point out to Inspector Koscho any such location where an examiner had notated an examination within the previous 7 days. Indeed, it is undisputed that Inspector Koscho was in fact directed by Klink away from a location where three dateboards were known by Klink to be located. Klink also admitted at one point that he did not know whether the mine examinations had in fact been made. According to Koscho the

~1084

most recent date of examination found in the approximately 1,000 feet he traveled through the bleeders was not within 1 month of the date of the inspection at bar.

Shannopin Safety Director Melvin Pennington was aware shortly after the inspection on May 7 that Inspector Koscho was unable to find any initials and dates of inspections in the areas of the bleeder entries but nevertheless did not either check the bleeder entries himself to see whether the dates and initials appeared nor did he delegate someone to check that matter. General Mine Foreman James Price also knew of the impending citation but he too did not seek to verify whether the inspection dates had been properly recorded in the bleeder entries.

Richard Gashie was the mine examiner (fireboss) responsible during relevant times for inspecting the cited bleeder entries. Gashie testified that he was in fact making the required inspections in these areas and had signed and dated a number of locations including the three dateboards near the point of deepest penetration of the section (the area Klink avoided showing inspector Koscho) and an area near point F (Joint Exhibit 1) on an angle stopping. Gashie was never asked by any mine official to point out the location of any of his initials and dates that he claims he placed throughout the cited bleeder entries. He further claims that his entries in the mine examiners books corresponded to the written work assignment given him each day.

Following his underground inspection, Inspector Koscho checked the mine examiner's book to determine whether entries corresponding to an inspection of the cited bleeder entries had been made. Based on his experience at this mine since 1978, he concluded from the entries in the book that the bleeders had not been inspected. Shannopin maintains that the entry made by Gashie on May 2, 1984, that "4A left return to 1 left regulator passable" shows that the left bleeder entries had been examined by Gashie as required. It also claims that the entry by Gashie on May 3, 1984 that "4A right returned to steele shaft passable" shows that the right bleeder entries had also been examined as required. According to Koscho, these entries show only that the mine examination was made in areas outby the cited bleeder entries.

At the time of his inspection Koscho asked Safety Director Pennington whether they were in fact "walking the bleeder" in the 4A section. Pennington consulted with Mine Foreman Price. After examining the books they then concluded that although the book entries were being noted as "returns" rather than "bleeders" they had nevertheless been inspected.

~1085

Price explained at hearing that the cited area could be characterized as either a "bleeder" or a "return" although the area outby the position of the retreat mining would be properly characterized as a "return" but not as a "bleeder". Inspector Koscho disagreed and defined "bleeder" as anything inby the gob area. According to Koscho the term "return" cannot properly be used for the same area since a "return" ventilates the last working place outby the gob area.

Within this framework of evidence I find that a mine examination had not in fact been performed within 7 days preceeding the inspection at bar and, accordingly, the violation has been proven as charged. The credible evidence shows that the mine examiner's initials and dates of inspection did not exist in either the right or left bleeder entries of the cited section. Inspector Koscho testified that he found no such notations (within the necessary 7-day time frame) in the cited areas. In addition, the general assistant at Shannopin, Frank Klink, who accompanied Koscho during the course of his inspection of the left bleeder entries, was unable to locate or point out any such notations in that area of the mine. Indeed it is not disputed that during the course of this inspection Klink actually directed Koscho away from three dateboards where proper notations should have been located.

In addition, even though Shannopin management was immediately aware of Koscho's inability to find any notations by a mine examiner in the bleeders it did nothing to prove to Koscho that the proper notations had in fact been made. It would have been a very simple matter for mine personnel to have shown Koscho the dates and initials of the mine examiners. It may reasonably be inferred that they did not do so because in fact such notations did not exist. Within this framework I can give but little credence to the self-serving testimony of former mine examiner Gashie that he did in fact perform the proper examinations and dated and initialed the required locations in the mine.

Since I have found that the notations had not been placed by the mine examiner in either the right or left bleeder entries as required by law I am also convinced that proper inspections of those bleeders had not been performed. Such notations are not only required by law, they are the best evidence to show that a mine examiner has in fact been present in the areas required to be inspected. It is highly unlikely that a miner examiner would fail to make such notations if he in fact was performing his job as required. Since I have found that the mine examinations had not been made it is also apparent that proper entries could not have

~1086

been made in the mine examiners book to show that the required inspections had been made. Accordingly the violations are proven as charged.

I further find that the failure to have inspected the bleeders was a "significant and substantial" and serious violation. A violation is significant and substantial if: (1) there is an underlying violation of a mandatory safety standard, (2) there is a discrete safety hazard, (3) there is a reasonably likelihood that the hazard contributed to will result in an injury and (4) there is a reasonable likelihood that the injury in question will be of a reasonably serious nature. Secretary v. Mathias Coal Company, 6 FMSHRC 1 (1984). In this regard it is undisputed that in the absence of the weekly inspections of the bleeder entries, methane and noxious gases could very well accumulate without the knowledge of the mine operator. A change in barometric pressure or temperature could result in the circulation of explosive gasses out of the gob areas into the working areas where electrical equipment could trigger an explosion or fire. Serious injuries or fatalities would likely result.

I also find that the violation was the result of operator negligence. It is clear from the absence of dates in the bleeder entries for a period of at least 1 month preceding the inspection that the inspections had not been carried out for a significant period of time. In addition, since neither the General Assistant at Shannopin, Frank Klink, nor the Safety Director, Melvin Pennington, had any knowledge as to whether the weekly inspections were being made when questioned by inspector Koscho on May 7, it is apparent that responsible officials were not checking to see that the mine examiner was performing his job. Indeed it appears that General Mine Foreman Price was relying only upon entries in the mine examiner's book to determine that the examinations had been taking place. Significantly Price did not seek to verify, even after Koscho brought the deficiencies to his attention, whether the mine examiner's notations actually appeared in the cited bleeder entries. Under all the circumstances I find that the violation was the result of operator negligence.

In determining the amount of penalty to be assessed in this case I am also considering that the mine operator is medium in size and has a moderate history of violations. There is no dispute that the cited conditions were abated as required. Under the circumstances I find that a civil penalty of \$500 is appropriate.

