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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. PENN 84-27 A.C. No. 36-03425-03545
v.	Maple Creek No. 2 Mine
U.S. STEEL MINING CO., INC., RESPONDENT	

Appearances: Joseph T. Crawford, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Petitioner.
Louise Q. Symons, Esq., U.S. Steel Mining Company, Inc., Pittsburgh, Pennsylvania.

DECISION

Before: Judge Fauver

This civil penalty case involves a citation,(FOOTNOTE.1) No. 2105356, issued by a Federal mine inspector under section 104(d)(1) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq. The citation alleges a violation of 30 C.F.R. 75.200, on the ground that Respondent violated its roof control plan by failing to put up a warning sign to keep people from going under unsupported roof.

The case was heard in Pittsburgh, Pennsylvania.

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. At all relevant times, Respondent's Maple Creek No. 2 Mine, an underground coal mine, produced coal for sale or use in or substantially affecting interstate commerce.

2. On August 31, 1983, about 7:00 a.m., Respondent's continuous miner operator made a cut 10 to 13 feet into No. 28 Room, on the midnight to 8:00 a.m. shift. The continuous miner operator failed to hang a reflectorized sign on the last row of roof bolts, to warn people not to enter the cut area, which was unsupported roof. The cut was not roof-bolted or otherwise roof-supported until approximately 1-1/2 hours after the cut was made.

3. Before the end of his shift, Jack Settles, the midnight shift foreman, called outside and told Ron Franczyk, the next shift foreman, that he (Settles) expected to have No. 28 room roof-bolted before the next shift came into the working section. However, a problem with the roof-bolting operation occurred, and the cut area was not roof-bolted for at least 1-1/2 hours and not until a Federal inspector detected that the roof was not roof-supported and there was no warning sign.

4. When the day shift crew came into the section, they were accompanied by Federal Mine Inspector Joseph F. Reid and Barry Armel, the union walkaround.

5. When Reid and Armel entered No. 28 Room, about 9:00 a.m., the cut area was not roof-supported, a roof-bolting machine was not in the room, and a reflectorized warning sign was not in place.

6. The preshift examination time, date, and initials in Room 28 were placed there by the day shift foreman, who knew when he inspected the room that the cut area was not roof-supported and that there was no warning sign. He did not report the lack of a warning sign in his preshift examination report and did not take any steps to have a warning sign put up for his shift, until the inspector cited a violation.

7. The approved roof control plan, at page 12, provided that:

> "A reflectorized warning device shall be placed immediately outby each unsupported area, and at all openings leading to the unsupported area. Such sign(s) shall be conspicuously placed so any person entering such area can observe the sign."

8. When Inspector Reid and Mr. Armel entered Room 28, Armel almost walked under the unsupported roof, because there was no warning sign, but Reid put out his arm and stopped him from doing so.

DISCUSSION WITH FURTHER FINDINGS

Respondent does not dispute a violation of the roof-control plan, and therefore a violation of 30 C.F.R. 75.200, but contends that it was merely a "technical violation" because (1) the midnight shift foreman planned to roof-bolt the area immediately, and this would have been done but for an unforseen problem with the roof-bolting operation, and (2) during the time the sign was not there (about 1 1/2 hours), no one was exposed to the roof and anyone who might go into Room 28 knew that the area was unsupported and therefore did not need a sign. In Respondent's view, "it was simply a case of the man with the responsibility deciding that the sign was superfluous based upon the facts available to him at the time that the three people in the section were fully aware of the condition of No. 28 room." Resp.'s Br. p. 3. However, the area remained unsupported for about 1 1/2 hours, far longer than the continuous miner operator's assumption as to when it would be roof-bolted, and two persons went into the room that he did not anticipate being there, i.e. Inspector Reid and the walkaround. The assumption that a sign was not needed was unwarranted and led to an unwarrantable violation of the roof control plan and 30 C.F.R. 75.200. The violation was an act of negligence, attributable to Respondent; the negligence was compounded by the day foreman's preshift examination, which established management's actual knowledge of the missing sign and unsupported roof.

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Respondent contends that the violation should not be deemed serious, on the ground that no one was endangered. However, I find that permitting unsupported roof without a warning sign for 1 1/2 hours was a serious violation that could significantly and substantially contribute to a serious or fatal injury. The failure to put up a warning sign endangered the walkaround and could easily have endangered a larger inspection team; it also presented a potential danger to employees who might have been mislead by the conditions to assume the whole roof in Room 28 was roof-bolted. The assumptions made by Respondent's employees in not complying with the warning sign requirement are the kind that can lead to a disaster or serious accident in mining. Safety standards are there for the protection of personnel who go into the mines; they are not there to be stretched or bypassed by individual employees or by mine management.

Respondent produces about 11,000,000 tons of coal per year and its Maple Creek No. 2 Mine produces about 760,000 tons of coal per year. Respondent is a large operator; the subject mine is large; a civil penalty otherwise appropriate for the violation would not have an adverse effect on Respondent's ability to continue in business. It is presumed that Respondent's compliance history at this mine is a least average. Respondent made a good faith effort to abate the violation after it was cited by the inspector.

Considering the criteria of section 110(i) of the Act for assessing a civil penalty, I find that an appropriate penalty for this violation is $1,000.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.

2. On August 31, 1983, Respondent violated 30 C.F.R. 75.200 as alleged in Citation No. 2105356.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay a civil penalty of $1,000 within 30 days of this Decision.

William Fauver
Administrative Law Judge

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FOOTNOTES START HERE:-

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1. Originally, the inspector issued an order under section 104(d)(2) of the Act, but at the hearing the Secretary moved to convert the order to a section 104(d)(1) citation, because a "clean" inspection had intervened before the relevant inspection.

The motion was granted.