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SOL (MSHA) v. JOHNIE CHILDERS 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. KENT 83-170  
A.C. No. 15-05394-03504

v.

No. 7 Mine

JOHNIE CHILDERS COAL COMPANY,  
INC.,  
RESPONDENT

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, TN,  
for Petitioner;  
No appearance for Respondent.

Before: Judge Fauver

This civil penalty case was scheduled for hearing at 9:00  
a.m., on July 25, 1985, at Lexington, Kentucky, pursuant to a  
notice of hearing issued under section 105(d) of the Federal Mine  
Safety and Health Act of 1977, 30 U.S.C. 801, et seq.

Counsel for Petitioner appeared with witnesses and  
documentary evidence. Respondent did not appear, and was held in  
default, whereupon evidence was received from Petitioner.

Having considered the 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 operated Mine No. 7, an  
underground coal mine in Kentucky, which produced coal for sales  
substantially affecting interstate commerce.

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2. Mine No. 7 regularly employed about 7 to 10 miners and produced about 25,000 tons of coal annually.

3. On August 2, 1982, Federal Inspector James Frazier observed that the roof bolting operation was not adequately lighted in that the roof bolting machine had no operable lights. At least four lights were required for adequate lighting. On the basis of his inspection he issued Citation No. 2046863, charging a violation of 30 C.F.R. 75.1719. Section 1719 is the general section requiring adequate illumination in the working place in a mine. More specifically, 75.1719-1(c) and (e)(5) state that, with roof bolting equipment, the area required to be illuminated, "in addition to [illumination] provided by personal cap lamps," is that which is within the miner's normal field of vision and, where the distance from the floor to the roof is five feet or less (as was the case here) that area is defined to include the face, ribs, roof, floor, and exposed surfaces of mining equipment that are within an area the perimeter of which is five feet from the roof bolting machine.

(a) Negligence. Respondent knew about the lighting requirement, but failed to install any lights on the roof bolting machine before the inspection. This conduct was clear negligence, even though Respondent had the machine for only two weeks.

(b) Gravity. Failure to provide lighting for the roof bolting operation created a serious safety hazard for the roof bolter and anyone who might be in the area while the roof bolting machine was operating. Without adequate lighting, the roof bolter might not see hazards in the roof, face, ribs, or floor, and his operating of the roof bolting equipment without adequate light could contribute to a fatal or serious injury.

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(c) Compliance History. Respondent had one prior illumination violation.

4. On August 4, 1982, Inspector Frazier observed that the roof bolting machine (involved in Finding No. 3) did not have a panic bar, in order to deenergize the tramming motor of the machine quickly in case of an emergency. Because of this condition, he issued Citation No. 2046870, charging a violation of 30 C.F.R. 75.523.

(a) Negligence. Respondent knew about the requirement for a tramming panic bar, but failed to install one before the inspection. Although Respondent had the machine for only about two weeks, it was clear negligence to put the machine in operation before it was properly equipped with a panic bar or other no less effective emergency device.

(b) Gravity. Failure to provide a panic bar created a serious safety hazard for the roof bolter and others who might be in the area when the bolting machine was being trammed. In an emergency, if the roof bolter were squeezed against a rib or other place in the mine and were unable to reach the normal controls while tramming the roof bolting machine, a panic bar could save his life or prevent serious injury by enabling him to stop the equipment.

(c) Compliance History. Respondent had one prior violation of section 75.523.

5. On December 20, 1982, Federal Inspector Prentiss Potter observed that shuttle car No. 78-W-14 was being operated without operable brakes. The brakes did not operate

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because they did not have adequate hydraulic fluid. The shuttle car was used to transport coal from the face to a dumping point outside the mine. Because of this condition, Inspector Potter issued Citation No. 2047192, charging a violation of 30 C.F.R. 75.1725.

(a) Negligence. Respondent knew or should have known about the requirements of section 30 C.F.R. 17.1725, which provides in section 17.1725(a):

"(a) Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately."

The shuttle car operator knew the brakes were inoperable, because Inspector Potter saw him pushing the brake pedal to the floor without stopping the machine.

(b) Gravity. Operating the shuttle car without operable brakes created a serious safety hazard for the shuttle car operator and other miners in the area where the shuttle car traveled.

(c) Compliance History. Respondent had no prior violation of 30 C.F.R. 75.1725.

6. On December 21, 1982, Federal Inspector Steve Kirkland observed that the coal drill operator was drilling coal without using a line curtain for ventilation. Because of this condition, Inspector Kirkland issued Citation No. 2047193, charging a violation of 30 C.F.R. 75.316. That section requires that the operator adopt an approved ventilation plan. Respondent's plan required that a line curtain be hung at each heading to obtain an air flow at the working face from the last open cross cut. Without a line curtain there,

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there was no perceptible air flow at the working face where the citation was issued. After a line curtain was installed to abate the violation, a reading of 3,100 cfm of air at the working face was obtained.

(a) Negligence. Respondent knew the requirements of its own ventilation plan. It was clear negligence not to ensure that its plan was being complied with.

(b) Gravity. Drilling coal without adequate ventilation is a most dangerous practice, running the risk of a dust or methane explosion, or propagating a mine fire, and subjecting miners to hazards of pneumoconiosis.

(c) Compliance History. Respondent had one prior violation of section 75.316.

#### DISCUSSION WITH FURTHER FINDINGS

I find that each of the violations charged was proved, was due to clear negligence, and was a serious violation that could contribute to a fatal or serious injury. Respondent is credited with making a good faith effort to achieve rapid compliance after each violation was cited.

Respondent is a small operator, operating a small mine.

Considering each of the criteria for assessing a civil penalty under section 110(i) of the Act, I find that an appropriate civil penalty for each of the violations found herein is \$125.

#### CONCLUSION OF LAW

1. The Commission has jurisdiction in this proceeding.

2. Respondent violated 30 C.F.R. 75.1719 as charged in Citation No. 2046863.

3. Respondent violated 30 C.F.R. 75.523 as charged in Citation No. 2046870.

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4. Respondent violated 30 C.F.R. 75.1725 as charged in Citation No. 2047192.

5. Respondent violated 30 C.F.R. 75.316 as charged in Citation No. 2047193.

ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay civil penalties in the total amount of \$500 for the above violations within 30 days of this Decision.

William Fauver  
Administrative Law Judge