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

BARNES AND TUCKER COMPANY,  
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. PENN 85-83-R  
Order No. 2255533; 12/12/84

Lancashire No. 24-B Mine

DECISION

Appearances: Michael T. Heenan, Esq., Smith, Heenan &  
Althen, Washington, D.C., for Contestant;  
David Bush, Esq., Office of the Solicitor, U.S.  
Department of Labor, Philadelphia,  
Pennsylvania, for Respondent.

Before: Judge Melick

This case is before me upon the application for review filed by the Barnes and Tucker Company (B & T) under section 107 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," to challenge the issuance by the Secretary of Labor of an imminent danger withdrawal order on December 12, 1984. The general issue before me is whether the conditions existing at the time the withdrawal order was issued constituted an "imminent danger" within the meaning of section 3(j) of the Act. "Imminent danger" is there defined as "the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated."

The order at bar (Order No. 225533) issued pursuant to section 107(a) of the Act, (FOOTNOTE.1) reads as follows:

A hazardous condition exists on the automatic elevator at the main portal of this mine. There are two 1/2 inch suspension wire ropes out of their respective grooves in the shieve [sic] wheel above the counterweight for this automatic elevator. It is reasonable to assume that with these ropes out of grooves, they could be tangled and cause the car to come to abrupt stop which would cause persons in this car to strike the sides or bottom of the car causing them serious injuries.

During the course of a special electrical inspection on December 12, 1984, Inspector Leroy Niehenke of the Federal Mine Safety and Health Administration (MSHA) found conditions on the main portal elevator to be an "imminent danger". Niehenke and MSHA Inspector William Davis were performing their inspection on the roof of the elevator at about the 30 to 40 foot level when Niehenke observed that the elevator ropes were changing positions.

Upon closer examination only 2 feet from the ropes he found that two of the six ropes were out of their corresponding grooves on the sheave wheel above the counterweight and were riding on the flange. In addition he found that one of the ropes had crossed over and overlapped another rope on the sheave wheel. The grooves are designed to keep the elevator ropes in proper alignment on the sheave wheel. They are ordinarily separated by an inch but according to Niehenke the ropes riding on the flange were 3 to 4 inches from the other ropes.

Niehenke observed that if the elevator had continued to operate with the ropes out of alignment as described, the ropes could have become lodged between the sheave wheel and its guard. They could then have become entangled and/or severed. In either case the elevator car could come to an abrupt halt thereby seriously injuring passengers inside or inspectors riding outside on the roof. If one or more ropes became severed it is not disputed that they were of sufficient weight to also cause serious injuries to anyone riding on top of the elevator who might be performing inspections. Severed ropes would also be expected to twist violently and could knock persons off the elevator into the shaft. Under these circumstances Niehenke believed an imminent danger withdrawal order was warranted. Accordingly the elevator was brought to the top, evacuated and closed down.

Inspector Davis was riding on top of the elevator with Niehenke. He also saw that two of the ropes were overlapped

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and riding out of their respective grooves on the flange of the sheave wheel. Contemporaneous notes taken by both inspectors indicate that the ropes appeared to be overlapped.

MSHA electrical engineer and elevator inspector Ronald Gossard thereupon expressed an opinion of the danger presented by the conditions described by Inspectors Niehenke and Davis. Gossard opined that if the elevator continued to operate under these conditions, the two ropes would be expected to further migrate off the sheave wheel toward the wheel housing. Eventually the ropes would move into the gap between the wheel and its housing and scrape the ropes if not immediately lock up the wheel. According to Gossard, the continued rubbing and scraping over a period of time would reduce the rope diameter and weaken it to the point where the rope would sever. Upon severance the rope could tangle in the other ropes or in the sheave wheel thereby halting the elevator abruptly. Gossard also opined that should even one rope become severed, the counterweight, which ordinarily passes within 6 inches of the elevator, could strike the elevator with serious effect. He observed that the counterweight weighs approximately 1 ton and would be approaching the car at a speed of 6 to 8 feet per minute.

B & T maintains, on the other hand, that although the No. 5 and No. 6 ropes were admittedly not in their proper grooves when the elevator was later examined by a repairman none of the ropes were overlapped. B & T contends that under these conditions no imminent danger could have existed. It maintains that, at worst, the No. 6 rope which was out of its groove and riding on the flange of the sheave wheel would wear flat and the rope strands would eventually begin breaking. The entire rope would break, according to this scenario, only after a period of at least 6 months. B & T argues that these deficiencies would be discovered by the inspection process well before any danger existed.

Robert Singer, an experienced repairman for the Otis Elevator Company (Otis), examined the elevator ropes later on the same day the order was issued. He found that rope No. 5 was in the groove for rope No. 6 and that rope No. 6 was riding on the flange of the sheave wheel but none of the ropes was overlapped. He realigned the ropes in a few minutes with a screw driver and adjusted the "keeper" by moving it about 1/16 inch closer to the sheave wheel. According to Singer the No. 6 rope would have eventually worn flat, the strands in the rope would begin breaking and only after a minimum of 6 months would the entire rope possibly break. He did not believe that the ropes would have continued to move toward the outside of the sheave flange because of the steep slope of the flange. Singer found no immediate danger but agreed that under the circumstances he would have shut the elevator down, just as Inspector Niehenke did. It is noted that Singer's employer, Otis, had at the

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time the withdrawal order was issued, and continues to have, a maintenance contract with B & T which includes a weekly examination of the cited elevator.

George Anderson, an experienced service attendant for the Schindler Elevator Corporation (Schindler) examined the subject ropes in April 1985, some 4 months after the order had been lifted. Schindler too had a continuing service contract with B & T. Anderson opined that the ropes had not overlapped. He based this opinion on his observation that there were no marks on the keeper. Anderson testified that had the ropes in fact been overlapped major effort would have been required to uncross them i.e., detaching one of the ropes from the end fasten point after resting the counterweights on the ground, grounding the elevator car to get slack then backing off and removing the keepers. Anderson concluded that in any event there was no possibility of physical injury even if the ropes had been crossed.

James Anderson, a self-employed mine elevator consultant, also examined the subject elevator about 4 months after the order had been lifted. He opined that so long as the ropes did not come off the sheave itself there was no danger whatsoever. He thought that in any event the ropes would be inspected and the defect discovered before anything happened. He agreed however that if he had found the cables overlapped he too would have stopped the elevator and corrected the condition.

Recalled as a witness by the court, MSHA electrical engineer Ronald Gossard explained how the ropes could have been overlapped when seen by Niehenke and Davis and not been overlapped when later seen by Robert Singer. According to Gossard a rock or piece of concrete could have fallen onto the sheave wheel and caused the No. 6 rope to jump over the No. 5 rope. The ropes would then have been crossed in two locations one of which was not seen by the inspectors. As the elevator was raised after the inspection the ropes could have then uncrossed explaining why Singer later found them in that condition. This explanation of the apparent inconsistency in testimony is unchallenged. For this additional reason I accept the testimony of Inspectors Niehenke and Davis as a credible description of conditions existing at the time the order was issued.

In assessing whether these conditions constituted an "imminent danger" I am particularly persuaded by the disinterested testimony of Gossard. This expert testimony amplifies and fully corroborates the testimony of Inspector Niehenke and clearly establishes that the conditions found by Niehenke could reasonably have been expected to cause death or serious physical harm before the conditions could have been abated. Accordingly an "imminent danger" then existed and the order at bar was properly issued.

