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SOL (MSHA) v. PYRO MINING
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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 PROCEEDINGS

Docket No. KENT 84-1
A.C. No. 15-13881-03510

v.

Docket No. KENT 84-174
A.C. No. 15-13881-03525

PYRO MINING COMPANY,
RESPONDENT

Pyro No. 9 Slope
William Station

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
William Craft, Manager of Safety, Pyro Mining
Company, Sturgis, Kentucky, for Respondent

Before: Judge Fauver

The Secretary of Labor brought these actions for civil penalties under section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 891, et seq. 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 pertinent times, Respondent owned and operated Pyro No. 9 Slope William Station, an underground coal mine that produced coal for sales or use in or substantially affecting interstate commerce.

2. Pyro No. 9 mine has an annual production of about 900,000 tons. Respondent is a relatively large operator. Payment of the penalties assessed herein will not adversely affect Respondent's ability to continue in business.

3. With respect to each of the citations involved, all issued at Pyro No. 9 mine, Respondent made a good faith effort to achieve rapid abatement of the cited condition after receiving the citation.

Citation 2225770

4. At the hearing the parties proposed settlement of Citation 2225770 based on full payment of the proposed penalty of \$91. This settlement is APPROVED.

Citation 2225768

5. This citation was issued by Federal Mine Inspector George W. Siria on July 19, 1983, alleging a violation of 30 C.F.R. 75.200.

6. On July 19, 1983, Inspector Siria observed that mining timbers had not been installed in eight cross-cuts adjacent to the supply entry on the No. 5 unit and more than 240 feet outby the tail piece of the belt line.

7. Pyro's roof control plan, in effect at that time, required that timbers or cribs be placed in all cross-cuts adjacent to supply entries to within 240 feet of the belt tail piece.

8. The condition cited constituted a hazard of roof falls.

9. Ten to twelve coal miners were working in the No. 5 Unit. At least three of the miners would be endangered, at any one time, by the condition which the inspector observed and cited.

10. From the placement of the tail piece and the nature of this violation, it is apparent that the section foreman or some other member of Pyro's management knew or should have known of this hazard.

11. In a two-year period immediately preceding this citation, Respondent had 33 violations of 75.200, with nine prior violations occurring at Pyro #9 Slope William Station.

Citation No. 2074898

12. This citation was issued by Federal Mine Inspector Robert G. Smith on July 28, 1983, alleging a violation of 30 C.F.R. 70.100(a).

13. Inspector Smith was unable to attend and testify at the hearing because he was on an extended period of sick leave. Mr. Charles Dukes, Mr. Smith's immediate supervisor and the Supervisory Safety and Health Specialist for District 10 of MSHA, testified concerning the issuance of this citation.

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14. Inspector Smith issued Citation No. 2074898 because he found that the average concentration of respirable dust from samples he took on the No. 3 Unit mechanized mining unit was 3.7 milligrams per cubic meter of air (mg/m³).

15. These samples were taken by Inspector Smith using approved sampling devices and yielded results upon which Inspector Smith based his determination to issue the citation.

16. An average concentration of respirable dust above the prescribed standard of 2.0 mg/m³ represents a serious threat to the health of underground coal miners. It should also be noted that the 3.7 mg/m³ measured by the inspector was an average. Secretary's Exhibit G-9 shows that the measured concentrations for two of the individual miners working on the mechanized mining unit were higher: the cutter operator's reading was 5.3 and the loader operator's reading was 8.4.

17. In the two-year period before this citation, Respondent had 11 prior violations of 70.100(a) with one of those prior violations occurring at Pyro #9 Slope William Station.

Citation No. 2225777

18. This citation was issued by Federal Mine Inspector George W. Siria on August 4, 1983, alleging a violation of 30 C.F.R. 75.1304.

19. Inspector Siria testified that he observed a shot firer, Louis Allen, carrying explosives to the face of the Number 5 entry on the Number 1 Unit in a cardboard box which did not have a top on it.

20. Inspector Siria testified that although a cardboard box would ordinarily be non-conductive, it would become conductive if it became wet. He further testified that he observed the shot firer dragging the box across the mine floor which was frequently wet. Mr. Siria also expressed concern that without a top on the box sticks of the explosives could fall out of the box and be overlooked by the shot firer and then be run over or scooped up with the coal and rock during normal mining operations. In either case, Mr. Siria felt that there was a danger of detonation. He acknowledged that he was more concerned with the insubstantial construction of the container and the missing top on the box than the question of conductive material, but did not specify either of those conditions in the citation.

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21. In the two-year period before this citation, Respondent, had one violation of 75.1304 and 10 violations of 75.1303, 75.1305, and 75.1306, which are all standards dealing with the handling, transportation or storage of explosives.

Citation 2337386

22. This citation was issued by Federal Mine Inspector George W. Siria on August 11, 1983, alleging a violation of 30 C.F.R. 75.400.

23. Inspector Siria observed loose coal and coal dust which had been allowed to accumulate along the ribs and floor of two haulage roads inby the three way feeder used by Pyro to facilitate the transportation of coal out of the mine. The loose coal and coal dust extended for a about 60 feet along two haulage roads and was three to twelve inches in depth.

24. The accumulations presented a serious hazard of a mine fire or propagation of a fire or explosion.

25. About 12 miners were endangered by this condition.

26. In the two-year period before this citation, Respondent had a 102 violations of 75.400 with 15 of these violations occurring at Pyro #9 Slope William Station Mine.

Citation 2225774

27. Inspector George W. Siria issued this citation on August 2, 1983, alleging a violation of 30 C.F.R. 70.501.

28. Inspector Siria, using MSHA approved procedures and instruments, obtained an eight hour supplemental noise survey for the loading machine operator. The results showed a noise level of 1.41, which substantially exceeded the permissible level of exposure prescribed by Table 1 referenced in 30 C.F.R. 70.501.

29. As prescribed by the formula found in 70.502, the maximum permissible exposure level is expressed as the number one. Any number above one represents an exposure in excess of the permissible levels expressed in Table 1.

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30. Inspector Siria testified that it is MSHA's policy to allow an instrument error factor of .32 so that no citation is issued until the measured noise exposure exceeds 1.32.

31. Inspector Siria testified that the loader operator was not wearing any hearing protection.

32. In the two-year period before this citation Respondent had no violations of 70.501.

DISCUSSION WITH FURTHER
FINDINGS AND CONCLUSIONS

Citation 2225768

Respondent was negligent in failing to follow its approved roof control plan. This was a serious violation, subjecting three to twelve miners to a hazard of roof fall.

Considering the criteria for civil penalties in section 110(i) of the Act, I find that an appropriate penalty for this violation is \$500.

Citation 2074898

Respondent does not dispute this violation, but contends that it is not a serious violation. This contention is rejected. Dr. Hodous' statements in Exhibit G-10 support a finding that the diseases associated with the inhalation of respirable coal dust present a serious hazard to the health of coal miners.

Respondent was negligent in exposing the listed employees to excessive amounts of respirable dust.

Considering the criteria for civil penalties in section 110(i) of the Act, I find that an appropriate penalty for this violation is \$250.

Citation 2225777

The Secretary failed to prove a violation as alleged in this citation. The condition cited is use of a conductive container for explosives. However, the plastic bags and cardboard box used were not conductive materials, and the Secretary did not prove that they were wet or otherwise conductive at the time of this citation. The Secretary's additional evidence of dangers due to an open carton and one of insubstantial material are not fairly and reasonably indicated by the specification of the charge in the citation. Moreover, the Secretary did not notify the Respondent of these contentions in the prehearing exchanges and did not move to amend the citation before the hearing.

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The charge in this citation will be dismissed.

Citation 2337386

Respondent does not dispute the accumulations observed by the inspector, but contends that it was following its clean-up program. This argument is rejected. Inspector Siria testified that the accumulations were extraordinary and dangerous, whether or not they occurred on one shift or more. A violative accumulation under 75.400 is not made acceptable simply because it will be cleaned up later under the operator's clean-up plan.

The violation was serious and due to negligence.

Considering the negligence, gravity, and compliance history involved, and the other criteria of section 110(i) of the Act, I find that an appropriate penalty for this violation is \$1,500.

Citation 2225774

A violation of the noise standard was proved.

Considering Respondent's good compliance history concerning this standard, and the other criteria of section 110(i) of the Act, I find that an appropriate penalty for this violation is \$75.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in these consolidated proceedings.

2. Respondent violated the safety standards as alleged in Citations 2225768, 2074898, 2337386, and 2225774.

3. The Secretary failed to prove a violation as alleged in Citation 2225777.

ORDER

1. Respondent shall pay the above civil penalties in the total amount of \$2,416 within 30 days of this Decision.

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2. The Secretary's charge as to Citation 2225777 is DISMISSED.

William Fauver
Administrative Law Judge