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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. VA 85-22  
A.C. No. 44-05594-03571

v.

No. 1 Mine

R B J COAL COMPANY, INC.,  
RESPONDENT

DECISION

Appearances: Craig W. Hukill, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia,  
for Petitioner;  
Raymond Jackson, RBJ Coal Company, Inc.,  
Mavisdale, Virginia, for Respondent.

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 two violations of regulatory standards. The general issues before me are whether RBJ Coal Company, Inc. (RBJ) violated the cited regulatory standards and, if so, whether those violations were of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety or health hazard i.e. whether the violations were "significant and substantial." If violations are found it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

Citation No. 2281585 alleges a "significant and substantial" violation of the operator's roof control plan under the standard at 30 C.F.R. 75.200 and charges as follows:

On 002 section the 8 breaker timbers in the No. 6 entry for the No. 5 pillar were "stretched" by being set on 2 or more sections of crib blocks or timber butts. There were other timbers visible in the pillar line that had been set in a similar fashion. The timbers were easily moved by hand.

It is not disputed that the roof control plan requires that "posts shall be installed tight on solid footing and [that] not more than two wooden wedges shall be used to

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install a post." During a spot inspection at the RBJ No. 1 Mine on February 4, 1985, Inspector Larry Stanley of the Federal Mine Safety and Health Administration (MSHA) found all of the eight breaker timbers used in the No. 6 entry for the No. 5 pillar to be unstable and not on solid footing. The timbers used were estimated to be only 5 feet long under a roof that was from 6 feet to nearly 8 feet high. Various material was used to supplement their height. At least three of the timbers were supplemented with timber butts only 4 to 6 inches in diameter and one of the timbers had footers made of 3 pieces of timber butts. Most of the eight timbers were also supplemented with more than two wedges and one with six wedges.

RBJ president Raymond Jackson conceded that three of the posts were not set on solid footing. Two of these were set on timber butts and one was on gob. Although he never saw the timbers while they were in place, Jackson was told by his foreman, Steve Larson, that the remaining five timbers were on solid footing. Jackson did not dispute however that more than two wedges were used on more than half of the eight timbers cited. Under the circumstances the violation is proven as charged.

According to Inspector Stanley the hazard presented by these "stretched" timbers was quite serious. Timbers properly placed and on solid footing provide a break-off point during retreat mining protecting the miners outby from falling roof. Without stable timbers Stanley believed that it would be likely for the roof in the gob area to continue breaking beyond the timbers thereby endangering the work crew. According to Stanley the continuous miner operator, his helper and the ram car operator would likely be working in the endangered area thereby being exposed to fatal injuries from a roof fall.

Jackson maintained that there was no "immediate danger" presented by the "stretched" timbers because there were also roof bolts in the cited entry. I find more credible however the reasoned opinion of Inspector Stanley that during the retreat mining process the roof bolts would not prevent sections of roof from falling. According to Stanley the pillars on which the "beam" created by the roof bolts depend for support are removed during retreat mining and therefore the entire "beam" would be expected to fall. Thus while no "immediate hazard" may have existed there was nevertheless a serious and "significant and substantial" hazard. See Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984). I also find that the violation was caused by the negligence of the mine operator. Jackson himself acknowledged that his foreman should have known that support timbers cannot be set on timber butts or gob and the use of an excessive number of wedges was in clear violation of the roof control plan.

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Order No. 2281586 also alleges a "significant and substantial" violation of the roof control plan under the standard at 30 C.F.R. 75Å200. The order charges as follow:

The approved roof control plan for 002 section, full pillar recovery, was not being followed in that the No. 5 pillar had been "slabbed" from the No. 6 entry, cutting left with approximately 3 lifts or runs taken. Only one timber, set on crib blocks, had been set for the second lift.

It is not diputed that the applicable roof control plan requires that the righthand wing of a pillar that has been split during retreat mining must be mined from the split and not from the entry to the right of that pillar. (See Government Exhibit Nos. 7 and 3 page 23). It is further undisputed that on February 4, 1985, the continuous miner was cutting into the righthand wing of the cited pillar from the entry to the right.

According to Inspector Stanley this was a particularly unsafe procedure because the controls of the continuous miner require its operator to be seated on the right side of the machine. Thus if he is cutting the right wing from the left side he is in the immediate proximity to the unstable and unsafe gob line. Stanley also observed that timbers had not yet been placed in the split and the roof was breaking up. Indeed some of the roof had already fallen including sections up to a foot thick. Stanley opined that under the circumstances a roof fall was highly likely in the cited area and such a fall would likely result in disabling or fatal injuries to the continous miner operator, his helper and/or the ram car operator. Under the circumstances the violation was serious and "significant and substantial." Mathies, supra.

Jackson conceded that the roof conditions in the vicinity of the alleged violation were not good because of the number of "slips" present. Indeed a continous miner had just recently been covered by a roof fall. Jackson acknowledged moreover that the mine foreman on the preceding evening shift had made the conscious decision to change the procedures set forth in the roof control plan because they had encountered dangerous roof conditions. If conditions were so dangerous however the pillar could have been abandoned or an approved modification to the roof control plan obtained. Indeed the evidence shows that an approved modification was obtained shortly after the order was issued. Under the circumstances however it is clear that the violation herein was intentional and, of course, thereby caused by the negligence of the mine operator.

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In assessing the penalties for these violations I have also considered that the mine operator is small in size and that the violations herein were abated in a good faith and timely manner. I also note however, that the operator had been cited 35 times for violations of the standard at issue herein over the the 2 year period preceding the issuance of the citation and order at bar. This record evidences a serious lack of concern for roof control. Under the circumstances I find penalties of \$500 and \$800, respectively, for Citation No. 2281585 and Order No. 2281586 to be appropriate.

Order

RBJ Coal Company, Inc., is hereby directed to pay civil penalties of \$1,300 within 30 days of the date of this decision.

Gary Melick  
Administrative Law Judge