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QUARTO MINING V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

QUARTO MINING COMPANY,
CONTESTANT

v.

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

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

v.

QUARTO MINING COMPANY,
RESPONDENT

CONTEST PROCEEDING

Docket No. LAKE 85-72-R
Citation No. 2330910; 4/8/85

Powhatan No. 4 Mine

CIVIL PENALTY PROCEEDING

Docket No. LAKE 85-97
A.C. No. 33-01157-03732

Powhatan No. 4 Mine

DECISION

Appearances: Timothy M. Biddle, Esq., and Thomas C. Means, Esq.,
Crowell & Moring, Washington, D.C. for Contestant/
Respondent Quarto Mining Company (Quarto);
Edward H. Fitch, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia for
Respondent/Petitioner Secretary of Labor (Secretary)

Before: Judge Broderick

STATEMENT OF THE CASE

This is a consolidated contest and civil penalty proceeding,
in which Quarto challenges the validity of a citation alleging a
violation of 30 C.F.R. 75.1106-2, and the Secretary seeks a
civil penalty for the alleged violation. The parties have
submitted the case on stipulated facts, including joint exhibits.
Following submission of the stipulation, Quarto filed a Motion
for Summary Decision and the Secretary filed a Cross Motion for
Summary Decision. Both parties have submitted legal briefs. I
accept the stipulation of facts as constituting the facts in the

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case, and have carefully considered the contentions of the parties.

FINDINGS OF FACT

Based on the stipulation, I find the following facts:

Quarto is the operator of an underground coal mine in Monroe County, Ohio, known as the Powhatan No. 4 Mine. It produces coal which enters and affects interstate commerce. Quarto is a large operator and has an average history of prior violations. It has had no previous violations of the standard involved in these proceedings. Payment of a civil penalty for the alleged violation will not adversely affect Quarto's ability to continue in business.

On April 6, 1985, as it had done previously, Quarto placed a heavy-duty metal acetylene cylinder and an oxygen gas cylinder on a longwall chain conveyor to be moved along the conveyor trough toward the headgate of the longwall. The cylinders were placed in the confines of a metal chain haul conveyor flight, resting on the chains. They were not placed in any special devices designed to hold the cylinders in place during transit. As the acetylene cylinder travelled along the trough of the chain conveyor, it caught against a piece of metal protruding from one of the sides of the stationary trough. The cylinder ruptured causing an explosion. Seven miners suffered first, second, and/or third degrees burns to the upper body and were taken to a hospital.

MSHA officials conducted an investigation of the accident on Saturday, April 6, 1985. A citation was issued at 3:40 p.m. on Monday, April 8 alleging a violation of 30 C.F.R. 75.1106-2(a)(1). Issuance of the citation was delayed in part because of MSHA's uncertainty whether the standard applied to longwall chain conveyors. MSHA had not previously issued a citation or order to any operator applying the standard to longwall chain conveyors, and no policy memoranda or other interpretive document had been issued stating that the standard applied to longwall chain conveyors.

A chain conveyor, such as was on the longwall here, moves material by mechanically pushing it across a stationary surface, the trough. The material is pushed through the trough by a series of regularly placed flights attached to the moving chains. In moving coal after it is cut from the face, the chain conveyor clears the cut coal and deposits it on a belt conveyor by a stage loader at the end of the chain conveyor. A belt conveyor, as distinguished from a chain conveyor, provides a moving surface (the belt) on which material is placed and transported.

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Quarto had no policy or practice concerning the transportation of compressed gas cylinders on longwall chain conveyors, but did not believe that any mandatory standard prohibited or otherwise regulated the practice. Devices generally designed to hold a compressed gas cylinder in place during transit on self-propelled equipment or belt conveyors would not work on a longwall chain conveyor. After the citation involved here was issued, Quarto demonstrated good faith in abating the alleged violation within the time set for abatement.

REGULATION

30 C.F.R. 75.1106Ä2(a)(1) provides as follows:

(a) Liquified and nonliquified compressed gas cylinders transported into or through an underground coal mine shall be:

(1) placed securely in devices designed to hold the cylinder in place during transit on self-propelled equipment or belt conveyors;

ISSUES

1. Does the mandatory standard apply only to the transportation of compressed gas cylinders on self-propelled equipment or belt conveyors?

2. Do the facts establish that the longwall chain conveyor was self-propelled equipment?

3. Do the facts establish that the longwall chain conveyor was a belt conveyor?

4. If a violation of the mandatory standard is established, what is the appropriate penalty?

CONCLUSIONS OF LAW

JURISDICTION

Quarto was subject to the provisions of the Federal Mine Safety and Health Act of 1977 (the Act) in the operation of the Powhatan No. 4 Mine, and I have jurisdiction over the parties and subject matter of this proceeding.

INTERPRETATION OF REGULATIONS

The Secretary argues that the Act and the regulations promulgated under it should be liberally construed to promote their purpose in preserving life and health. Quarto concedes

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that Court decisions support a liberal construction of the Act to promote its purpose, but denies that the rule of liberal construction applies to the Secretary's regulations. It is clear, and Quarto does not contend otherwise, that broadly-phrased standards are necessary, and are to be tested by whether they inform a reasonably prudent person that the condition or conduct involved was prohibited by the standard. Secretary v. Mathies Coal Company, 5 FMSHRC 300 (1983); Secretary v. Alabama By-Products Corp., 4 FMSHRC 2128 (1982). The basic rule of interpretation of a mandatory standard, however, is "the plain language of the regulation. Absent a clearly expressed legislative or regulatory intent to the contrary, that language ordinarily is conclusive." Secretary v. Freeman United Coal Mining Company, 6 FMSHRC 1577 (1984). As an aid in interpreting the language of a regulation, it should be read "in the context of the preventive purpose of the statute." See Secretary v. United States Steel Corporation, 5 FMSHRC 3, 5 (1983). When the violation of a regulation results in the imposition of a penalty, however, the rule of liberal construction must give way to the requirement that the regulation give fair notice of the prohibited conduct. Diamond Roofing Co. v. OSHRC, 528 F.2d 645 (5th Cir.1976); Phelps Dodge Corp. v. FMSHRC, 681 F.2d 1189 (9th Cir.1982); Gates & Fox Company v. OSHRC, No. 80-1446 (D.C.Cir. May 13, 1986). Therefore, I look first to the language of the regulation involved here to determine whether it fairly gives notice that the conduct complained of is prohibited by the regulation.

BREADTH OF THE REGULATION

The mandatory standard in issue here attempts to regulate the transportation of compressed gas cylinders: It requires that they be disconnected from hoses and gages; that they be labeled "empty" when the gas has been expended; that they may not be transported on mantrips; and, (1) during transit on self-propelled equipment or belt conveyors, that they be placed securely in devices designed to hold them in place, (2) during transit by trolley wire haulage, that they be placed in well insulated and substantially constructed containers specifically designed for holding them.

Because the standard specifically refers to certain modes of transportation: self-propelled equipment, belt conveyors, trolley haulage, mantrips, I conclude that other forms of transportation (assuming there are any) of gas cylinders are not regulated by the standard.

SELF-PROPELLED EQUIPMENT

The Secretary asserts that the chain conveyor involved here is a piece of self-propelled equipment, because "the chain and flights clearly are self-propelled along the trough," and "the chain conveyor is an integral part of the longwall mining unit which is also self-propelled equipment." Quarto argues that the basis for the citation was the transportation of cylinders on a conveyor, and the Secretary is precluded from now changing the basis of the citation. It also argues that the chain conveyor is not self-propelled equipment. Addressing the latter issue, it is clear to me, and I conclude, that a longwall chain conveyor is not self-propelled equipment. Part 75 of the regulations (safety standards in underground coal mines) uses the term self-propelled in referring to self-propelled electric face equipment such as cutting machines, shuttle cars, battery powered machines, and roof drills and bolters (75.523), in referring to a self-propelled mantrip car (75.11002(d)), in requiring that operators face in the direction of travel (75.140310(j)), and that self-propelled rubber tired haulage equipment have adequate brakes, lights and a warning device (75.140310(e)), in requiring cabs and canopies for self-propelled electric face equipment (75.17101). The term self-propelled equipment thus refers to equipment which has its own source of power, which moves from place to place, and which (ordinarily at least) has an operator. A conveyor is not such a piece of equipment.

CHAIN CONVEYOR BELT CONVEYOR

The terms chain conveyor and belt conveyor are not defined in the Secretary's regulations. They are defined in the Dictionary of Mining, Mineral and Related Terms (United States Department of the Interior, 1968) as follows:

Chain conveyor; scraper chain conveyor. A conveyor comprising one or two endless linked chains with crossbars or flights at intervals to move the coal or mineral. The loaded side of the conveyor runs in a metal trough while the empty side returns along guides underneath. The material is transported on the conveyor partly by riding on the chains and flights and partly by being scraped along in the trough . . .

Belt conveyor. A moving endless belt that rides on rollers and on which coal or other materials can be carried for various distances. The principal parts of a belt conveyor are (1) a belt to carry the load and transmit the pull, (2) a driving unit, (3) a supporting structure and idler rollers between the terminal drums, and (4) accessories . . .

These definitions are consistent with the stipulations (10 and 11) submitted in this proceeding, and very clearly are

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describing two different things, which operate in quite different ways. The "plain language" of the regulation would therefore seem to preclude applying it to a chain conveyor. More importantly, devices generally designed to hold cylinders in place during transit on belt conveyors "would not work on a longwall chain conveyor." (Stipulation 25). Obviously, therefore, in promulgating the regulation involved here, the Secretary did not intend to treat chain conveyors as the same as or equivalent to belt conveyors.

The Secretary argues that it was clearly hazardous to move a compressed gas cylinder by mechanically pushing it along a chain conveyor. And indeed it was hazardous, and caused multiple injuries. It may be that transportation of such cylinders on chain conveyors should be banned. But that is not the issue before me. Rather the issue is whether such transportation comes within the regulation cited, that is, whether the regulation fairly notifies the operator that it encompasses transportation by chain conveyor. I conclude that it does not. Therefore, I conclude that the mandatory standard in 30 C.F.R. 75.1106-2(a)(1) does not apply to the transportation of compressed gas cylinders on longwall chain conveyors. The citation contested here was therefore invalidly issued.

ORDER

Based on the above findings of fact and conclusions of law IT IS ORDERED that citation 2330910 issued to Quarto on April 8, 1985 is VACATED. IT IS FURTHER ORDERED that the petition for assessment of civil penalty is DENIED.

James A. Broderick
Administrative Law Judge