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SOL (MSHA) V. TWIN STAR
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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 86-16
A.C. No. 15-15103-03505

v.

No. 1 Mine

TWIN STAR CONTRACTING
COMPANY, INC.,
RESPONDENT

DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for Petitioner;
Jerry Pelphrey, President, Twin Star Contracting
Company, Paintsville, Kentucky, pro se, for
Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns a proposal for assessment of civil penalty filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment of \$400 for an alleged violation of mandatory safety standard 30 C.F.R. 77.1606(c). The respondent filed an answer denying the violation, and a hearing was held in Paintsville, Kentucky, on November 18, 1986.

Issues

The issues presented in this proceeding are as follows:

1. Whether the respondent violated the cited mandatory safety standard, and if so, the appropriate civil penalty to be assessed for the violation based on the criteria found in section 110(i) of the Act.

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2. Whether the inspector's "significant and substantial" (S & S) finding concerning the violation is supportable.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, Pub.L. 95-164, 30 U.S.C. 801 et seq.

2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).

3. Commission Rules, 20 C.F.R. 2700.1 et seq.

Discussion

Section 104(d)(1) "S & S" Order No. 2468943, was served on the respondent at 3:15 p.m., on August 12, 1985, by MSHA Inspector R.C. Hatter. The inspector cited a violation of 30 C.F.R. 77.1606(c), and the condition or practice is described as follows:

The cat rock truck No. P120 exhibits an equipment defect affecting safety, not corrected prior to use of such truck, which is being used for spoil haulage in the pit, in that the outer edge of the rt. rear tire is badly worn and in one location approx. 3p long x 12-14" wide, the outer tread is gone and at least 10 or more layers or plies are worn through. The condition can result in a blow-out which can cause accident resulting in a serious injury. Such truck is subject to use on two shifts. Such condition is caused by an unwarrantable failure.

30 C.F.R. 77.1606(c) provides as follows: "Equipment defects affecting safety shall be corrected before the equipment is used."

Petitioner's Testimony and Evidence

MSHA Surface Mine Inspector R.C. Hatter, testified as to his background and experience, and he confirmed that he inspected the mine on August 12, 1985, and issued the order in question. He confirmed that he issued the violation after observing that the right rear tire on a rock haulage truck which was in operation on the haulage road was badly worn. He described the condition of the tire and believed it was a safety hazard. In his

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view, the condition of the tire presented a possible "blow-out" hazard. He confirmed that abatement was achieved within approximately 2 hours of the issuance of the order, and that the worn tire was replaced with a new one (Tr. 5Ä33; 63Ä64).

Respondent's Testimony and Evidence

Loyal E. Tackett, respondent's mine foreman, confirmed that he was aware of the condition of the tire in question, and given the prevailing conditions, including the speed of the trucks operating on the haulage road, the road terrain, and the fact that the truck normally travelled a distance of 400 to 500 feet, he was of the opinion that the condition of the tire did not present a hazard. He explained that tire maintenance is performed by a local contractor, and he identified a copy of a purchase order dated August 9, 1985, indicating that a replacement tire for the truck was on order at the time the violation was issued (Exhibit RÄ3, Tr. 38Ä51). He also confirmed that a new tire was installed on the cited truck to abate the violation on the same day that it was issued, and he identified a copy of a sales receipt reflecting that the cost of the new tire was \$2,223.02.

Jerry Pelphrey, President, Twin Star Contracting Company, testified as to the condition of the tire in question, and in his view, it did not present a safety hazard. He confirmed that he is no longer in business at the No. 1 Mine, and stated that he closed down the operation in September, 1985, and with the exception of two drills, he has sold all of his equipment. He confirmed that abatement was achieved within 2 hours of the issuance of the order by the inspector by the installation of a new tire, and he asserted that a replacement tire had been ordered to replace the worn tire observed by the inspector (Tr. 51Ä53; 76Ä79).

At the conclusion of the testimony in this case, the parties agreed to settle the dispute by a mutual agreement requiring the respondent to pay a civil penalty assessment in the amount of \$200 for the violation in question. Mr. Pelphrey stated that he was ready, willing, and able to pay the settlement amount and would remit payment to MSHA upon receipt of my decision and order in this case.

After review and consideration of all of the evidence, testimony, and arguments presented by the parties, including the requirements of Commission Rule 30, 29 C.F.R. 2700.30, I issued a bench decision approving the proposed settlement by the parties. I took particular note of the fact that the

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respondent was a small mine operator, and that its reported coal production in 1985 was 14,150 tons. I also considered the fact that the respondent is no longer in business, and that its prior history of assessed violations for the 2-year period August 12, 1983 through August 11, 1985, consists of 19 section 104(a) citations and one section 104(d)(1) citation. The total civil penalty assessments for these prior violations is \$820, and the respondent has paid the full amount for all of these assessments.

ORDER

The respondent IS ORDERED to pay a civil penalty assessment in the amount of \$200 in satisfaction of section 104(d)(1) Order No. 2468943, August 12, 1985, 30 C.F.R. 77.1606(c). Payment is to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of payment, this matter is dismissed.

George A. Koutras
Administrative Law Judge