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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. WEVA 86-371
A.C. No. 46-03084-03510

v.

Winifrede Central Shop

U.S. STEEL MINING COMPANY,
INC.,
RESPONDENT

DECISION

Before: Judge Melick

This case is before me upon the petition for civil penalty filed 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 a violation of the regulatory standard at 30 C.F.R. 77.1713(a). The general issues before me are whether U.S. Steel Mining Company, Inc., (U.S. Steel) violated the cited standard and, if so, whether that violation was 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 violation was "significant and substantial". If a violation is found it will also be necessary to determine the appropriate civil penalty to be assessed in accordance with Section 110(i) of the Act.

The citation at bar, No. 2717754, alleges a "significant and substantial" violation at the Winifrede Central Shop and charges as follows:

Examinations of the working areas were not being conducted for hazardous conditions in the working areas of the truck shop on B and C shifts and in the electrical shop on C shift.

The cited standard, 30 C.F.R. 77.1713(a), captioned in part as "daily inspection of surface coal mine", requires that "at least once during each working shift, or more often if necessary for safety, each active working area and each active surface installation shall be examined by a certified person designated by the operator to conduct such examinations for hazardous conditions and any hazardous conditions noted during such examinations shall be reported to the operator and shall be corrected by the operator."

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The parties in this case agreed to waive hearing and to submit the matter on a joint stipulation of facts. The stipulation as amended reads as follows:

1. The respondent operates the Winifrede Central Shop (hereinafter "the Shop") which is the subject of this proceeding.
2. The shop is located in Winifrede, West Virginia. The shop is located approximately 8.5 miles from the Number 50 Surface Mine which is an operating coal strip mine. It is located approximately 5 miles from the Morton Mine which is an operating underground coal mine. The shop is located approximately one-half mile from the Winifred Central Cleaning Plant, a coal preparation plant.
3. The shop's function is to repair and maintain electrical and mechanical equipment from the No. 50 Surface Mine, the Morton Underground Mine and the Winifrede Central Cleaning Plant. The preparation plant processes coal mine from both surface and underground mines.
4. The shop has separate supervision from any of the aforementioned mines or plants, and has a separate MSHA mine identification number.
5. The shop is composed of a one-story electrical shop building of approximately 3200 square feet, and a one-story automotive repair building of 4300 square feet. When the shop is in operation, some fourteen employees would have been working in the electrical shop and two employees in the automotive repair shop.
6. On March 3, 1986 Inspector Ronald Brown issued Citation No. 2717754. The inspector observed that no inspection, as required by 30 CFR 77.1713 was made in the working areas of the automotive repair building on the B or C shifts and no such inspection had been made in the electrical shop on the C shift on that date. The operator does not dispute this observation.
7. The employees at the shop are subject to hazards inherent in workings in areas where heavy equipment is being moved, electrical work, grinding, cutting, sharpening and welding are being done and

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where lathes and drill presses are operating. The work area also contains flammable and caustic liquids.

8. A copy of the above-mentioned citation was properly served upon, and received by, the mine operator.

9. . . . Exhibit A is an accurate statement of the number and type of violations occurring at the shop from March 3, 1984 to March 3, 1986.

10. The alleged violation was timely abated after the operator began to conduct inspections for hazardous conditions in all working areas on each work shift.

11. Payment of the proposed penalty of \$168.00 would not affect the operator's ability to continue in business.

12. MSHA Policy Memorandum No. 85Ä4(c), dated April 8, 1985, accurately reflects current MSHA enforcement policy regarding 30 CFR 77.1713.

U.S. Steel argues in this case that the shop at issue herein is not subject to the cited regulation because it is not a surface coal mine. The cited regulation by its caption applies to "surface coal mine[s]". More specifically the standard on its face applies to "each working area and each active surface installation [of such surface coal mines]". By stipulation the shop herein is used to repair and maintain electrical and mechanical equipment from, among other places, the nearby (only 8.5 miles) No. 50 Surface Coal Mine. Within this framework it may reasonably be inferred that the Winifrede Central Shop was an "active surface installation" of the No. 50 Surface Coal Mine. The fact that the shop is also used to repair equipment from the nearby (5 miles away) Morton Underground Coal Mine is not, in my opinion germane to the issue of liability in this case.

The parties in their joint stipulations of fact and in their briefs have also made reference to an MSHA policy memorandum on the subject of the cited standard (MSHA policy memorandum No. 85Ä4(c)). That memorandum only serves to confirm the stated positions of both parties that the cited standard is indeed applicable to surface coal mines. Under all the circumstances it clear that the violation has been proven as charged.

Based on the limited stipulations furnished in this case however I cannot determine whether the violation was "significant and substantial", see Secretary v. Mathies Coal Co., 6 FMSHRC 1 (1984), nor whether it was of high gravity. For the

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same reasons I am able to find but little negligence. It appears that the Respondent has been operating under a mistaken but good faith belief that the shop was not subject to the inspection requirements of the cited standard.

Considering the additional stipulations of factors to be considered under section 110(i) of the Act, I find that a penalty of \$50 is appropriate.

ORDER

U.S. Steel Mining, Co., Inc. is hereby directed to pay civil penalty of \$50 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge
(703) 756-6261