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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY, CONTESTANT	CONTEST PROCEEDING
v.	Docket No. WEVA 85-183-R Citation No. 2222286; 4/11/85
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Blacksville No. 2 Mine
SECRETARY OF LABOR MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDING Docket No. WEVA 85-236 Blacksville No. 2 Mine
v.	
CONSOLIDATION COAL COMPANY, RESPONDENT	

DECISION

Appearances: William T. Salzer, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, PA, for Petitioner;
Michael Peelish, Esq., Consolidation Coal Company, Pittsburgh, PA, for Respondent

Before: Judge Fauver

Consolidation Coal Company (hereafter "Consolidation") seeks to vacate a citation charging a safety violation, and the Secretary of Labor seeks a civil penalty for the violation charged, under the Federal Coal Mine Safety and Health Act of 1977, 30 U.S.C. 801, et seq.

Having considered the hearing evidence and the record as a whole, I find that a preponderance of the reliable, probative, and substantial evidence establishes the following:

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FINDINGS OF FACT

1. Consolidation owns and operates Blacksville No. 2 Mine, which produces coal for sale or use in or affecting interstate commerce.

2. Consolidation is a large coal operator, producing over 10,000,000 tons a year.

3. On April 11, 1985, MSHA Electrical Inspector Spencer Shriver issued Citation 2222286 charging a violation of 30 C.F.R. 75.807

4. The citation alleges the following condition or practice:

> The 7200 volt cable serving the 5 North Section Power Center, is laying on the bottom for 25 feet, beside area of new track construction, in No. 5 entry, outby belt trench. Cable is contacting a 5 foot drill steel leaning against rib, and is heavily abraided for about 6 feet where it passes around the corner of the intersection inby the belt trench. About 20 feet of cable is laying on the bottom, near Bantam Duster, and across entry from power center cable has 3 cuts, 1/8 inch deep and 1/2 to 2 inches long, and is abraided, where it hangs down from crossing No. 5 entry, and into high-voltage sled. Area is under construction and the cable has received mechanical damage at corner of intersection and at high-voltage sled, and is subject to mechanical damage at the two locations where it was laying on bottom. These conditions were easy to observe.

5. The cited safety standard states in pertinent part:

> All underground high-voltage transmission cables shall be installed only in regularly-inspected air courses and haulageways, and shall be covered, buried, or placed so as to afford protection against damage, guarded where men regularly work or pass under them unless they are 6 1/2 feet or more above the floor or rail, securely anchored, properly insulated . . . .

6. The electrical inspector came into the area along the number 5 entry. He passed the recess where the power

sled and power center were located. He proceeded up the entry and through the intersection where an overcast had recently been cut. He then walked approximately 75 feet outby the intersection to where the track ended.

7. Inspector Shriver observed that the cable was hanging low as it came out of the power sled into the entry. It was approximately three feet from the ground. He noticed three cuts on this part of the cable. He also noticed handprints in the rockdust on this part of the cable. Given the handprints on this part of the cable, but not elsewhere, and the eighteen inch step up to the power sled and center, it appeard to him that the cable was being used as a handrail or hoist to and from the power center.

8. The 7200 cable crossed over the entry at this point and was hung against the roof. When it came down on the opposite side of the entry, there were approximately 25 feet of cable looped and lying on the ground next to a bantam duster.

9. The cable then ran along the ribs of the entry close to the roof. It went over the intersection tight against the top of the overcast. When it came down the other side of the intersection, it was wrapped tightly around the corner of the intersection, approximately three or four feet off the ground. There were heavy abrasions on the six feet of the cable that were wrapped around the corner.

10. These abrasions were on the side of the cable that faced the intersection. Given the height of the cable and the concentration of heavy abrasions on this corner, it appeared to the inspector that the cable was being scraped and damaged by machinery or equipment traveling around or through the intersection.

11. Once the cable rounded the corner of the intersection, it was then wrapped around a drill steel that was leaning against the rib.

12. The next fifty feet of the 7200 cable along the entry was hanging less than six and a half feet from the ground. Ten feet of that was guarded. The other forty feet were unguarded.

13. The next twenty five feet of cable were lying on the ground near the rib. This area was at the end of the track. At the end of the track and next to the cable on the ground, there were cross ties and rails that had been unloaded where supplies are dropped off. There were also

several pieces of metal lying within two or three inches of the cable. There were three pieces of metal measuring about four feet long and four inches wide.

14. Upon entering the area, the electrical inspector had observed a crew bolting in the cross cut area between the number four and five entries. He observed the section foreman, Mr. Stone, in the same vicinity as well.

15. After the inspector indicated that a citation was being issued, the 7200 cable was de-energized. The electrical inspector went back and looked more closely at the cuts on the cable near the power sled. Using his fingernail, he estimated that the cuts were one eighth of an inch in depth and varied from one half to two inches long. It was the inspector's opinion that these cuts were more than normal wear and tear and amounted to serious damage to the outer jacket.

16. The way in which the 7200 cable was hung and placed in this area of the number 5 Entry was readily observable. The damage to the cable at the power sled and on the corner of the intersection was also readily observable. The inspector made his observations of the area in a matter of minutes. The potential for further damage was obvious at the corner of the intersection and the end of the track.

17. The 7200 cable had been in this positon from the time the power center was moved to its location, within the last several days. It was Inspector Shriver's opinion that the cable had been in this condition for two to three days based on his observation of the area. He believed that the overcast was cut several days before. There was also rock dust settled on the cable and there were no emptly bags in the area, indicating the cable had been in this position for several days.

18. The area is required to be examined by the section foreman during pre-shift and on-shift examinations. Section Foreman Stone had done an on-shift examination of this area at approximately eight o'clock that morning. A pre-shift had been done by the last boss on the midnight shift.

19. If left in this position, the cable would have been subjected to further damage and it was reasonably likely that a short circuit would have occurred.

20. When a 7200 cable is damaged, a short circuit or exposed conductors can result. If a person contacts an energized conductor, he would almost certainly be electrocuted given the voltage of this cable. A short circuit can

result in fire, explosion or electrocution. Water or moisture can get into a cable through the damaged area and result in an explosion.

21. The cuts and abrasions on the cable constituted damage. The six feet of abraided cable at the intersection was subject to further damage. The twenty five feet of cable on the ground near the end of the track was subject to damage from supplies and other materials being dropped on the cable.

22. This area was regularly traveled and worked in by miners. It was a construction area. The track and power center were located in this entry.

23. Because of the high voltage of the 7200 cable, it has a number of safety features in its overall protection system. Each of the three conductors or phase wires in the cable is covered with shielding. The shielding is covered with insulation. Then there is another braided or tape shield covered by the outer jacket. Any amount of damage to the cable could affect the overall protection system of the cable. If the cable is damaged through to the conductors, the breaker would be tripped and the cable de-energized if the ground monitoring system is functioning properly. If it is not functioning properly at the time, the breaker would not be thrown. An attempt might be made to reset the breaker even when it has been thrown off. If the object that penetrated the inner cable was removed the power would remain on and a short circuit would result.

24. In the event that these hazards occurred, very serous injuries would result given the frequency with which this area is traveled and worked in. Serious injuries from burns and flying debris would result. A fatality could result from electrocution.

25. The electrical inspector did not require the cable to be repaired or replaced in order to abate the violation. All that was required was hanging the cable near the roof in all locations so that it would not be subjected to contact or further damage. This was done within approximately one hour. Since the damage to the cable did not penetrate beyond the outer jacket and it was protected from further damage, the area was made safe.

DISCUSSION WITH FURTHER FINDINGS

The standard cited is a broad safety regulation regarding the installation of high voltage transmission cables. The intent of 75.807 clearly is to protect

high-voltage cables against damage and to protect miners against contact with high-voltage cables.

Consolidation violated the section by its failure to cover, bury or place the 7200 cable in the 5 North Section so as to afford protection against damage. The cable was damaged at two places: near the power sled and at the corner of the intersection. Also, the twenty five feet of 7200 cable outby the intersection near the end of the track was not protected against damage from various types of supplies being unloaded there. Pieces of metal debris in the area could have caused damage to the cable as well. The operator also violated the standard by its failure to guard the cable where it hung less than six and a half feet since this is an area where miners regularly worked. Little Bill Coal Company, 2 FMSHRC 3634, 3642Ä3643 (December 1980).

The violation was caused by the operator's "unwarrantable failure" to comply. An unwarrantable violation may be proved by:

> . . . a showing that the violative condition or practice was not corrected or remedied, prior to the issuance of a citation or order, because of indifference, willful intent, or a serious lack of reasonable care. [United States Steel Corp., 3 FMSHRC 1424, 1434 (1984).]

The fact that the 7200 cable was put in this position after the overcast was cut and no action was taken to hang the cable or protect it from damage demonstrates indifference or a serious lack of reasonable care. Given that this area is required to be examined during pre-shift and on-shift by the section foreman, and the damage to the cable and potential for further damage was not observed nor acted upon, indifference or a serious lack of care has been also shown.

The violation was of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety and health hazard in this mine. As stated by the Commission in Mathies Coal Company, 3 FMSHRC 1184 (1984), in order to establish that a violation is "significant and substantial," it must be shown that there was: (1) an underlying violation of a mandatory safety standard, (2) a discrete safety hazard, that is, a measure of danger to safety contributed to by the violation, (3) a reasonable likelihood that the hazard contributed to will result in injury, and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

Damage to the outer jacket of a cable, even a small tear, weakens the overall system of protective insulation and

increases the risk of danger to the internal layers of insulation on the power conductors. The fact that the cable was damaged and subject to further damage increased the likelihood of the hazards of electrocution, fire or explosion. A short circuit or exposed conductors were likely to have occurred. In addition, water or moisture could have seeped through damaged areas and caused a short circuit and explosion. Given that this construction area was requlary traveled and worked in, injury was reasonably likely.

In the event that one of the hazards occurred, very serious injuries would have been reasonably likely. Serious or even fatal injuries would result from electrocution, burns and flying debris.

Considering all the criteria for assessing a civil penalty under section 110(i) of the Act, I find that a penalty of $750 for this violation is appropriate.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in these proceedings.

2. Consolidation Coal Company violated 30 C.F.R. 75.807 as charged in Citation 2222286.

ORDER

WHEREFORE IT IS ORDERED that:

1. Citation 2222286 is AFFIRMED.

2. Consolidation Coal Company shall pay the above-assessed civil penalty of $750 within 30 days of this Decision.

William Fauver
Administrative Law Judge