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

SOUTHERN OHIO COAL COMPANY, CONTESTANT	CONTEST PROCEEDINGS
v.	Docket No. WEVA 86-186-R Order No. 2713975; 2/10/86
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), RESPONDENT	Docket No. WEVA 86-189-R Order No. 2713980; 2/14/86 Docket No. WEVA 86-193-R Order No. 2705919; 2/24/86
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), PETITIONER	CIVIL PENALTY PROCEEDINGS Docket No. WEVA 86-235 A.C. No. 46-03805-03719
v.	Docket No. WEVA 86-284
SOUTHERN OHIO COAL COMPANY, RESPONDENT	A.C. No. 46-03805-03725 Martinka No. 1 Mine

DECISION

Appearances: David M. Cohen, Esq., American Electric Power Service Corporation, Lancaster, Ohio, for Contestant/Respondent; James H. Swain, Esq., Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for Respondent/Petitioner.

Before: Judge Maurer

STATEMENT OF THE CASE

Contestant, Southern Ohio Coal Company (SOCCO), has filed notices of contest challenging the issuance of Order No. 2713975 (Docket No. WEVA 86Ä186ÔR), Order No. 2713980 (Docket No. WEVA 86Ä189ÔR), and Order No. 2705919 (Docket No. WEVA 86Ô193ÔR) at its Martinka No. 1 Mine. The Secretary of Labor (Secretary) has filed petitions seeking civil penalties concerning these alleged violations in the total amount of $2,200.

At the commencement of the hearing on these cases, which was held on December 30, 1986, in Morgantown, West Virginia, the parties jointly moved for approval of their settlement of

Docket No. WEVA 86Ä284 and that portion of Docket No. WEVA 86Ô235 that pertains to Order No. 2713975. I approved a reduction in civil penalty from $700 to $500 in Docket No. WEVA 86Ä284 (Tr. 5) and similarly approved a reduction from $850 to $500 concerning Order No. 2713975 (Tr. 8). This action had the effect of mooting Docket Nos. WEVA 86Ä186ÔR and WEVA 86Ô193ÔR.

Therefore, the case left to be tried and which was tried concerned only Order No. 2713980 (Docket No. WEVA 86Ä189ÔR) and so much of Docket No. WEVA 86Ä235 as pertains to that particular order.

Both parties have filed post-hearing proposed findings of fact and conclusions of law, which I have considered along with the entire record herein. I make the following decision.

STIPULATIONS

The parties have agreed to the following stipulations, which I accept (Tr. 8Ä9):

1. The Southern Ohio Coal Company is the owner and operator of the Martinka No. 1 Mine.

2. The operator and the mine are subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977.

3. The presiding Administrative Law Judge has jurisdiction over this proceeding.

4. The inspector who issued the subject order was a duly authorized representative of the Secretary of Labor.

5. A true and correct copy of the subject order was properly served upon the operator.

6. The imposition of any penalties in this proceeding will not affect the operator's ability to continue in business.

7. The operator is to be considered large in size for penalty assessment purposes.

8. The conditions set forth in the order, Order No. 2713980, constituted a violation of the cited mandatory standard, 30 C.F.R. 75.518.

The issues remaining before me for decision then are hether the admitted violation of the cited standard was significant and substantial" and caused by the "unwarrantable

failure" of the mine operator to comply with that standard as well as the appropriate civil penalty to be assessed for the violation, should any be found.

Order No. 2713980, issued pursuant to section 104(d)(2) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (the Act) alleges a violation of the regulatory standard at 30 C.F.R. 75.518 (FOOTNOTE 1) and charges as follows:

> There was inadequate short circuit protection for the belt take up motor for 2 East B belt. The motor was a 25 horsepower, 575volt, 26.2 full load amps and was protected by a 400 amp circuit breaker with a trip range of 800 to 1600 amperes.

MSHA Inspector John Paul Phillips issued the order at bar at the Martinka No. 1 Mine on February 14, 1986. On that date, he went to a location in the mine that was variously described in the record as being either the 2 East B Section or the 2 East C Section. In any event, he found that the short circuit protection for the belt take-up motor there was provided by a 400 amp circuit breaker with a magnetic trip range from 800 to 1600 amperes. This motor is a 25 horsepower, 575 volt motor which has a continuous rated capacity of 26.2 full load amps. The regulations require short circuit protection for this motor to be in accordance with the National Electric Code of 1968, and the maximum allowable short circuit protection for this motor is 700 percent of the full load current of the motor, 183.4 amps in this case. The parties have stipulated that this amounts to a violation of 30 C.F.R. 75.518.

SOCCO contends, however, that the order was improperly designated a "significant and substantial" violation.

The Commission has held that a violation is properly designated significant and substantial if, based on the particular facts surrounding that violation, there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature. Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981). In Mathies Coal Co., 6 FMSHRC 1, 3Ä4 (January 1984), the Commission explained:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazardÄthat is, a measure of danger to safetyÄcontributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

The Commission subsequently explained that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury," U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984).

In the instant case, it is stipulated that a violation of the cited standard occurred. Therefore, we may use that fact as a starting point for an examination of the other relevant factors.

Inspector Phillips testified that the hazard presented in his opinion by this lack of short circuit protection would be fire and smoke with the resulting possibility of lost work days or restricted duty at the least.

Mr. Shriver, an electrical engineer employed by MSHA, was called as an expert witness. He stated that the most probable situation in which a motor such as the one involved in this case would develop a short circuit of less than 800 amps would be where a motor bearing went bad. This would permit the cylindrical rotor of the motor to get cocked somewhat inside the stator windings. There is an extremely close clearance maintained between the rotor and stator and it would, therefore, be conceivable that a short could occur from phase to phase contact within the motor without making contact with ground. The impedance of the windings would then reduce the current flow below the 800 ampere range. Mr. Shriver went on to opine that in the absence of short circuit protection for less than the 800 amps, the short would be capable of eroding a hole completely through the motor to the outside very rapidly. If there were coal dust present, that could be ignited and generate smoke.

On cross-examination, the witness conceded that there was about an equal chance that a bearing failure that would cause a short by phase to phase contact would also contact ground. In that event, the ground protection devices would work to shut off the circuit. There was testimony to the effect that the ground phase protection was operating properly.

James Lunden, a staff electrical engineer employed by SOCCO, was also called as an expert witness. He testified that the belt take-up motor at issue here is only in operation once or twice a day and only operates 10 to 20 seconds at a time. The point being that if only because of the limited use of the motor, the chances of a short circuit occurring in the motor are highly unlikely.

The Secretary's witness referred to the potential problem of the rotor touching the power wires inside the motor because of a failed bearing. Given that scenario, Mr. Lunden opined that the rotor would contact ground. A short circuit would exist, but it would be a phase-to-ground fault condition. In that case, the ground fault relay, which is used to deenergize a circuit in the event of a phase-to-ground short condition, would cut the circuit off instantaneously. I note that there is no contention that the ground fault relay was not operational at the time the instant order was written.

To summarize Mr. Lunden's testimony concerning the probability of a hazard resulting from the stipulated violation of the standard, he stated that if a phase to phase short circuit condition were to exist, it would almost certainly contact ground, resulting in a grounded phase condition which would cause the circuit breaker to trip instantaneously. Secondly, even in the unlikely case where a phase to phase short circuit condition were to occur that did not contact ground, the circuit breaker as set would have a very good probability of switching off the circuit. Finally, as a third protection, there is an overload relay, although it takes time to operate, which would nevertheless deenergize the circuit in time. For example, in a short circuit of 340 amps, the overload protection device would operate after five seconds. With greater amperage, the time required for the overload relay device to operate would be less.

With regard to any potential shock hazard, Mr. Lunden explained that the shock hazard protection is supplied by the ground wire which connects the frame of the take-up motor to the belt power center. That equipment was functional on the day of the inspection. There is also the neutral grounding resistor which is located in the belt power center. It works in conjunction with the ground wire, the ground monitor relay and the ground fault relay so that if an electrical phase to ground short circuit were to occur, the maximum voltage that would appear on the frame of the take up motor would be limited to a safe value. All this equipment was likewise functional at the time the order was written.

The inspector alleged that the violation at bar was "significant and substantial" because a rotor bearing could fail, causing the rotor to damage the inner windings of the motor which would in turn result in a short circuit that could melt through to the outside of the motor and ignite coal and/or coal dust, thereby creating a smoke and fire hazard in the area.

I find that it is established that the stipulated violation contributed to a discrete safety hazard that could contribute to an injury if there was an uncontrollable short circuit of less than 800 amps coexistent with an accumulation of coal or coal dust in the immediate area of the motor. If such a short circuit should develop, it would instantaneously create intense heat sufficient to melt steel and clearly capable of burning a hole through the motor to the outside where it could ignite accumulated coal or coal dust, if there were any such accumulations. However, I also find that the Secretary has failed to establish that there is any reasonable likelihood that an uncontrollable short circuit of less than 800 amps would ever actually occur, given the design of the motor and the other circuit protection devices installed. Also, the only evidence in this record as to the existence of any coal or coal dust accumulations in the area of the motor was to the effect that there were none. The unrebutted evidence demonstrates the area was well rock dusted and clean. Accordingly, I find that the Secretary has not established that there was a reasonable likelihood that an accident or injury would occur. Therefore, the inspector's "significant and substantial" finding is vacated and the order is modified to reflect a "non-S & S" violation.

Nonetheless, I find that the violation was caused by the "unwarrantable failure" of the operator to comply with the standard.

In Zeigler Coal Company, 7 IBMA 280 (1977), the Interior Board of Mine Operations Appeals interpreted the term "unwarrantable failure" as follows:

> An inspector should find that a violation of any mandatory standard was caused by an unwarrantable failure to comply with such standard if he determines that the operator has failed to abate the conditions or practices constituting such violation, conditions or practices the operator knew or should have known existed or which it failed to abate because of lack of due diligence, or because of indifference or lack of reasonable care.

The Commission has concurred with this definition to the extent that an unwarrantable failure to comply may be

proven 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 serious lack of reasonable care. United States Steel Corp. v. Secretary of Labor, 6 FMSHRC 1423 at 1437 (1984).

The testimony from the operator's own witnesses establishes that the wrong part was placed on the motor approximately two months prior to the order being written. I therefore find SOCCO's failure to locate this violative condition in spite of frequent electrical equipment inspections to be a serious lack of reasonable care to see that the said condition was abated in a timely fashion.

Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is $250.

ORDER

Based on the above findings of fact and conclusions of law, IT IS ORDERED:

1. Order No. 2713980, contested in Docket No. WEVA 86Ä189ÔR, IS AFFIRMED as a non-S & S violation of 30 C.F.R. 75.518. Further, the order properly concluded that the said violation resulted from SOCCO's unwarrantable failure to comply with the standard involved.

2. The motion for approval of settlement with regard to Order Nos. 2713975 and 2705919, contested in Docket Nos. WEVA 86Ä186ÔR and WEVA 86Ô193ÔR, respectively, IS GRANTED and therefore those two contest cases are now moot and are hereby DISMISSED.

3. The respondent IS HEREBY ORDERED TO PAY a civil penalty of $1,250 within 30 days of the date of this decision. Upon payment, the civil penalty proceedings ARE DISMISSED.

Roy J. Maurer
Administrative Law Judge

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~FOOTNOTE_ONE

1 30 C.F.R. 75.518 provides as follows:

Automatic circuit-breaking devices or fuses of the correct type and capacity shall be installed so as to protect all electric equipment and circuits against short circuit and overloads. Three-phase motors on all electric equipment shall be provided with overload protection that will deenergize all three phases in the event that any phase is overloaded.