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CONSOLIDATION COAL CO. V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

CONSOLIDATION COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. WEVA 86-210-R
Order No. 2713402; 3/10/86

Osage No. 3 Mine

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 86-481
A.C. No. 46-01455-03640

Osage No. 3 Mine

DECISION

Appearances: William T. Salzer, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the Secretary of Labor;
Michael R. Peelish, Esq., Consolidation Coal Co.,
Pittsburgh, Pennsylvania, for Consolidation Coal
Company.

Before: Judge Melick

These consolidated cases are before me pursuant to Section
105(d) of the Federal Mine Safety and Health Act of 1977, 30
U.S.C. 801, et. seq., the "Act" to challenge a withdrawal order
issued under Section 104(d)(1) of the Act and charging a
violation of the standard at 30 C.F.R. 75.1105 (FOOTNOTE 1) The general

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issue before me is whether Consolidation Coal Company (Consol) violated the cited regulatory standard, and, if so, whether the violation was the result of "unwarrantable failure" and whether 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, 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 110(i) of the Act.

The order at bar, No. 2713401, reads as follows:

The 7 West belt drive power center was not adequately ventilated to the return. When chemical smoke was released at the front of, 3 feet back, and 6 feet back, over the electrical box the smoke was carried out into the track entry and no smoke could be seen traveling toward the 8 inch by 8 inch vent hole.

The cited standard, 30 C.F.R. 75.1105, provides in relevant part that "air currents used to ventilate structures or areas enclosing electrical installations shall be coursed directly into the return."

The essential facts in this case are not in dispute. Lynn Workley, an experienced inspector for the Mine Safety and Health Administration (MSHA), was performing a regular inspection of the 7 West section of the Osage No. 3 Mine on March 10, 1986, when he noticed warm air coming out of a crosscut containing an energized power center. There is no dispute that the power center was an "electrical installation" within the meaning of the cited standard. Workley observed that there were no stoppings or ventilation curtains to direct the air ventilating the power center through the small vent hole leading to the return. He also observed little air movement through that vent hole. Under the circumstances, he considered it necessary to conduct further tests by releasing smoke from a smoke tube.

Thereafter, in the presence of John Morrison, the Consol safety escort, and Joseph Jimmie, the Union escort, Workley released smoke at four locations over the power center (Ex. GÄ3, p. 2, positions A, B, C and X). It is not disputed that when the smoke was released from positions A, B, and C, it proceeded

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toward the haulage or track entry (depicted as position RÄ2, Ex. GÄ3) and away from the vent hole ventilating the power center into the return. Workley acknowledged that he did not see any of the smoke actually move into the haulage entry but saw the smoke pass in that direction through the cap light beams of Morrison and Jimmie. Both Jimmie and Morrison told Workley that none of the smoke passed into the haulage and Morrison so testified at hearing. Both Morrison and Workley agreed that the smoke dissipated and neither was able to ascertain whether it thereafter passed back over the power center and through the vent hole. (FOOTNOTE 2)

Within this framework of evidence, I have no difficulty in finding that the violation is proven as charged. The definition of the word "directly" taken from Webster's Third New International Dictionary, (1981 Edition Unabridged), is not contested. "Directly" is therein defined as "in a straight line without deviation of course; by the shortest way." Using this definition, it is clear from the undisputed evidence that the air currents being used to ventilate the power center at issue were not coursed directly through the vent hole and into the return.

According to Inspector Workley, the violation was "significant and substantial" because of the danger of fire and smoke from the power center to employees operating in the haulage entry. It is not disputed that should smoke exit the power center into the haulage entry it would travel approximately 300 feet over the track area before exiting into the bleeder system. It is also undisputed that the track was used to transport workers, inspection parties, and supplies several times a shift thereby exposing those persons to serious and potentially fatal injuries from smoke (carbon monoxide) inhalation. Accordingly, I find the violation to be serious and "significant and substantial." Secretary v. Mathies Coal Company, 6 FMSHRC 1 (1984).

