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

PEABODY COAL COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. KENT 86-94-R
Citation No. 2214342; 3/3/86

Docket No. KENT 86-95-R
Citation No. 2214343;
3/5/86

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

v.

PEABODY COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 87-154
A.C. No. 15-08357

Camp No. 11 Underground Mine

DECISION

Appearances: Michael O. McKown, Esq., Henderson, Kentucky,
for Peabody Coal Company;
Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, for the Secretary of Labor.

Before: Judge Fauver

Peabody Coal Company seeks to have two citations vacated,
and the Secretary seeks to have them affirmed and civil penalties
assessed for violations charged in them, under the Federal Mine
Safety and Health Act of 1977, 30 U.S.C. Å 801; et seq.

The basic issue is whether the equipment cited is required
to have a cab or canopy under 30 C.F.R. Å 75.1710Å1.

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

FINDINGS OF FACT

1. Peabody is a large operator of coal mines producing coal for use or sale in interstate commerce.

2. Peabody's Camp No. 11 Mine is a large underground coal mine near Morganfield, Kentucky.

3. From about 1978 to the present, two coal production sections at Camp No. 11 Mine have used what is called a "continuous haulage system," which is designed so that coal mined by a continuous miner is put directly onto a mobile haulage system that conveys it to the panel belt line. The continuous haulage system consists of three piggyback conveyors, two mobile bridge carriers (MBCs) and a special low structure or dolly that is connected to the tailpiece of the panel belt. The inby part of the system is connected to a Joy continuous miner. All these components are joined by slot devices hooked together by pins. The components may be disconnected, and this is done between mining cycles. The MBCs provide mobility to the system so that it can adjust to movement of the continuous miner without disrupting the constant movement of mined coal. The system is substantially more efficient than using shuttle cars to move coal from the continuous miner.

4. The components described above are connected in the following order: the continuous miner, a piggyback conveyor, a mobile bridge conveyor (MBC), another piggyback conveyor, a second MBC, and a third piggyback conveyor that is connected to a special dolly that "rides" up and down the panel belt onto which coal is dumped.

5. Peabody uses a five entry system in its continuous haulage sections. At times, it reduces the entries to three where gas or oil wells or other obstructions are encountered.

6. The mining cycle using the continuous haulage system results in offset crosscuts at angles of approximately 60 degrees. The last open crosscut resulting from such a configuration, and as defined by the flow of air across the section, includes not only the openings between the entries but across the intersections and that part of an entry inby an intersection to the point of the next intersection inby. That is, the last open crosscut follows the air flow across the entries of the working section.

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7. The distance from the first (the inby) MBC operator's compartment to the cutting drums of the continuous miner is 105 feet plus or minus two feet.

8. From their earliest use at this mine, the MBCs have not been equipped with a cab or canopy over the operator's compartment where the operator sits while operating the MBC.

9. On March 3, 1986, and March 5, 1986, Peabody was issued Citations 2214342 and 2214343 for operating the MBCs without cabs or canopies.

DISCUSSION WITH FURTHER FINDINGS

The controlling issue is whether the first (the inby) MBC is subject to 30 C.F.R. § 75.1710-1, which provides in pertinent part:

(a) [A]ll self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine shall be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls.

The MBC is self-propelled and is electrically operated, but is it "electric face equipment"? That term is not defined by the cab/canopy regulation, but 30 C.F.R. § 75.2(i) provides a practical line of demarcation (emphasis added):

(i) "Permissible" as applied to electric face equipment means all electrically operated equipment taken into or used inby the last open crosscut of an entry or a room of any coal mine the electrical parts of which, including, but not limited to, associated electrical equipment, components, and accessories, are designed, constructed, and installed, in accordance with the specifications of the Secretary, to assure that such equipment will not cause a mine explosion or mine fire, and the other features of which are designed and constructed, in accordance with the specifications of the Secretary, to prevent, to the greatest extent possible, other accidents in the use of such equipment.

The issue thus leads to the meaning of the "last open crosscut" as used in Å 75.2(i). This term is not defined in the Act or regulations.

Peabody's witness, Mr. Charles Jernigan, testified and illustrated his testimony by marking Exhibits GÄ10 and GÄ11 in yellow pencil to show that the last open crosscut is only the area between, but not including, the mine entries. However, he testified in response to questions from counsel for the Secretary that the definition of "last open crosscut" is "where your air travels across your face," meaning where the "air travels through on the intake and exhaust system" (Tr. p. 163).

The Bureau of Mines Dictionary of Mining, Minerals and Related Terms (1968) does not define last open crosscut but does define "crosscut" in part as follows:

In room and pillar mining the piercing of the pillars at more or less regular intervals for the purpose of haulage and ventilation.

The Secretary's witness, Mr. David Whitcomb, defined "last open crosscut" as "the last continuous line the air passes through across the [run] (FOOTNOTE 1) from one side of the entry to the other side" (Tr. p. 258). I find that this definition is consistent with the pattern of ventilation and electrical standards under the Act. The operative concept of the last open crosscut is used in many of the regulations found in Title 30, Part 75 of C.F.R. For example, Å 75.500(a) requires all multiple power connections "inby the last open crosscut" to be permissible. See also: Å 75.507Ä1, 75.522Ä1, 75.1002-1, and 75.1107Ä5. If Peabody's characterization of last open crosscut as only the areas between the entries were applied literally this would make inby the last open crosscut the middle of a solid block of coal.

I credit Mr. Whitcomb's definition of last open crosscut as being reliable and accurate. Peabody's narrow definition would lead to arbitrary results, inconsistent with the broad, remedial purposes of the statute.

I also credit Mr. Whitcomb's testimony analyzing the mining cycle and movements of the first (inby) MBC based upon the other hearing evidence. The evidence shows that, applying the definition of last open crosscut used by Mr. Whitcomb, the first MBC operator's compartment enters the last open crosscut in the mining cycle. Mr. Whitcomb's careful analysis of the mining cycle and distances involved also shows that, even if Peabody's narrow definition of last open crosscut were applied, the operator's compartment of the first MBC still enters the last open crosscut.

Since the first MBC operator's compartment enters the last open crosscut, it is required to have a cab or canopy under Å 75.1710Å1. Since the MBCs are mobile and interchangeable, all of the MBCs that are subject to being used in the first MBC position are required to have a cab or canopy under Å 75.1710Å1.

The Secretary also contends that the continuous haulage system is a "unitary or integrated system" that must be viewed as a single unit for purposes of applying the cab/canopy regulation. The Secretary argues that, since the Joy miner and at least part of the first MBC move into or inby the last open crosscut, every part of the system should be held to be subject to Å 75.170Å1.

I do not find this argument persuasive. The MBCs and bridges function both as a belt conveyor and a substitute for shuttle cars. The components are interchangeable and separable. The test of applying the cab/canopy regulation is whether the equipment operator's compartment is subject to being used in or inby the last open crosscut. It would stretch the standard too far to hold that the second MBC, which is far removed from the last open crosscut, should be considered "face equipment" solely because the front part of the continuous haulage system is in or inby the last open crosscut.

These cases involve a novel haulage system that raises a question of first impression. The operator used this system for a number of years without being cited by the Secretary until March of 1986. The operator has held a sincere, good faith belief that the cab/canopy standard does not apply to its continuous haulage system. The violations are serious because of the gravity of injuries that could occur if an MBC operator were struck in a fall of roof or rib. However, the company is making a good faith test of its interpretative position, which differs from the Secretary's. I therefore assess a penalty of \$1.00 for each violation.

