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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

v.

GATEWAY COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. PENN 87-251
A.C. No. 36-00906-3651

Gateway Mine

DECISION

Appearances: Therese I. Salus, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania,
for the Secretary of Labor;
David Saunders, Safety Director, Gateway Coal Co.,
Prosperity, Pennsylvania, for Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary of Labor (Secretary) seeks a civil penalty for the violation of 30 C.F.R. 75.329 alleged in a citation issued October 10, 1986, in connection with an imminent danger withdrawal order issued the same day. Respondent did not contest or seek review of the withdrawal order and, although both parties have submitted argument as to whether it was properly issued, it is not before me in this penalty proceeding. The citation charged that Respondent permitted an excessive concentration of methane to exist in a travelable portion of the 5Äbutt, 7Äface longwall bleeder system in the number 45 crosscut of the tailgate entry of the subject mine. Respondent contends that the inspector took the methane reading in the wrong area of the bleeder system. Pursuant to notice, the case was heard in Washington, Pennsylvania, on June 8, 1988. Joseph F. Reid and Alex O'Rourke testified on behalf of the Secretary. Gary Hajdu and Robert W. Hauser testified on behalf of Respondent. Both parties have filed post hearing briefs. I have considered the entire record and the contentions of the parties, on the basis of which I make this decision.

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FINDINGS OF FACT

1. At all times pertinent to this proceeding, Respondent was the owner and operator of an underground coal mine in Greene County, Pennsylvania known as the Gateway Mine.

2. Respondent produced approximately 689,000 tons of coal annually.

3. No evidence was submitted concerning Respondent's history of prior violations. I conclude that the history was favorable, and not such that a penalty otherwise appropriate should be increased because of it.

4. On October 10, 1986, Federal mine inspector Joseph Reid, an MSHA ventilation specialist, was assisting a regular MSHA inspector on an inspection of the subject mine. They proceeded first to the 5Äbutt, 7Äface longwall. Coal was not being mined at that time.

5. The inspectors walked out of the mine through the return escapeway, examining the various bleeders on the way out. Inspector Reid took methane readings in approximately 20 areas in the bleeder system. This was an area from which pillars had been extracted.

6. At the end of the tailgate entry of the bleeder system, approximately 3 feet from the gob area, Inspector Reid took readings showing 4.8 to 5.2 percent methane, at a point 12 inches from the roof. The readings were taken with a hand held methane detector. The area was well supported with cribs. The inspector was standing between 2 cribs when he took the readings. Inspector Reid orally informed Respondent that he was issuing an imminent danger withdrawal order. The inspector then took three bottle samples from the same area. He took an air reading at the location where the air was crossing the gob and found 2397.5 cubic feet per minute.

7. The bottle samples were sent to the MSHA laboratory in Mt. Hope, West Virginia. Analyses showed methane concentrations of 4.23 percent, 7.13 percent and 7.81 percent.

8. Inspector Reid issued withdrawal Order No. 2681195 under section 107(a) of the Act, and citation 2681196 under section 104(a) charging a violation of 30 C.F.R. 75.301. The citation was modified July 1, 1987, to charge a violation of 30 C.F.R. 75.329.

9. The bleeder entries are required to be examined weekly by a certified person. A date board indicating such examinations

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was maintained in the area of the citation, approximately ten feet further from the gob than the point where the inspector took his readings.

10. Although coal was not being mined, there were approximately five people working in the longwall area when the order and citation were issued. The inspector decided not to order these men withdrawn but to permit the mine foreman to attempt to correct the situation.

11. The condition was abated, the order lifted, and the citation terminated the same day when a stopping was opened to introduce additional ventilation into the area. Readings were then taken in the area involved showing 1.4 percent to 1.5 percent methane.

12. During the initial inspection, the inspector took additional methane readings at the regulator and at the mixing point in the bleeder entry in question and found 17 percent methane.

13. Respondent's assistant mine foreman, Gary Hajdu accompanied Inspector Reid on October 10, 1986. He took readings with a methane detector at a point approximately 10 to 15 feet from the crib where the Inspector had found the excessive methane. Foreman Hajdu's readings showed from 2.7 to 3 percent methane. He also took readings at the outby side of the crib and found 4.3 to 5 percent methane. He took further readings at the regulator and found 1.3 to 1.7 percent methane. The regulator was approximately 150 feet from the gob.

REGULATION

30 C.F.R. 75.329 provides in part:

. . . all areas from which pillars have been . . .
extracted . . . shall be ventilated by bleeder
entries or by bleeder systems. . . . When ventilation
of such areas is required, such ventilation shall be
maintained so as continuously to dilute, render
harmless, and carry away methane and other explosive
gases within such areas and to protect the active
workings of the mine from the hazards of such methane
and other explosive gases. Air coursed through the
underground areas from which pillars have been wholly
or partially extracted which enters another split of
air shall not contain more than 2.0 volume per centum
of methane, when tested at the point it enters such
other split . . .

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ISSUES

1. Whether the methane readings found by Inspector Reid on October 10, 1986, constituted a violation of 30 C.F.R. 75.329?

2. If a violation is found, was it significant and substantial?

3. If a violation is found, what is the appropriate penalty?

CONCLUSIONS OF LAW

IMMINENT DANGER

As I noted above, the inspector issued the citation charging the violation with which we are here concerned, in connection with an imminent danger withdrawal order under section 107(a). Both parties have introduced evidence concerning the existence vel non of an imminent danger and have argued the question in their post hearing briefs. However, Respondent did not file a contest or an application for review of the order with the Commission. The propriety of the issuance of the order cannot be challenged in a penalty proceeding. The issues before me are whether the alleged violation took place and, if so, the appropriate penalty. I make no finding as to whether an imminent danger existed.

WHERE WERE THE READINGS AND SAMPLES TAKEN

There is some dispute as to where Inspector Reid took his methane detector readings and his bottle samples. Reid testified that he took them at a point about three feet from the gob area and twelve inches from the roof while standing between two cribs. Respondent's witness intimated that he took them while reaching into the gob. I accept Inspector Reid's testimony which is consistent with his contemporaneous notes (Government's Exhibit 6).

REQUIREMENTS OF 30 C.F.R. 75.329

The regulatory standard has two distinct mandates: (1) ventilation in bleeder entries required where pillars have been extracted shall be maintained so as to dilute, render harmless and carry away methane within such areas and to protect the active workings of the mine; (2) air from such areas which enters another split of air shall not contain more than two percent methane. *Itmann Coal Company v. Secretary*, 2 FMSHRC 1986 (1980). Active workings is defined in the regulations as "any place in a coal mine where miners are normally required to work or travel."

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30 C.F.R. 75.2(g)(4). Respondent is charged with failing to ventilate the area of its bleeder system so as to dilute, render harmless and carry away methane within such areas. It is not charged with permitting excessive methane concentrations at the regulator or mixing points.

VIOLATION

There is no dispute that the readings and bottle samples taken by Inspector Reid showed methane in a potentially explosive concentration. Methane is explosive when its concentration is between 5 and 15 percent. I have found that the readings and samples were taken in a travelable portion of the bleeder system. In fact they were taken within ten feet from the date board maintained by the mine examiner. Therefore, this was an area where miners are normally required to travel. It constituted active workings of the mine. Since Respondent failed to dilute and render harmless methane within such areas, a violation of 30 C.F.R. 75.329 has been established. Respondent cited the case of Secretary v. Greenwich Collieries, 8 FMSHRC 1390 (1986), but that case involved a second requirement of 75.329: methane concentrations at bleeder evaluation points in excess of two percent. It did not involve a charge of methane in an explosive concentration. It is not applicable to this case.

SIGNIFICANT AND SUBSTANTIAL

A violation is properly termed significant and substantial if it contributes to a safety hazard reasonably likely to result in serious injury. Mathies Coal Co., 6 FMSHRC 1 (1984). Methane will explode if it exists in the 5 to 15 percent range in the presence of any ignition. An ignition may be created by a roof fall which causes a spark. Roof falls in or at a gob area are reasonably likely to occur. A methane explosion in an active workings of a coal mine is likely to result in serious injury. I conclude that the violation was significant and substantial.

OTHER CRITERIA

There is no evidence as to how long the violative condition had existed. The area was examined weekly. I am not able on this record to conclude that the condition resulted from Respondent's negligence. The condition was abated promptly by introducing additional ventilation to the area.

PENALTY

Considering all the evidence in the light of the criteria in section 110(i) of the Act, I conclude that a civil penalty of \$500 is appropriate for the violation found.

ORDER

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

1. Citation 2681196 issued October 10, 1986, charging a violation of 30 C.F.R. 75.329 is AFFIRMED including its findings that the violation was significant and substantial.

2. Respondent shall within 30 days of the date of this order pay a civil penalty in the amount of \$500 for the violation found herein.

James A. Broderick
Administrative Law Judge