

CCASE:
GREEN RIVER COAL CO. V. SOL (MSHA)
SOL (MSHA) V. GREEN RIVER COAL CO.
DDATE:
19881021
TTEXT:

~1456

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

GREEN RIVER COAL CO.,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. KENT 87-217-R
Citation No. 2828322; 7/15/87
Docket No. KENT 87-218-R
Citation No. 9897267; 7/9/87
Docket No. KENT 87-82-R
Citation No. 2216195; 12/10/86
Docket No. KENT 88-2-R
Order No. 2836094; 9/21/87
Docket No. KENT 87-202-R
Citation No. 2215847; 5/27/87
Docket No. KENT 87-203-R
Citation No. 2215849; 5/27/87

No. 9 Mine
Mine I.D. 15Ä13469

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

v.

GREEN RIVER COAL CO.,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 88-5
A.C. No. 15-13469-03620

Docket No. KENT 88-19
A.C. No. 15-13469-03624

No. 9 Mine

DECISION

Appearances: Flem Gordon, Esq., Gordon & Gordon, Owensboro, KY,
for Green River Coal Co.;
Mary Sue Ray, Esq., Office of the Solicitor, U.S.
Department of Labor, Nashville, TN, for the
Secretary of Labor.

Before: Judge Fauver

~1457

The above cases, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., were called for hearing at Evansville, Indiana.

Motions to approve settlement and to withdraw some of the cases were considered and granted at the hearing. Accordingly, KENT 87Ä82ÄR, KENT 88Ä2ÄR, and KENT 87Ä218ÄR will be dismissed and the operator will be ordered to pay the following approved civil penalties: \$700 each for Order 2215845 and Order 2215846 in KENT 88Ä5; \$700 for Order 2836094 in KENT 88Ä2ÄR; and \$20 for Citation 9897267 in KENT 87Ä218ÄR.

The following matters are pending decision following the hearing and briefs: KENT 87Ä217ÄR and KENT 88Ä19 concerning Citation 2828322 and KENT 87Ä202ÄR, KENT 87Ä203ÄR and KENT 88Ä5 concerning Order 2215847 and Order 2215849.

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

FINDINGS OF FACT

1. Green River Coal Company is a large coal operator producing coal for sales in or substantially affecting interstate commerce.

Order 2215847

2. On May 27, 1987, MSHA Ventilation Specialist Louis Stanley inspected working section 4 of Green River No. 9 mine. There were six active entries in the section.

3. In No. 3 entry, Specialist Stanley observed an air curtain that appeared to him to be improperly hung in that it did not cover enough of the crosscut to direct sufficient air to the working face. The curtain extended only five to eight feet across the crosscut. Specialist Stanley believed the curtain would have to be extended to nearly the full width of the crosscut to direct adequate air to the working face. He believed the condition was obvious and should have put the foreman on notice to check the ventilation and correct the curtain.

4. Based upon his suspicion about the curtain, Specialist Stanley took an air reading in the entry. He used a smoke tube to determine the speed of air in the entry and calculated the volume of air after measuring the air opening behind the air curtain. The air opening was 5 x 4 feet. His calculations showed 1,500 cfm of air. Because the regulations (30 C.F.R. 75.301Ä1) require a minimum of 3,000 cfm at each working face, Speciatist Stanley issued Order 2215847.

~1458

5. Specialist Stanley measured the air for methane in the same entry and found .9 percent methane.

6. Specialist Stanley asked the section foreman, Kelvin Smelly, whether he had checked the ventilation. The foreman told him that he had. Specialist Stanley asked to see Mr. Smelly's calculations. Mr. Smelly said, "I don't have any." Specialist Stanley then asked him, "How could you calculate this?" and he replied, "I calculated it in my head." Specialist Stanley then asked what figures he had used for the air opening, and Mr. Smelly replied, "two foot by five foot."

Order 2215849

7. On May 27, 1987, Specialist Stanley observed accumulations of loose coal along the ribs of entries No. 2 through No. 7 in working section 4, extending from the working faces outby 60 to 70 feet. The loose coal ranged from 12 to 30 inches deep and one to four feet wide.

8. Based upon the conditions he observed, Specialist Stanley's expert opinion was that the loose coal had accumulated over three work shifts.

9. Methane was detected in each of the six entries, ranging from .7 to 1.15 percent.

Citation 283822

10. On May 15, 1987, MSHA Inspector George Newlin took methane readings in the return air course off the No. 1 unit in the old headings of the No. 1 return. He detected methane of 2.13 percent in one room at spad 2100 and 1.95 percent in another room at spad 2100.

11. The Green River No. 9 mine liberates over one million cubic feet of methane in 24 hours.

DISCUSSION WITH OTHER FINDINGS

Order 2215847

The company does not deny a violation of the ventilation standard (30 C.F.R. 75.301-1), which requires 3,000 cfm, but challenges Specialist Stanley's finding that the violation was "unwarrantable."

Specialist Stanley found 1,500 cfm in the entry. Mr. Smelly contended he had measured over 3,000 cfm shortly before the inspector's test.

~1459

I credit Specialist Stanley's testimony and notes concerning this matter. The foreman was present on the section but had not ensured proper ventilation of the face, the curtain was obviously improperly hung, and an accurate air reading showed that the air was 1,500 cfm below the safety standard of 3,000 cfm. In addition, there was .9 percent methane in the entry. I find that the foreman demonstrated high negligence in operating this section without ensuring adequate ventilation. The improper hanging of the air curtain was the sole reason for the 50% loss of the required ventilation. Given the obvious condition of the curtain, the history of methane buildups in this mine, and the sources of ignition in the working section, the foreman's conduct exceeded ordinary negligence when he proceeded to work the section without adequately measuring the air and correcting any deficiency. I find that the foreman either did not take an air reading or, if he took one, he used a patently inadequate figure for the air opening, i.e., 10 sq. ft. instead of the accurate figure of 20 sq. ft. measured by the inspector. The inspector was justified in finding an "unwarrantable" violation of the ventilation standard.

Considering the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$700 is appropriate for this violation.

Order 2215849

The violation charged is not contested, but the company contends that it was not an "unwarrantable" violation.

I credit the inspector's testimony and notes concerning this matter.

Considering the obvious condition of the accumulations of loose coal, the fact that it took several shifts to accumulate the amount of loose coal observed, and the failure of the company to comply with its own cleanup policy, I find that the inspector was justified in finding a high degree of negligence. This satisfies the Commission's criteria for an "unwarrantable" violation.

The company relies on the inspector's acceptance of the word "inattentive" during cross examination, in contending that the violation was not "unwarrantable." However, the inspector's personal interpretation of the word "inattentive" is that it means "no attention at all" and "basically the same" as "aggravated conduct or high negligence" (Tr. 37-38). This is consistent with his finding of an "unwarrantable" violation based on the facts he observed.

Considering the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$800 is appropriate for this violation.

This citation was issued by Inspector George Newlin on May 15, 1987, for a violation of 30 C.F.R. 309(b) on the ground that 2.3 percent and 1.95 percent methane readings were found in the return air course off the No. 1 unit in the old headings of the No. 1 return. Inspector Newlin took methane readings with an approved methane monitor in numerous areas throughout the old headings. He took bottle samples in two rooms and found 2.13 percent methane in one and 1.95 percent methane in the other. The buildup of methane was caused by a rock fall in the return air course. It had been two or three days since the headings were last inspected by the company. The headings are required to be walked and inspected once a week. The area was due to be sealed within a week.

If left uncorrected, the condition probably would have caused a back up of methane to the active unit.

Green River Coal Company No. 9 mine liberates in excess of one million cubic feet of methane in a 24 hour period. Further build up of methane could have resulted in an explosive mixture of methane. The mine has a history of prior violations concerning methane.

Section 75.309(b) of 30 C.F.R. provides that if, when tested, a split of air returning from a working section contains 1.5 percent of methane or more, the area of the mine endangered by methane shall be safeguarded "until the air in such split shall contain less than 1.0 volume per centum of methane."

A "split of air" means a separate air circuit, e.g., when mine workings are subdivided to form a number of separate ventilating districts; "the main intake air is split into the different districts of the mine" and later "the return air from the districts reunite to restore the single main return air current" (A Dictionary of Mining, Mineral, and Related Terms (Bureau of Mines, U.S. Department of Interior 1968) p. 1201). The locations where the inspector found methane readings of 2.13 and 1.95 percent were in a "split of air returning from a working section."

The methane buildup was caused by a roof fall, and not negligent conduct by the company.

The safety standard requires the operator to take certain corrective action "If, when tested, a split of air returning from any working section contains 1.5 volume per centum or more of methane." Since the company's last methane test of the cited area did not show this amount of methane, the Secretary has not shown a violation of 309(b) as charged in the citation. In other words, a duty to safeguard the area by the steps outlined

~1461

in 309(b) was not triggered by a prior test showing methane of 1.5 percent or higher.

CONCLUSIONS OF LAW

1. The judge has jurisdiction over these proceedings.
2. Green River Coal Company violated the safety standards as alleged in Order 2215847 and Order 2215849.
3. The Secretary failed to prove a violation as charged in Citation 2828322.

ORDER

WHEREFORE IT IS ORDERED that:

1. Docket Nos. KENT 87Ä82ÄR, KENT 88Ä2ÄR, and KENT 87Ä218ÄR are DISMISSED.
2. Order 2215847 is AFFIRMED.
3. Order 2215849 is AFFIRMED.
4. Citation 2828322 is VACATED.
5. Green River Coal Company shall pay the above civil penalties of \$3,620 within 30 days of this Decision.

William Fauver
Administrative Law Judge