

CCASE:
SOL (MSHA) V. U.S. STEEL MINING
DDATE:
19881123
TTEXT:

~1584

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.

U.S. STEEL MINING CO., INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 88-193
A.C. No. 46-05907-03574

Shawnee Mine

DECISION

Appearances: Mark R. Malecki, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Secretary of Labor (Secretary);
Billy M. Tennant, Esq., Pittsburgh, Pennsylvania,
for the Respondent.

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for two alleged violations of the mandatory standard in 30 C.F.R. 75.1102 which requires that underground belt conveyors be equipped with sequence switches. It is the Secretary's position that in the 3 Right Section of the subject mine two sequence switches, one on the 8 left belt, the other on the North Mains 3 belt were inoperative. Respondent contends that the switches were in fact operative, and the Secretary's method for testing the switches was faulty. Pursuant to notice, a hearing was held in Charleston, West Virginia on October 18, 1988. Gerald L. Smith and Junior Farmer testified on behalf of the Secretary; Peyton Lee Hale, Gaines Davis, and Henry Sessions testified on behalf of Respondent. Both parties waived the right to file post hearing briefs. I have considered the entire record and the contentions of the parties, and make the following decision.

FINDINGS OF FACT

At all times pertinent hereto, Respondent was the owner and operator of an underground coal mine in Wyoming County, West Virginia known as the Shawnee Mine.

~1585

On January 27, 1988, Gerald L. Smith, a Federal Coal Mine electrical inspector, conducted an electrical spot inspection at the subject mine. He was accompanied by regular inspector Junior Farmer, and by K.T. Miller, a representative of the United Mine Workers union. A management representative did not accompany the inspection party. Among other things, inspector Smith inspected sequence switches on conveyor belts. Sequence switches are designed to cause the shutting down of the "inby" belt when the "outby" or "mother" belt stops. Their purpose is to avoid coal spillage which would necessarily occur if the inby belt continued operating after the outby belt stopped.

In the subject mine, the belts were shut down every day from about 3:30 p.m. until about 5:00 p.m., between shifts. It was Respondent's practice to test the switches at that time by shutting down the main belt, and to grease the bearings, etc., as part of its belt maintenance program. In late 1987 and early 1988, Respondent's maintenance foreman and chief electrician discussed the question of testing sequence switches with Inspectors Smith and Farmer. The inspectors requested that Respondent fashion a metal plate to insert between the sensor and the switch box in accordance with the instruction manual of the Appalachian Electronic Company which manufactured the switches: according to the manual, the insertion of such a metal plate should stop the inby belt if the switch is operating properly. The switch operates by means of a sensor which generates a magnetic field which in turn produces a pulse, and if the pulse is blocked or reduced the controlled device will stop. The testing procedure, by interjecting ferrous metal between the magnets and the sensor, blocks the entire magnetic field.

During the January 27, 1988 inspection, Inspector Smith tested the sequence switch at the tail of the 8 left belt by using the metal plate which Respondent provided. He inserted the plate between the sensor and the roller. The 3 right belt (the inby belt) did not stop. The switch was a hybrid, however. It consisted of a control box manufactured and supplied by Appalachian Electronics and a sensor called "Hawkeye" from a different supplier, American Mine Resources. Henry Sessions, Executive Vice President of Appalachian Electronics, who devised the testing procedure in Appalachian's manual, testified that he could not state whether the hawkeye switch was compatible with the Appalachian control box. There were substantial accumulations of loose coal, coal dust and float dust on the mine floor near the junction of the belts. Inspector Smith testified that these accumulations most likely resulted from the fact that the sequence switch did not operate properly, that is, it did not stop the 3 right belt when the 8 left belt stopped. There was no evidence of other possible causes of the accumulations, such as misaligned belts, large pieces of rock on the belts, etc.

~1586

Inspector Smith then tested the switch at the North Mains No. 3 belt in the same manner. The 8 left belt (inby the North Mains #3) failed to stop. The entire switch system, including the control box and the sensor, was supplied by Appalachian Electronics. Again, there were accumulations of loose coal, coal dust and float dust on the mine floor. Again, there was no evidence of misaligned belts or large rocks on the belt. Inspector Farmer testified that the union representative tested the switch by stopping the North Mains No. 3 belt. This resulted in the 8 left belt stopping. Inspector Smith denied that such a test was made. He stated that after he completed his test using the metal plate, he asked the union representative to shut down both belts. The union walkaround representative was not called to testify at the hearing. I find as a fact that the switch was not tested by shutting down the outby belt during this inspection. I accept Inspector Smith's testimony, and believe that Inspector Farmer's testimony was in error.

The citation involving the North Mains No. 3 belt switch was abated by adjusting the cut out speed in the control box. Following this, Inspector Smith tested the switch by inserting the metal plate between the sensor and the magnetic wheel, and the inby belt began to shut down immediately. Inspector Smith was not present when the citation involving the 8 left belt switch was abated, but he terminated the citation upon checking the switch following the same procedure as on the North Mains No. 3 belt switch.

Citations were issued to Respondent for the accumulations of loose coal and coal dust described above. They are not part of this proceeding.

ISSUES

1. Were the cited sequence switches in operable condition on January 27, 1988?

2. If violations were established, were they significant and substantial?

3. If violations were established, what are the appropriate penalties?

CONCLUSIONS OF LAW

Respondent is subject to the provisions of the Mine Safety Act in the operation of the Shawnee Mine, and I have jurisdiction over the parties and subject matter of this proceeding.

~1587

The Secretary has the burden of establishing that the sequence switches were not properly operating on January 27, 1988, that is, they were not shutting down the inby belt when the outby belt stopped operating. There was considerable testimony as to the best way to test the operation of the switches. The issue, however, is not the proper test, but the functioning of the switch. Shutting down the outby belt is a valid, and probably the best way to test the switch. However, if the manufacturer's instructions concerning testing are properly followed a functioning switch should stop the inby belt when the metal plate is inserted between the sensor and the magnetic wheel. Therefore, I conclude that the test performed by Inspector Smith on the sequence switch on the North Mains No. 3 belt established that it did not operate properly to stop the 8 left belt. The citation no. 2736047 is therefore affirmed. However, the evidence does not establish that the switch on the 8 left belt was not operating properly. There is some evidence to support such a finding, namely, the existence of coal accumulations. The test of the switch, however, based on the manufacturer's (Appalachian) suggestion, was not a conclusive test since the switch had components from two different manufacturers, and there is no evidence as to the validity of the test in such a case. I conclude therefore that the Secretary has failed to carry her burden of proof with respect to citation no. 2736042.

The failure of a sequence switch to operate properly will cause coal spillage and ultimately accumulations of loose coal, coal dust and float dust. This in turn can result in the danger of a mine fire. Shawnee Mine experienced such a fire three or four years prior to the citation. I conclude that the violation was serious, and was likely to result in serious injury. Therefore it was significant and substantial under the Commission's test in Cement Division, National Gypsum, 6 FMSHRC 1 (1984).

Respondent's witnesses testified that they tested the switches daily, when the belts were shut down between the first and second shifts. The violation here was cited at 12:07 p.m. I conclude that Respondent's testing procedure was a valid one. Therefore its negligence is reduced. However, the accumulations of loose coal on the mine floor around the belt should have alerted Respondent to the problem.

Respondent is a large operator. Its history of prior violations was moderate. The abatement of the violation was timely and carried out in good faith. I conclude that an appropriate penalty for the violation is \$50.

ORDER

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

1. Citation 2736042 issued January 27, 1988 is VACATED.
2. Citation 2736047 issued January 27, 1988 is AFFIRMED,
including the findings that the violation charged is significant
and substantial.
3. Respondent shall within 30 days of the date of this
decision pay a civil penalty in the amount of \$50 for the
violation found herein.

James A. Broderick
Administrative Law Judge