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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

CIVIL PENALTY PROCEEDING

Docket No. KENT 88-21
A.C. No. 15-09351-03582

v.

Karst Robbins Mine No. 4

KARST ROBBINS COAL COMPANY, INC.
RESPONDENT

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, TN, for
Petitioner.

Before: Judge Fauver

The Secretary of Labor brought this proceeding for civil penalties for alleged violations of safety standards under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

The case was called for hearing in Kingsport, Tennessee, on August 2, 1988. Government counsel appeared with his witnesses and documentary evidence. Respondent did not attend the hearing.

The Government witnesses were sworn and testified, and the Government's evidence was received.

It is clear from the nature of the evidence in relation to the charges, and the fact of Respondent's non-appearance, that the request for hearing by Respondent was intended to delay the Government's efforts to assess and recover civil penalties. Respondent's delaying tactics are further shown by the fact that Respondent is in arrears of past civil penalties due under the Act in the amount of \$78,625 (as of October 4, 1988).

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. Respondent, Karst Robbins Coal Company, Inc., is a moderate to large sized operator with a production of 308,363 tons of coal in 1986.

2. The amount of the proposed penalties will not affect the ability of the operator to continue in business.

Citations 2797848 and 2797849

3. While carrying out a spot inspection at Respondent's No. 4 Mine on February 9, 1987, Mine Safety and Health Administration (MSHA) Inspector Elijah Myers discovered that a miner, Ira Lee Clark, had received an electrical shock on February 5, 1987, while working on a 480 volt trailing cable.

4. This accident resulted in second and third degree burns to Mr. Clark, but Respondent did not report the accident to MSHA.

5. Inspector Myers investigated the accident and found that when Mr. Clark was injured he was attempting to do electrical work on the cable, but was not a qualified electrician and was not working under the direct supervision of a qualified electrician as required by 30 C.F.R. 75.511 and 75.153. This was the basis for his issuance of Citation 2797848 on February 9, 1987.

6. Inspector Myers also found that when Mr. Clark was injured the electrical circuit for the roof bolter cable had not been deenergized and locked out or tagged at the power center, as required by 30 C.F.R. 75.511. For this reason he issued Citation 2797849.

7. Inspector Myers prepared an accident investigation report shortly after the incident. His testimony regarding the accident fully supported this report. Inspector Myers found that the injured miner, Ira Lee Clark, was assigned to do electrical repair work by his supervisor, Mr. Bill Whitt, Jr., who was at that time chief electrical supervisor and maintenance foreman.

8. When he attempted to do electrical work on the roof bolter trailing cable Mr. Clark was not a qualified electrician and he was not being directly supervised by a qualified electrician.

9. Before he began working on the cable, Mr. Clark asked the roof bolter operator, Ernest Robbins, to deenergize the cable. This was in itself an unsafe practice and also contrary to the requirements of 30 C.F.R. 75.511.

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10. Mr. Robbins pulled both "cat-heads" or plugs on the cable from the power center and laid them over the rib. He did not lock out or tag the cable. Devices to lock out or tag a disconnected cable were not available at the power center.

11. After Mr. Robbins removed the cable plugs, Frank Gross, the section foreman, came along and plugged them back into the power center. He mistakenly assumed that the cable had been accidentally disconnected by moving equipment hitting the cable.

12. Foreman Gross stated that there were no devices to lock out or tag the cat-heads at the time that the injury occurred despite his prior notification to company officials, including Danny Karst, the mine manager, of the need for such devices.

13. When Mr. Gross re-energized the cable Mr. Clark was holding the cable, attempting to resplice it. He was immediately shocked and burned. If lock out or tagging devices had been provided for the roof bolter cable and used, Mr. Clark would not have been injured.

14. Inspector Myers has 28 years of qualified electrical experience in coal mining, including work in private industry and with MSHA. In his expert opinion Mr. Clark would have been killed had Ernest Robbins not pulled the cable out of his hands. At the time of the electrical shock, Mr. Clark was helpless and unable to free himself from the live wire.

15. In July 1986, Inspector Myers had investigated an electrical fatality at the Karst Robbins No. 4 Mine involving nearly identical circumstances. Ralph Whitehead, like Mr. Clark in this case, was not a qualified electrician but attempted to repair a 480 volt trailing cable. He did not deenergize the cable and was electrocuted when he came into contact with an energized conductor.

16. A 107(a) withdrawal order and three citations were issued by Inspector Myers in July 1986, as a result of the investigation of the Whitehead fatality.

17. Shortly after the Whitehead fatality Inspector Myers warned Eddie Karst, owner of the mine, about the danger of assigning unqualified personnel to do electrical work and the danger of doing electrical work on a cable without deenergizing the circuit and locking it out or tagging it.

18. MSHA Supervisor Henry Standafer has over 35 years qualified electrical experience in coal mining and has been electrical supervisor for District 7 of MSHA since June 1977. Mr. Standafer participated in the investigation of the Whitehead

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fatality in July 1986 and helped prepare the accident investigation report.

19. Mr. Standafer described an electrical fatality that occurred in District 7 on August 8, 1983. A qualified electrician was electrocuted while attempting to repair a roof bolter cable without deenergizing the cable. This occurred at the Lesterfield Coal Company.

20. As a result of that electrical fatality, Mr. Standafer initiated a program in District 7 to warn coal operators and miners doing electrical work of the dangers of working on energized electrical equipment and to inform them that there was no need energize a trailing cable in order to "trouble shoot" it. (Tr. 51A52).

21. In that program MSHA representatives spoke with over 2,600 mining personnel within District 7, including the supervisors and affected miners at Karst Robbins. This included Respondent's supervisor Bill Whitt, Jr.

22. After the Whitehead fatality at Respondent's No. 4 Mine, in July 1986, Danny Karst, Edward Karst and Bill Whitt, Jr. were management representatives at conferences with MSHA representatives. In those conferences, MSHA emphasized the need to have only qualified electricians or properly supervised personnel doing electrical work and the importance of deenergizing and locking out or tagging circuits before doing electrical work on them.

23. At the time of the Whitehead fatality, Respondent's No. 4 Mine had only three qualified electricians for the entire mine, which employed about 300 miners in four working sections.

24. Mr. Standafer is responsible for maintaining and monitoring the mines in MSHA's District 7 to ensure that they have qualified electrical personnel. He described Karst Robbins' record for maintaining an adequate number of such miners as "very poor" (Tr. 55A57).

25. Mr. Standafer also described Respondent's record for compliance with electrical safety standards as being "very bad, very poor" (Tr. 62).

26. Mr. Standafer agreed with Inspector Myers' expert opinion in the Whitehead case, and in this case, that there was no need to have a trailing cable energized to properly carry out trouble-shooting or repair work on the cable.

Order 2785787

27. MSHA Inspector Donald Henry issued 104(d)(2) Order 2785787 to Respondent on April 16, 1987, for a violation of 30 C.F.R. 75.507 because Respondent was operating a power center in the return air course, rather than in the intake air course.

28. The section foreman, Jim Brogdon, stated to Inspector Henry that it was the usual procedure at this mine to maintain power centers in the return air courses.

29. The mine manager, Mr. Danny Karst, confirmed Mr. Brogdon's statement to Inspector Henry that this was the normal procedure at the Karst Robbins No. 4 Mine.

30. Because of the risk of methane explosions, and the risk of propagating fires or explosions by accumulations of coal dust, a serious threat of explosion or mine fire was caused by return air from the face area sweeping over the power center, which is not required to be permissible equipment. Such an explosion or fire could have resulted in death or serious injury to many miners.

Citation Number 3005188

31. Inspector Henry issued Citation 3005188 at Respondent's Mine No. 4 on July 1, 1987, for a violation of 30 C.F.R. 75.200 because he found unsupported roof in two areas of a roadway leading to the 002 section.

32. One area of unsupported roof was about 2,000 feet from 002 section. Draw rock had fallen out of the roof, loosening eight roof bolts and leaving a gap three to six inches between the roof and the bearing plates attached to the roof bolts. This gap caused the roof to be unsafe and unsupported because the bearing plates were not firm against the roof.

33. Inspector Henry noticed that none of the fallen draw rock was on the mine floor in this area. This indicated to him that the ground area had been cleaned up before his observation of the dangerous roof condition.

34. Inspector Henry observed another unsafe roof area about 1,000 feet closer to 002 section. The heads of roof bolts and bearing plates were missing from about 12 roof bolts covering an area 15 feet wide and 20 feet long.

35. Inspector Henry observed evidence that the ground area had been cleaned up prior to his inspection.

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36. There had been a number of roof falls in the mine before the issuance of this citation. Roof conditions at this mine were generally poor.

37. When Inspector Henry observed the two cited roof conditions he was traveling with Jack O'Rourke, mine foreman, and Bill Shuler, the mine superintendent. Neither offered any explanation regarding these unsafe conditions.

38. Respondent had not done anything to correct the roof support in the two cited areas before the inspector arrived. Both areas of dangerous roof presented a risk of death or serious injury to miners traveling in the roadway.

DISCUSSION WITH
FURTHER FINDINGS

Citations 279848 and 2797849

Respondent showed gross negligence and a reckless disregard for the cited safety standards by directing an unqualified and unsupervised miner, Ira Lee Clark, to do electrical work on a trailing cable and by failing to deenergize and lock out or tag the electrical circuit while he attempted to work on the cable. The miner received an electrical shock with serious burns, and probably would have been killed had a fellow employee not pulled the cable from his hands.

Respondent had direct, prior notice of the importance of the cited regulations when a miner was killed in an electrocution at this mine involving nearly identical circumstances (the Whitehead case, in July 1986), and in 1983 Respondent had been notified of the dangers involved in failing to comply with the same electrical standards. In addition, Respondent had been put on notice by MSHA that it was not necessary to energize a trailing cable in order to trouble shoot or repair the cable.

Order 2785787

Respondent showed gross negligence in placing a power center in the return air course, in violation of 30 C.F.R. 75.507. This equipment is not required to be permissible (i.e., designed to prevent a methane explosion) and therefore should not be operated in return air, which would spread any possible buildup of methane from the working faces to the ignition sources in the power center. This violation constituted an "unwarrantable failure" to comply with a safety standard within the meaning of 104(d)(2) of the Act.

Citation 3005188

The dangerous roof conditions were obvious and should have been corrected by Respondent before the area was inspected by MSHA. Respondent was therefore negligence in connection with violation. The violation was most serious because the dangerous roof conditions were in a roadway traveled by miners.

Compliance History

Respondent has a poor compliance history, as shown by numerous serious violations of safety standards in the two-year period before the inspections involved here, and as shown by the testimony of MSHA witnesses. In addition, Respondent has demonstrated a persistent and deliberate failure to pay substantial civil penalties for violations of mine safety standards that are long overdue. As of October 4, 1988, Respondent was in arrears for civil penalties in the amount of \$78,625. The recalcitrance shown by this record of nonpayment is part of Respondent's poor compliance history.

Penalty Assessments

Considering all of the criteria for civil penalties in 110(i) of the Act, I find that the Secretary's following post-hearing proposals for civil penalties for the violations found herein are appropriate, and Respondent is ASSESSED those penalties:

Civil Penalty

Citation 2797848	\$7,500
Citation 2797849	\$7,500
Order 2785787	\$2,500
Citation 3005188	\$1,500
	\$19,000

Conclusions of law

1. The undersigned judge has jurisdiction over this proceeding.

2. Respondent violated the safety standards as alleged in Citations 2797848, 2797849 and 3005188 and in Order 2785787.

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ORDER

WHEREFORE IT IS ORDERED that Respondent shall pay the above civil penalties of \$19,000 within 30 days of this Decision.

William Fauver
Administrative Law Judge