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SOL (MSHA) V. METTIKI COAL
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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. YORK 88-37
A. C. No. 18-00621-03633

v.

Mettiki Mine

METTIKI COAL CORPORATION,
RESPONDENT

DECISION

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging the Mettiki Coal Corporation (Mettiki) with one violation of the regulatory standard at 30 C.F.R. 75.1400-4. The issue before me is whether Mettiki violated the cited regulatory standard and, if so, the appropriate civil penalty to be assessed in accordance with section 110(i) of the Act.

Citation No. 3115919, issued pursuant to section 104(a) of the Act alleges a "significant and substantial" violation and charges that: "The results of the daily inspection of the hoisting equipment at A-portal was [sic] not recorded for 4-15-88, the hoist was inspected on 4-14-88 and then on 4-16-88.".

The cited standard provides as follows:

At the completion of each daily examination required by 75.1400, the person making the examination shall certify, by signature and date, that the examination has been made. If any unsafe condition is found during the examinations required by 75.1400-3, the person conducting the examination shall make a record of the condition and the date. Certifications and records shall be retained for one year.

In a motion to dismiss filed February 16, 1989, Mettiki argued, inter alia, that there was no violation on

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April 15, 1988, of 30 C.F.R. 75.1400-4 (requiring examinations to be recorded) because no examination had been performed on April 15, 1988. Mettiki notes that section 75.1400-4 is a recording regulation which requires that after a daily hoist examination is performed, the results of that examination must be recorded. Mettiki further observes that the Secretary's regulations imposed two distinct requirements on a mine operator: (1) an obligation to examine and, (2) an obligation to record examinations made.

I agree with Mettiki's position herein. Clearly the Secretary's regulations concerning hoisting and man-trips (Sub-Part O) have separate and distinct requirements--one for daily examinations under section 75.1400-3 and another for recordation of such daily examinations under section 75.1400-4. The latter standard does not in itself require a daily examination but rather requires recordation following an examination. Since it is not disputed that no examination was performed on April 15, 1988 (Mettiki arguing that none was required under the law) a condition precedent to a violation of 30 C.F.R. 1400-4 did not exist. See *Secretary v. Dako Corporation*, 10 FMSHRC 1259 (1988) (ALJ). Accordingly there was no violation as charged.

Under the circumstances Mettiki's Motion to Dismiss is granted and Citation No. 3115919 is vacated.

Gary Melick
Administrator Law Judge
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