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SOL (MSHA) V. SUPER BLOCK 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. LAKE 88-79
A.C. No. 12-01986-03504

v.

Hunley Creek

SUPER BLOCK COAL CORPORATION,
RESPONDENT

DECISION

Appearances: Miguel J. Carmona, Esq., Office of the
Solicitor, U.S. Department of Labor, Chicago,
Illinois, for the Petitioner.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding initiated by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking a civil penalty assessment in the amount of \$20 for an alleged violation of mandatory safety standard 30 C.F.R. 77.1109(c)(1). The respondent filed a timely answer and contest and a hearing was convened in Evansville, Indiana. However, the respondent failed to appear, and the hearing proceeded in his absence, and testimony and evidence was submitted by the petitioner in support of the alleged violation. A show cause was subsequently served on the respondent affording it an opportunity to explain its failure to appear at the hearing, but no response was received. Under the circumstances, pursuant to Commission Rule 63, 29 C.F.R. 2700.63, the respondent is deemed to be in default.

Issues

The issues presented in this case are (1) whether the condition or practice cited by the inspector constitutes a violation of the cited mandatory safety standard, and (2) the appropriate civil penalty to be assessed for the violation,

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taking into account the statutory civil penalty criteria found in section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977; Pub. L. 95-164, 30 U.S.C. 801 et seq.
2. Section 110(i) of the 1977 Act, 30 U.S.C. 820(i).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Discussion

Section 104(a) non-"S&S" Citation No. 3038275, issued on January 19, 1988, cites a violation of mandatory safety standard 30 C.F.R. 77.1109(c)(1), and the cited condition or practice states as follows: "A portable fire extinguisher was not provided for the Ingersoll-Rand T-4 highwall drill. Work area I.D. No. 900-0."

MSHA Inspector Keith L. Stoner testified as to his background and experience, and he confirmed that he issued the citation in question during the course of a regular inspection which he conducted at the mine on January 19, 1988. He stated that the coal stripping superintendent, Danny Jasper, was present at the mine and was aware of his inspection. Mr. Stoner confirmed that he issued the citation after finding that a rubber-tired drill truck was not equipped with a portable fire extinguisher as required by the cited standard. He stated that the drill apparatus is an integral part of the truck, and he considered it to be a mobile piece of equipment within the meaning of the standard.

Mr. Stoner confirmed that the truck was parked approximately 100 feet from the repair garage, but that it was not tagged out. Other pieces of equipment parked near the garage were equipped with fire extinguishers, and the cited drill was the only piece of equipment which was not provided with one. Except for the lack of a fire extinguisher, the drill truck appeared to be in normal and good operating condition. The truck was equipped with a bracket which normally is used to hold an extinguisher in place. Mr. Stoner confirmed that he spoke with Mr. Jasper about the matter, and Mr. Jasper informed him that he did not believe that an extinguisher was required because the drill truck was not in use when the inspector observed it.

Mr. Stoner stated that the violation was not significant and substantial, and he believed that an injury was unlikely

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because the drill was not in use and no one was around it at the area where it was parked. He made a negligence finding of "moderate" because the other equipment was provided with fire extinguishers, and abatement was achieved within 5 minutes when a spare extinguisher located in the repair garage was placed on the drill truck in the bracket which was provided for this purpose.

Findings and Conclusions

Fact of Violation

The respondent is charged with a violation of mandatory safety standard 30 C.F.R. 77.1109(c)(1), for failure to provide a portal fire extinguisher for the highwall drill in question. Section 77.1109(c)(1) provides as follows: "Mobile equipment, including trucks, front-end loaders, bulldozers, portable welding units, and augers, shall be equipped with at least one portable fire extinguisher."

As noted earlier, the respondent failed to appear at the hearing in this matter, and failed to respond to my show cause order of March 14, 1989. The returned postal service certified mail receipts of record reflect that the respondent received the initial hearing notice, the amended hearing notice, and the show cause order. However, it has not further responded or explained its absence and failure to respond. Under all of these circumstances, I conclude and find that the respondent is in default and has waived its right to be heard further in this matter.

On the basis of the credible testimony of the inspector who issued the citation, I further conclude and find that the petitioner has established a violation of section 77.1109(c)(1), and the citation is therefore AFFIRMED.

Size of Business and Effect of Civil Penalty Assessment on the Respondent's Ability to Continue in Business

The respondent appears to be a small mine operator, and absent any information to the contrary, I conclude and find that the \$20 civil penalty assessment for the violation in question will not adversely affect its ability to continue in business.

History of Prior Violations

A computer printout submitted by the petitioner reflects that for for the period March 21, 1986 to March 20, 1988, the

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respondent paid civil penalty assessments in the amount of \$960 for 17 section 104(a) citations, none of which include prior violations of mandatory safety standard section 77.1109(c)(1). I cannot conclude that the respondent's compliance history is such as to warrant any additional increase in the civil penalty assessment made for the violation which has been affirmed in this case.

Good Faith Compliance

I conclude and find that the respondent immediately abated the violation in good faith by providing a fire extinguisher for the cited drill in question.

Negligence

The inspector's "moderate" negligence finding is affirmed.

Gravity

The inspector's credible testimony establishes that the violation was not serious, and I adopt his finding as my finding and conclusion on this issue.

Civil Penalty Assessment

On the basis of the foregoing findings and conclusions, and taking into account the requirements of section 110(i) of the Act, I conclude and find that the petitioner's proposed civil penalty assessment in the amount of \$20 for the violation in question is reasonable and appropriate, and IT IS APPROVED.

ORDER

The respondent IS ORDERED to pay to the petitioner a civil penalty assessment in the amount of \$20 for a violation of mandatory safety standard 30 C.F.R. 77.1109(c)(1), as stated in section 104(a) "non-S&S" Citation No. 3038275, January 19, 1988. Payment is to be made to the petitioner within thirty (30) days of the date of this decision and order, and upon receipt of payment, this case is dismissed.

George A. Koutras
Administrative Law Judge