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SOL (MSHA) V. CONSOL PENNSYLVANIA 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. PENN 88-200
A.C. No. 36-07230-03541

v.

Bailey Mine

CONSOL PENNSYLVANIA COAL
COMPANY,
RESPONDENT

DECISION

Appearances: Anita D. Eve, Esq., Office of the Solicitor, U.S.
Department of Labor, Philadelphia, Pennsylvania,
for the Secretary of Labor (Secretary);
Michael R. Peelish, Esq., Pittsburgh, Pennsylvania,
for Consol Pennsylvania Coal Co. (Consol).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for an alleged violation of 30 C.F.R. 75.1101-8(a) which requires that at least one water sprinkler be installed above each belt drive, belt take-up, electrical control, and gear reducing unit. The Secretary cited Consol because it did not have sprinklers installed above nine combination belt starter-transformer units. Consol takes the position that such units are not electrical control units, but rather are power centers and not covered by the regulation. Pursuant to notice, the case was heard in Washington, Pennsylvania on March 28, 1989. Robert G. Santee testified on behalf of the Secretary. John F. Burr and Carl H. Trickett testified on behalf of Consol. Consol filed a posthearing brief; the Secretary did not. I have considered the entire record and the contentions of the parties in making the following decision.

FINDINGS OF FACT

Consol is the owner and operator of an underground coal mine in Greene County, Pennsylvania. Consol is a large mine operator, producing over 10 million tons of coal annually. The subject mine produces over 2 million tons annually. The subject mine has a history of 106 paid violations in the 24 months prior to the

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violation involved herein. None of these prior violations involved 30 C.F.R. 75.1101. This history is not such that penalties otherwise appropriate should be increased because of it.

In the belt entry in the subject mine, there are belt drives, drive motors, belt takeups, gear-reducing units, spill switches, contractor controls, on-off switches and fire detection systems. These five latter named units are forms of electrical controls. The adjacent entry contains a combination unit sometimes called a combination belt starter-transformer, and sometimes called a combination power center. This unit supplies power to the belt entry; it also contains a belt starter. The entry in which this unit is located is separated from the belt entry by a permanent stopping.

In October 1982, Consol filed a Petition for Modification under section 101(c) of the Act requesting that the application of 30 C.F.R. 75.1101-8 be modified to permit the use of a single line of automatic sprinklers at all main and secondary belt-conveyor drives in the subject mine. Drawings accompanied the Petition showing the location and configuration of the sprinkler system along the belt line, particularly at the belt drive and the car spotter areas. Neither the Petition nor the drawings referred to or depicted the combination belt-starter/transformer units which were not in the belt entry. MSHA investigated the Petitioner in November 1984, and a Report of Investigation was made January 9, 1985. In June 1985, a Proposed Decision and Order was issued by MSHA granting the modification. Neither the Investigation Report nor the Decision and Order referred to the combination belt-starter/transformer units.

On March 31, 1987, Federal mine Inspector Robert Santee issued a citation alleging a violation of 30 C.F.R. 75.1101-8(a) because combination belt electrical control starter transformers in nine locations in the subject mine were not provided with at least one water sprinkler. All of these units were in entries adjacent to the belt entries. All were housed in fireproof structures, vented to the return aircourse.

Prior to the issuance of the citation referred to above, Consol on February 5, 1987, filed a Petition for Modification of 30 C.F.R. 75.1101-8(a) to permit it to install a thermostat device inside the belt starter box which would deenergize the equipment at a certain temperature. This would be in lieu of an overhead sprinkler. The citation was continued during the period the Petition was investigated, and was terminated when the Petition was granted, on or about March 17, 1988.

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REGULATION

30 C.F.R. 75.1101-8(a) provides:

(a) At least one sprinkler shall be installed above each belt drive, belt take-up, electrical control, and gear reducing unit, and individual sprinklers shall be installed at intervals of no more than 8 feet along all conveyor branch lines.

ISSUES

1. Whether the combination belt-starter-transformer units in the subject mine are electrical controls and covered by the standard set out above?

2. If the units are covered, what is the appropriate penalty for the violation?

CONCLUSIONS OF LAW

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

The facts in this case are not in dispute. The legal issue is a very narrow one: whether the combination belt starter transformer units are covered by 30 C.F.R. 75.1101-8(a) as electrical control units. These units are not in the belt entry; the entry in which they are placed is separated from the belt entry by a permanent stopping. The units have two functions: they supply high voltage power to the belt entry, and low voltage power to the belt drive. 30 C.F.R. 75.1105 requires underground transformer stations to be housed in fireproof structures, and air currents used to ventilate the structures must be coursed directly into the return. Belt starter boxes and transformers need not be enclosed in the same structure. Where they are separate, normally the belt starter box is in the belt entry and under the required sprinkler system. The newer units are in combination and enclosed in a fireproof structure outside of the belt entry.

The regulations contained in 30 C.F.R. 1101-1 and following were designed to prevent and contain fires primarily in underground belt entries where the danger of fire is particularly great: the rollers and bearings can get hot; the belt itself can burn; oil and grease are present; coal is transported on the belt; the belt can slip. For these reasons a sprinkler system is required. None of these reasons would support having a sprinkler over a belt starter unit which is enclosed in a fireproof

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structure along with a high voltage transformer, and is located outside the belt entry. Furthermore, permitting water to contact a high voltage power unit could cause a ground fault which is an extremely dangerous condition in an underground coal mine. For these reasons, I conclude that the standard contained in 30 C.F.R. 75.1101-8(a) was not intended to apply to the combination belt starter-transformer units involved in this case. Therefore, I conclude that the violation charged in the citation did not occur, and the citation must be vacated.

ORDER

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

Citation 2684504 issued March 31, 1987, is VACATED, and no penalty may be assessed.

James A. Broderick
Administrative Law Judge