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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 89-82  
A.C. No. 15-13469-03696

v.

No. 9 Mine

GREEN RIVER COAL CO., INC.,  
RESPONDENT

DECISION

Appearances: Joseph B. Lockett, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, Tennessee, for  
the Secretary of Labor (Secretary);  
Mr. William Craft, Madisonville, Kentucky, for  
Green River Coal Co., Inc. (Green River).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for two alleged violations of mandatory safety standards: one charges a violation of 30 C.F.R. 75.1710 because a scoop allegedly used in the last open crosscut was not provided with a canopy; the other charges a violation of 30 C.F.R. 75.503 because of a permissibility violation on a loading machine. Pursuant to notice the case was heard in Owensboro, Kentucky on June 7, 1989. George Newlin testified on behalf of the Secretary. Mike McGregor testified on behalf of Green River. The parties waived their 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

FINDINGS RELATING TO BOTH CITATIONS

Green River is the owner and operator of an underground coal mine in Hopkins County, Kentucky, known as the No. 9 Mine. The mine is moderately large: it produces over one million tons of coal annually, and employs approximately 200 workers. During the 24 month period from October 28, 1986 to October 27, 1988, the mine was cited for 1,057 violations of mandatory safety and

~1314

health standards; 10 of these were for violations of 30 C.F.R. 75.1710; 74 were for violations of 75.503. This is a substantial history of prior violations, and if violations are found herein, the penalties will be increased because of it. The violations cited herein was promptly abated in good faith after the citations were issued.

CITATION 3297516

On October 28, 1988, at about 5:25 a.m., Federal Coal Mine Inspector George Newlin issued the subject citation while making a regular inspection of the No. 9 Mine. The mine was not producing coal during the midnight shift, and only maintenance work was being performed. The inspector came upon a scoop in the No. 2 unit, about three crosscuts outby the face. The scoop was at the charging station being charged. Since it was being charged, it was deenergized. The canopy had been removed from the scoop. The height of the coal was approximately 50 inches. The roof condition in the subject mine is not good. The mine has experienced a large number of unexpected roof falls.

The scoop was not locked or tagged out. Inspector Newlin was accompanied by company safety inspector (now safety director) Mike McGregor, and Union representative Jarvis. Both McGregor and Jarvis said the scoop was a unit scoop and was used for cleanup at the coal face. McGregor said he was surprised that it did not have a canopy.

Green River has a number of scoops, all of them electric powered. Those used at the face are provided with canopies; those used outby are not. I find as a fact that the scoop cited herein was regularly used at the face. Its canopy had been removed and not replaced. The next production shift was to begin work at about 8:25 a.m. on October 28, 1988.

The violation was abated by replacing the canopy on the scoop in question. The citation was terminated October 31, 1988.

CITATION 3297518

On October 28, 1988, at about 6:00 a.m., Inspector Newlin found an opening in a control panel of a loading machine to be in excess of the permissibility limit (the opening was .005 inch; .004 inch is the limit permitted). The loader was not energized, the mine was on the maintenance shift and not producing coal. The loading machine was in the entry at the last open crosscut. It had a permissibility plate or label and had been used and was intended to be used in the production of coal. The subject mine liberates in excess of 700,000 cubic feet of methane per day. At

~1315

the time the citation was issued, the inspector found between .2% and .3% methane. The air was good.

The violation was abated by tightening the bolts on the control panel and closing the gap to within .004 inch. The citation was terminated at 6:30 a.m., October 28, 1988.

#### REGULATIONS

30 C.F.R. 75.1710 provides as follows:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

30 C.F.R. 75.503 provides as follows:

The operator of each coal mine shall maintain in permissible condition all electric face equipment required by 75.500, 75.501, 75.504 to be permissible which is taken into or used in by the last open crosscut of any such mine.

#### ISSUES

1. Whether the Secretary can cite an operator for failure to have a canopy on electric face equipment without observing the equipment being operated at the coal face?

2. Whether the facts establish a violation of 30 C.F.R. 75.1710?

3. Whether the Secretary can cite an operator for a permissibility violation at a time when the cited electric face equipment is not being operated, i.e., when the section is idle?

4. Whether the facts establish a violation of 30 C.F.R. 75.503?

5. If the violations are established, whether they were significant and substantial?

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

CONCLUSIONS OF LAW

JURISDICTION

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

CANOPY ON SCOOP

Section 104(a) of the Act provides that if upon inspection an authorized representative of the Secretary believes that an operator of a coal mine has violated the Act or any mandatory safety standard, he shall issue a citation to the operator. The statute does not require that the authorized representative observe the violative condition; he need only believe that a violation occurred. In the present case, I have found as facts (1) the scoop was present in the section and did not have, as the regulations required, a canopy to protect the scoop operator; (2) the inspector was informed by representatives of the miner and by a union miner that the scoop was a "unit scoop used on the unit for cleanup." (Tr. 11); (3) the mine produced coal on the shift prior to the inspection and expected to produce coal on the shift subsequent to the inspection. Based on these facts, the inspector reasonably believed that a violation occurred. I conclude that the scoop was an item of electric face equipment and required a substantially constructed canopy. A violation of 30 C.F.R. 75.1710 has been established.

The subject mine has a history of roof falls. The roof is not a stable roof. The operation of electric face equipment without a canopy is reasonably likely to result in serious injury. I conclude that the violation was significant and substantial. The absence of the canopy on the scoop was obvious. It had been removed for some unknown reason. I conclude that the violation resulted from Respondent's negligence. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$250.

PERMISSIBILITY VIOLATION

30 C.F.R. 75.503 requires an operator to maintain in permissible condition all electric face equipment which is taken into or used in by the last open crosscut. Neither the Act nor the regulations require that the inspector observe the equipment actually being operated in by the last open crosscut. Such a requirement would defeat the whole purpose of the regulation. There is no question that the loader was electric face equipment. There is no question that it had been operated in by the last open crosscut. It was in fact in the entry at the last open crosscut

~1317

when cited. It was not contested that the equipment was not permissible. I conclude that a violation of 30 C.F.R. 75.503 was established.

Because the subject mine liberated considerable methane the violation was serious. It was reasonably likely to cause serious injury to miners. Therefore the violation was significant and substantial. The condition could have been found on weekly examination, but there is no evidence that it existed at the time of prior weekly exam: it could have resulted at any time from vibrations, etc. Therefore, I cannot conclude that it resulted from Green River's negligence. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$150.

ORDER

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

1. Citations 3297516 and 3287518 are AFFIRMED.
2. Respondent shall within 30 days of the date of this decision pay \$400 as civil penalties for the violations found herein.

James A. Broderick  
Administrative Law Judge