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SOL (MSHA) V. GREEN RIVER 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. KENT 89-19
A.C. No. 15-13469-03687

v.

Docket No. KENT 89-76
A.C. No. 15-13469-03693

GREEN RIVER COAL CO., INC.,
RESPONDENT

DECISION

Appearances: Joseph B. Luckett, Esq., Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Secretary of Labor (Secretary);
B. R. Paxton, Esq., Paxton & Kusch, Central City,
Kentucky for Green River Coal Co., Inc. (Green River).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for six alleged violations of mandatory safety standards contained in the above dockets. The alleged violations involve the same mine and were consolidated for the purposes of hearing and decision. Pursuant to notice, the consolidated cases were heard in Owensboro, Kentucky on June 7, 1989. Lewis Stanley, James E. Ranks, Michael V. Moore, and Bobby Clark testified for the Secretary. Jessie W. Campbell and Mike McGregor testified for Green River. Both parties filed post hearing briefs limited to the legal question whether order No. 3227686 was properly modified after its termination. I have considered the entire record and the contentions of the parties in making this decision.

FINDINGS OF FACT

FINDINGS COMMON TO ALL VIOLATIONS

1. Green River is the owner and operator of an underground coal mine in Hopkins County, Kentucky known as the No. 9 Mine.

2. Green River employs approximately 200 miners, and produces approximately one million tons of coal annually.

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3. The subject mine liberates in excess of one million cubic feet of methane in a 24 hour period.

4. During the 24 month period from June 23, 1986 to June 22, 1988, Green River had 1,059 paid violations of mandatory standards. Of these, 80 were violations of 30 C.F.R. 75.301, 13 were violations of 30 C.F.R. 75.302, 8 were violations of 30 C.F.R. 75.1710, and 73 were violations of 30 C.F.R. 75.503. This is a substantial history of prior violations, and penalties otherwise appropriate will be increased because of it.

5. All of the violations charged in these proceedings were abated promptly in good faith.

CITATIONS 3228886 AND 3228887

An explosion occurred in the subject mine at about 10:30 a.m., on June 23, 1988, at the crosscut right off the No. 2 entry in the 003 section, while coal was being loaded. The ignition was of short duration and self-extinguishing. It resulted in first and second degree burns to the loader operator.

When the Federal mine inspector arrived at the scene at about noon, he discovered that the line curtain for the crosscut was installed 22 feet from the toe of the coal. The section foreman was present. He testified at the hearing that a line curtain had been installed about 7 or 8 feet from the coal face but apparently had been removed prior to the explosion.

The mine has a history of methane liberation and has experienced prior ignitions or explosions at the face. Many citations for ventilation violations had been issued to the mine. Methane was found at the site of the explosion ranging from 1.6 to 2 percent.

The approved ventilation plan for the subject mine requires that in working faces there shall be a minimum of 3000 cubic feet of air in each working face where coal is being cut, mined or loaded.

The inspector checked the air flow at about 12:15 p.m. on June 23, 1989, and found only 1800 cubic feet a minute of air reaching the end of the line curtain in cross cut right off the No. 2 entry in 003 section.

The inspector issued a section 107(a) imminent danger closure order and two section 104(a) citations, charging violations of 30 C.F.R. 75.302-1 and 75.301-1.

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The order and the citations were terminated the same day they were issued, when a line curtain was installed to the toe of the coal, the air increased to 3825 cubic feet a minute, and the methane reduced to .2 percent.

CITATION 3228988 AND ORDERS 3228563 AND 3228564

The coal seam height in the subject mine varies from 54 inches to about 60 inches. Therefore it has been required since January 1, 1975, to have substantially constructed canopies or cabs on all self propelled electric face equipment employed in active workings.

The subject mine has a generally poor roof condition. It has had 88 reported roof falls.

On March 18, 1988, a Federal coal mine inspector saw a cutting machine being operated without a canopy over the operator. The canopy was loose--the bolts holding it were backed off and the hydraulic mounting alignment brackets were broken off. The machine operator stated that he did not use the canopy because of the danger that it would fall on him. In the inspector's judgment, the condition had existed for a considerable period of time--certainly for more than one shift. The roof in the area was in good condition.

The inspector issued a section 107(a) imminent danger closure order and a section 104(a) citation (3228988) charging a violation of 30 C.F.R. 1710. He had issued another citation for a cutting machine without a canopy only a short time prior to this.

The citation was terminated the same day when the bolts on the canopy were tightened, the brackets were welded back on, and the canopy positioned over the operator.

On August 22, 1988, a Federal mine inspector observed a loading machine being operated at or near the last open crosscut, with its canopy swung around over the tram motor. It was not over the operator of the loader. The pin which held it from swinging away from the operator had been removed. No roof problems were noted in the area at the time. The inspector issued a section 104(d)(1) order at 9:40 a.m., charging a violation of 30 C.F.R. 75.1710. The order was terminated at 10:15 a.m. the same day when the canopy was moved back over the operator, and the pin replaced.

At 10:25 a.m. the same day, the same inspector noticed a cutting machine in the No. 5 entry of the No. 5 unit, on which the canopy was swung away from the operator and positioned over

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the wheel of the cutter. Order 3228563 was issued charging a violation of 30 C.F.R. 75.1710. The order was terminated at about 11:00 a.m. the same day when the canopy was placed over the cutter operator and the pin put in place.

Respondent has regular safety meetings with its employees, and has instructed them of the requirements for maintaining canopies on electric face equipment when operating inby the last open crosscut.

ORDER 3227686

On August 12, 1988, a Federal coal mine inspector was in the No. 3 Unit of the subject mine when the power was shut off because of a ventilation problem. He noticed four 110 volt pumps pumping water inby the last open break. These were nonpermissible pumps, and were pumping water to a 480 volt permissible pump. Coal was being produced until the power was shut off. The highest methane reading in the area was .4%. The inspector issued a section 104(d)(1) order (3227686) charging a violation of 30 C.F.R. 75.507. A citation had been issued about two months previously, and an order about six weeks previously for essentially the same conditions. The order was terminated at 10:30 a.m. the same day when the pumps were removed outby the last open crosscut.

The order was modified on April 24, 1989, to correct the standard allegedly violated from 75.507 to 75.503.

REGULATIONS

30 C.F.R. 75.302-1 provides in part:

75.302-1 Installation of line brattice and other devices.

(a) Line brattice or any other approved device used to provide ventilation to the working face from which coal is being cut, mined or loaded and other working faces so designated by the Coal Mine Safety Manager, in the approved ventilation plan, shall be installed at a distance no greater than 10 feet from the area of deepest penetration to which any portion of the face has been advanced unless a greater distance is approved by the Coal Mine Safety District Manager of the area in which the mine is located.

30 C.F.R. 75.301-1 provides:

75.301-1 Quantity of air reaching working face.

A minimum quantity of 3,000 cubic feet a minute of air shall reach each working face from which coal is being cut, mined or loaded and any other working face so designated by the District Manager, in the approved ventilation plan.

30 C.F.R. 75.1710 provides in part:

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.

75.1710-1 Canopies or cabs; self-propelled electric face equipment; installation requirements.

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in paragraphs (a)(1), (2), (3), (4), (5), and (6) of this section, be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. the requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

30 C.F.R. 75.507 provides in part:

Except where permissible power connection units are used, all power-connection points outby the last open crosscut shall be in intake air.

75.507-1 Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

(a) All electric equipment, other than power-connection points, used in return air outby the last open crosscut in any coal mine shall be permissible except as provided in paragraphs (b) and (c) of this section.

30 C.F.R. 75.503 provides:

75.503 Permissible electric face equipment; maintenance.

[STATUTORY PROVISIONS]

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 inby the last open crosscut of any such mine.

CONCLUSIONS OF LAW

JURISDICTION

Respondent Green River is subject to the provisions of the Federal Mine Safety and Health Act of 1977 (the Act) in the operation of the No. 9 Mine. I have jurisdiction over the parties and subject matter of this proceeding.

VENTILATION VIOLATIONS

Green River does not seriously contest the violations charged as a result of the investigation of the explosion on June 23, 1988. It suggested that the line curtain might have come down as a result of the explosion, but its own witness, the section foreman, did not support this suggestion. The evidence clearly establishes that the line curtain was not hung to within 10 feet of the face, and that the airflow at the end of the line curtain was substantially less than required. Violations of 30 C.F.R. 75.302-1 and 75.301-1 were clearly established. Because the mine liberates more than one million cubic feet of methane in a 24-hour period, and has a history of face ignitions, the violations were extremely serious. In fact, they resulted in an explosion and an injury to a miner. Both conditions should have been ascertained by management, especially given the mine's history. I conclude that they resulted from Green River's

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negligence. Considering the criteria in section 110(i) of the Act, the proposed penalties of \$1400 for each violation are appropriate.

CANOPY VIOLATIONS

The roof in the subject mine is unstable. Eighty eight roof falls have been reported to MSHA. The canopy requirement has applied to the subject mine since 1975. The three alleged violations were clearly established: the equipment involved, all items of electric face equipment, were used inby the last open crosscut. The violations were all very serious: that involving the cutting machine (Citation 3228988) was especially aggravated, since the operator was in jeopardy if he used the canopy or if he did not use the canopy. All of the violations were known or should have been known to mine management. They resulted from Green River's negligence. Considering the criteria in section 110(i) of the Act, \$1,000 for the violation cited in citation 3228988 and \$800 for each of the violations cited in orders 3228563 and 3228564 are appropriate penalties.

PERMISSIBILITY VIOLATION

Respondent does not contest the facts that on August 12, 1988, there were four 110 volt nonpermissible pumps pumping water inby the last open crosscut. Neither does it deny that these facts establish a violation of 30 C.F.R. 75.503. Rather, it argues the modification of the citation on April 24, 1989, was improper and that it does not comport with the mandate of the statute that a copy of the order be given promptly to the mine operator.

There was no question at the time the order 3227686 was issued that Green River was being charged with operating nonpermissible electric face equipment in and inby the last open crosscuts (a violation of 30 C.F.R. 75.503). It was not charged, nor did it offer evidence to indicate that it believed it was charged with operating nonpermissible electric face equipment in return aircourses (a violation of 30 C.F.R. 75.507-1). The violation was abated by removing the pumps outby the last open crosscut. Respondent was not misled. See Secretary v. U.S. Steel Mining Co., Inc., 6 FMSHRC 722 (1984) (ALJ). I conclude that a violation has been established, and the modification of the order does not vitiate it.

The violation was serious. Green River No. 9 is a gassy mine, and an arc from one of the pumps could cause an ignition or explosion if it contacted a methane buildup. The violation was obvious and Green River was aware or should have been aware of it. I conclude that it resulted from Green River's negligence.

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Considering the criteria in section 110(i) of the Act, \$1500 is an appropriate penalty for the violation.

ORDER

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

1. Citations 3228886, 3228887 and 3228988 are AFFIRMED.
2. Orders 3228563, 3228564 and 3227686 are AFFIRMED.
3. Respondent shall within 30 days of the date of this decision pay the following civil penalties for the violations found:

CITATION OR ORDER	PENALTY
3228886	\$1400
3228887	1400
3228988	1000
3228563	800
3228564	800
3227686	1600
TOTAL	\$7000

James A. Broderick
Administrative Law Judge