

CCASE:  
SOL (MSHA) V. SOUTHERN OHIO COAL  
DDATE:  
19891017  
TTEXT:

~2013

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. WEVA 89-44  
A.C. No. 46-03805-03880

v.

Martinka No. Mine

SOUTHERN OHIO COAL COMPANY,  
RESPONDENT

DECISION

Appearances: Mark R. Malecki, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia,  
for the Secretary of Labor (Secretary);  
David M. Cohen, Esq., Lancaster, Ohio, for Southern  
Ohio Coal Company (SOCCO).

Before: Judge Broderick

STATEMENT OF THE CASE

In this docket, the Secretary seeks civil penalties for two alleged violations of mandatory safety standards. The violations were charged in two withdrawal orders issued under section 104(d)(2) of the Federal Mine Safety and Health Act (Act). With respect to the violation charged in Order 3106068, the parties have agreed to a settlement, and the Secretary filed a motion for its approval subsequent to the hearing. Pursuant to notice, a hearing was held on the other alleged violation in Morgantown, West Virginia on June 14, 1989. Homer Delvich, Patrick Grimes, Warren Bates and Gary Eagle testified on behalf of the Secretary. David Stout, Mattio Mugnano and Paul Zanussi testified on behalf of SOCCO. No provision was made on the record for posthearing briefs. SOCCO filed such a brief; the Secretary did not. I have considered the entire record and the contentions of the parties, on the bases of which I make the following decision.

FINDINGS OF FACT

SOCCO is the owner and operator of an underground coal mine in Marion County, West Virginia, known as the Martinka No. 1 Mine. The mine has an annual production of two million tons; the operator has an annual production of eleven million tons. It is a large operator. Martinka has a history of prior violations

~2014

amounting to approximately one significant and substantial violation per inspection day during the two year period prior to the violations involved in this proceeding. The two violations involved herein were abated in a timely manner.

ORDER NO. 3106068

This order charges a violation of 30 C.F.R. 75.202. It was originally assessed at \$950, and the motion proposes a reduction to \$800. The violation involved a hazardous roof condition which had been noted in SOCCO's preshift book. For that reason, the violation was found to result from SOCCO's unwarrantable failure to comply. The motion states that pretrial discussion persuaded the Secretary to reduce the negligence somewhat because the condition had worsened within a few days of the inspection. I have considered the motion in the light of the criteria in section 110(e) of the Act, and conclude that it should be approved.

ORDER NO. 3106064

On August 15, 1988, Federal coal mine inspector Homer Delirch was inspecting the subject mine. He entered the mine at about 8:30 a.m. and arrived at the belt feeder on North Main Section 037 at about 9:45 a.m. He found a large pool of hydraulic oil, about 3 inches deep, 6 feet wide and 12 feet long under the feeder. Rock dust had been added only to the edges of the oil puddle against the rib lines. There was also a coating of coal dust about 1/8 of an inch deep caked with oil on the frame and motor of the feeder. The oil was hydraulic oil used to coal motors and it was combustible. The belt feeder was running at the time. The prior shift (cat-eye shift) had produced coal. Ignition sources were in the area: the motor (covered with oil saturated coal dust) runs hot. There are power cables going to the feeder.

SOCCO had had problems with this belt feeder for some time prior to August 15, 1988. On July 29, 1988, during the midnight shift, O-rings and a "busted fitting" were replaced. On August 1, 60 gallons of oil were added to the feeder. On August 2, 8 and 11 further work was done on the hoses, O-rings and oil tank. One mechanic, Patrick Grimes (also a UMWA walkaround), testified that oil had been on the floor "possibly a week or longer" (prior to August 15). (R. 39). Grimes never saw anyone trying to take up the oil "until the inspector wrote it up." (R. 39). Another mechanic, Warren Bates, testified concerning the feeder: "You poured it (oil) in and it runs out, and you pick it up off the ground. I mean, it's just a cycle." (R.62). On August 12, the mechanic's work sheet noted that the mechanic took oil and rock dust to feeder. In his remarks he

~2015

noted: "Did not get oil spill covered." (Exhibit 1, SOCCO's Response to Secretary's Request for Production of Documents.) Matio Mugnano, the day shift section foreman, testified that during the weekend (August 13-14), the O-rings and a hose were replaced on the feeder.

The condition was abated by taking up the oil in 5 gallon cans, which were placed on the belt and taken out of the mine. Between ten and thirty gallons of oil were removed. The feeder pump frames were degreased and washed and coal dust was removed from the frames and motor. The order was terminated at 12:30 p.m., August 15, 1988.

#### REGULATION

30 C.F.R. 75.400 provides as follows:

Coal dust, including coal dust deposited on rock dusted surfaces, loose coal, and other combustible materials, shall be cleaned up and not be permitted to accumulate in active workings, or on electric equipment therein.

#### CONCLUSIONS OF LAW

##### I

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

##### II

Although SOCCO contends that a violation of 30 C.F.R. 75.400 has not been shown, because the accumulations cited were minimal and not combustible, the evidence is overwhelming that the pool of oil under the belt feeder was (1) hydraulic oil with very little water, (2) combustible and (3) a large accumulation. The evidence further establishes that there was oil soaked coal dust on the frame and motor housing of the feeder. I conclude that these conditions establish a violation of 30 C.F.R. 75.400.

##### III

A violation is properly designated as significant and substantial if there is a reasonable likelihood that the hazard contributed to will result in a serious injury. Cement Division, National Gypsum Co., 3 FMSHRC 822 (1981); Florence Mining Company, 11 FMSHRC 747 (1989). Here there is evidence of a substantial amount of combustible material on and near electrical

~2016

equipment. I conclude that a mine fire was reasonably likely. This could result in fire entrapment, smoke, and carbon monoxide. With miners working in the area, serious injuries would be probable. I conclude that the violation was significant and substantial.

#### IV

Unwarrantable failure is established by a showing of aggravated conduct constituting more than ordinary negligence. Emery Mining Corp., 9 FMSHRC 1997 (1987). The problem of oil leaks from the belt feeder in question go back more than two weeks from the date the order was issued. SOCCO was aware of the leaks, and made some attempts to take care of the problem. The evidence however establishes that substantial accumulations of oil under the feeder were common--the rule rather than the exception--from at least July 29 to August 15, 1988. SOCCO should have effectively repaired the equipment or withdrawn it from service. In view of the accumulations and SOCCO's awareness of them, its failure to do so constituted aggravated conduct, more than ordinary negligence. I conclude that the violation resulted from SOCCO's unwarrantable failure to comply with the standard.

#### V

The violation was serious and resulted from aggravated conduct. SOCCO is a large operator. Its history of prior violations is not such that a penalty otherwise appropriate should be increased because of it. The violation was abated in a timely fashion. In the light of the criteria in section 110(i) of the Act, I conclude that \$1000 is an appropriate penalty for the violation.

#### ORDER

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

1. Order 3106064 is AFFIRMED, including the special findings that the violation was significant and substantial and caused by unwarrantable failure;

2. Order 3106068 is AFFIRMED, including the special findings that the violation was significant and substantial and caused by unwarrantable failure.

3. Within 30 days of the date of this decision, SOCCO shall pay the following civil penalties:

~2017

Order	Penalty
3106064	\$1000
3106068	800
	\$1800

James A. Broderick  
Administrative Law Judge