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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

ARCH OF KENTUCKY, INC.,
CONTESTANT

v.

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
RESPONDENT

CONTEST PROCEEDINGS

Docket No. KENT 89-161-R
Citation No. 3172128; 4/20/89

Docket No. KENT 89-163-R
Citation No. 3172130; 4/20/89

High Splint No. 2

Mine ID 15-16084

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

v.

CIVIL PENALTY PROCEEDING

Docket No. KENT 90-39
A. C. No. 15-16084-03519

High Splint No. 2 Mine

ARCH OF KENTUCKY, INC.,
RESPONDENT

DECISION

Appearances: Edward H. Fitch, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, VA,
for the Secretary;

Michael T. Heenan, Esq., Smith Heenan, & Althen,
Washington, DC, for the Respondent.

Before: Judge Fauver

Arch of Kentucky, Inc., seeks to vacate two citations, and the Secretary of Labor seeks civil penalties for the two violations they allege, under 105(d) the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

The parties have filed cross-motions for summary decision, based upon a stipulated record.

The citations were issued during the investigation of a fatal accident that occurred at Arch's High Splint No. 2 Mine on April 18, 1989.

The mine produces coal two shifts a day, with maintenance on a third shift, five days a week. It employs 77 underground employees and three surface employees.

On April 18, 1989, Maintenance Foreman David L. Funk and his crew were trying to repair a continuous mining machine, which had broken down on the previous shift.

At the time of the accident, the foreman and his crew were attempting to repair the right side planetary gear box on the continuous miner. The repair required removal of the planetary gear box, which could not be dropped out of the continuous miner without first removing the pinion shaft that extends through the planetary. The pinion shaft drives the tram chain sprocket, which turns the chain that propels the continuous miner as it travels from one place to another underground.

Before repairs were started, the continuous miner was taken out of production, deenergized, jacked up and blocked. The guard that covers the tram chain during normal operations was swung open to provide access to the pinion shaft and chain sprocket.

Work to remove the shaft was first tried by inserting a roof bolt into the end of the shaft and trying to hammer the shaft out using a 16 lb sledge hammer. The parties have stipulated that this effort although unsuccessful was "consistent with established maintenance procedure." Another accepted procedure "would have been to use a cutting torch to cut the pinion shaft and thereby free the planetary gear." However, as stipulated by the parties, Mr. Funk decided to avoid a cutting job. Instead, he used a method that was "not a maintenance procedure that is recommended or otherwise addressed by the manufacturer" and "which proved to be completely unsafe." Stipulations, ¶57 13. The method he used is described as follows in the MSHA Accident Investigation Report (which the parties stipulate "correctly states the facts of this case" (Stipulations, ¶57 5)):

Funk decided to try and shear the splines off the shaft by rotating the shaft back and forth alternately using the tram motor with sprockets and tram chain attached. Funk instructed the crew to stand away from the miner in the event something went wrong. Funk told the miner operator to tram the motor back and forth. After approximately 15 or 20 times, the tram chain broke, hurling a piece of chain (connecting link) approximately 12 feet, striking Funk (victim) in the right side of his neck, severing an artery, causing profuse bleeding from the wound.

Mr. Funk died before reaching the hospital. The MSHA Accident Investigation Report also states the following findings of "Physical Factors" involved in the accident:

1. Prior to performing repair work on the final

drive assembly, the electrical power was not removed from the control circuit of the Joy 14CM5 continuous miner, Serial Number JM 2915.

2. The planetary and transmission sprockets were not completely installed on the shafts and secured with the retaining plates. The splines on the planetary drive shaft were fouled, not allowing the sprocket to be fully seated. The tram chain was installed around the sprockets, misaligned by approximately one (1) inch.

3. The planetary shaft was being removed by wringing the shaft from the pinion gear using the force applied to the sprocket, via the traction motor and tram chain.

4. The resultant stresses sheared a pin from the back plate of a connecting link on the Whitney 200H roller chain. Part of the connecting link was propelled approximately twelve (12) feet to where it struck the victim, causing severe trauma to the right side of the victim's neck.

5. The guard covering the tram chain and sprockets had not been replaced before energizing the traction motor.

DISCUSSION

Citation No. 3172128 charges a violation of 30 C.F.R. 75.1725(c), which provides:

(c) Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments.

Citation No. 3172130 charges a violation of 75.1722(c), which provides:

(c) Except when testing the machinery, guards shall be securely in place while machinery is being operated.

Arch contends that the exceptions to both safety standards applied.

It contends that Mr. Funk was using the machinery's motion to "adjust" the pinion shaft and therefore there was no violation of 75.1725(c). It contends that the guard was not secured because Mr. Funk was "testing" whether his method of trying to remove the pinion shaft would work and therefore there was no violation of 75.1722(c).

The Secretary contends that Mr. Funk used an unsafe method of trying to strip the pinion shaft from the planetary gear and such method had nothing to do with "making adjustments" or "testing" equipment within the meaning of the exceptions to the two safety standards.

The facts indicate that Mr. Funk tried to take a shortcut "which proved to be completely unsafe" (Stipulation, ¶57 13). He chose a dangerous practice that is not sanctioned either as making machine "adjustments" or as "testing" machinery within the meaning of 75.1725(c) or 75.1722(c). A continuous miner is not designed to shear the splines from the planetary shaft by using the torque of the tram motors. Attempting to use it for such purpose did not qualify as an "adjustment" or "testing" exception to the cited safety standards.

Accordingly, the stipulated facts establish a violation of 75.1725(c) as alleged in Citation No. 3172128 and a violation of 75.1722(c) as alleged in Citation No. 3172130

The foreman was highly negligent in endangering himself and his crew by using an unsafe and highly dangerous practice. Compliance with the cited safety standards would have prevented this fatality. The foreman's negligence is imputed to the mine operator. The gravity of each violation was very high. The reliable evidence amply sustains the inspector's findings that the violations were of a "significant and substantial" nature.

Considering all the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$3,000 is appropriate for the violation of 75.1725(c) and a penalty of \$8,000 is appropriate for the violation of 75.1722(c).

CONCLUSIONS OF LAW

1. The judge has jurisdiction in these proceedings.
2. The Secretary of Labor is entitled to summary decision as a matter of law.
3. Arch of Kentucky, Inc., violated the safety standards as alleged in Citation Nos. 3172128 and 3172130.

ORDER

WHEREFORE IT IS ORDERED that:

1. Arch of Kentucky, Inc's motion for summary decision is DENIED.
2. The Secretary of Labor's motion for summary decision is GRANTED.

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3. Citations Nos. 3172128 and 3172130 are AFFIRMED.

4. The contest actions in Docket Nos. KENT 89-161-R and KENT 89-163-R are DISMISSED.

5. Arch of Kentucky, Inc., shall pay the above-assessed civil penalty of \$11,000 within 30 days of this Decision.

William Fauver
Administrative Law Judge