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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 89-210
A.C. No. 15-13469-03711

v.

No. 9 Mine

GREEN RIVER COAL CO., INC.,
RESPONDENT

DECISION

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

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for an alleged violation of the mandatory safety standard in 30 C.F.R. 75.511 promulgated under the Federal Mine Safety and Health Act of 1977 (the Act). Pursuant to notice, the case was heard in Owensboro, Kentucky, on January 18, 1990. Allen L. Head testified on behalf of the Secretary. Michael McGregor testified on behalf of Green River. The parties were given the opportunity to file post hearing briefs. Neither party has filed such a brief. I have considered the entire record and the contentions of the parties in making the following decision. FINDINGS OF FACT

1. At all times pertinent hereto, Green River was the owner and operator of an underground coal mine in Hopkins County, Kentucky, known as the No. 9 Mine.

2. Although the corporate identity did not change, the management of the No. 9 Mine changed as of November 15, 1988.

3. Green River produces approximately one million tons of coal per year and has approximately 200 employees. It is a relatively large operator.

4. During the period from April 11, 1987 to November 14, 1988, 869 paid violations were assessed at the subject mine, of which 705 were denominated significant and substantial. None of these violations were of 30 C.F.R. 75.511.

5. During the period from November 15, 1988 to April 11, 1989, when the mine was under new management, 123 paid violations were assessed, of which 93 were denominated significant and substantial. None of these violations were of 30 C.F.R. 75.511.

6. On April 12, 1989, on the Number 2 Unit of the subject mine, a mechanic and a roof bolter were working on a trailing cable for a roof bolter machine. The mechanic had cut open a permanent splice in the cable and was checking the cable for a fault or ground by inserting the probes of his volt meter into the power wires.

7. The disconnecting device at the unit power center, was not locked out or tagged. The power center was approximately 200 feet from the trailing cable being worked on, and was not visible from the cable because two 90 degree corners and a ventilation check curtain separated them. The disconnecting device was lying on the mine floor in front of the receptacle from which it was unplugged.

8. Other disconnecting devices and receptacles were in the area. These were attached to two other roof bolting machines.

9. The power center voltage is 4160 volts; 480 volts goes to the roof bolter cable. This is considered low voltage.

10. Federal Mine Inspector Allen Head issued a section 107(a) imminent danger closure order and a section 104(a) citation because of the condition described in finding of fact No. 7.

11. In the event that someone had inadvertently put the power on the trailing cable involved, the mechanic could have been electrocuted or severely shocked. Approximately 16 miners work on the section and others come on the section periodically.

12. The section foreman was not in the area when the violation was cited.

13. The mechanic who, after the order and citation were issued, locked out and tagged the disconnecting device told Green River's safety manager, Michael McGregor, "this isn't the first mine we've worked in." The inspector understood that statement

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to mean that the safety manager "was making a big issue out of not locking and tagging out, and also that he [the mechanic] probably had a practice of not locking and tagging out." (R.22) McGregor was asked how he interpreted the mechanic's statement and he responded: "Largely, the same way Mr. Head took it." (R. 26)

14. Since November 1988, Green River has conducted weekly safety meetings with all employees. Separate weekly meetings with top management discuss safety matters. Lock out procedures are discussed in the weekly safety meetings. The mechanic has an electrical certification, and therefore is required to undergo a 16 hour retraining program annually.

15. The violation was abated within 3 minutes when the mechanic locked out and tagged the disconnecting device. Also, Green River's safety manager informed him of the company policy. The mechanic admitted that he knew of the lock out and tag policy. He had a lock and tag on his person. The following day, a meeting was held with all maintenance personnel, and the company policy on locking out and tagging was reiterated.

REGULATION

30 C.F.R. 75.511 provides as follows:

[STATUTORY PROVISION]

No electrical work shall be performed on low-, medium-, or high-voltage distribution circuits or equipment, except by a qualified person or by a person trained to perform electrical work and to maintain electrical equipment under the direct supervision of a qualified person. Disconnecting devices shall be locked out and suitably tagged by the persons who perform such work, except that in cases where locking out is not possible, such devices shall be opened and suitably tagged by such persons. Locks or tags shall be removed only by the persons who installed them or, if such persons are unavailable, by persons authorized by the operator or his agent.

ISSUES

1. Did Respondent violate the mandatory safety standard contained in 30 C.F.R. 75.511 by performing electrical work on a trailing cable without locking out and tagging the disconnecting device to the cable?

2. If so, what is the proper penalty for the violation?

CONCLUSIONS OF LAW

I

Respondent was 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

Finding of Fact No. 7 establishes a violation of the standard in question. Green River does not seriously contest the occurrence of a violation.

III

The violation was very serious, and could have resulted in electrocution or serious electrical shock to the mechanic or the roof bolter, if the power was put on the cable by the section foreman or another miner. The occurrence of such an event is not unlikely, when the disconnecting device is not locked out and suitably tagged.

IV

The violation resulted from Green River's negligence. Even though the mechanic had been properly trained, he had apparently been involved in prior violations of the standard and was not adequately supervised to make certain that he followed the regulation.

V

Green River's history of prior violations has improved under its new management (45½ violations per month prior to November 15, 1988; 24½ violations subsequent to that date). I take that improvement into account, but nevertheless consider the entire history shown in Government's Exhibits 4-A and 4-B. Secretary v. Green River Coal Co., 11 FMSHRC 2036 (1989), Commission Review denied, November 1989, appeal docketed, No. 89-4133 (6th Cir. December 27, 1989).

VI

Considering the above findings and conclusions in the light of the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$750.

ORDER

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

1. Order No. 3418284 and Citation No. 3418285 issued April
12, 1989, are AFFIRMED.

2. Respondent Green River shall, within 30 days of the date
of this decision pay the sum of \$750 as a civil penalty for the
violation found herein.

James A. Broderick
Administrative Law Judge