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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDINGS

Docket No. VA 90-28
A. C. No. 44-00304-03618

v.

Bullitt Mine

WESTMORELAND COAL COMPANY,
RESPONDENT

DECISION

Appearances: Mark R. Malecki, Esq., Office of the Solicitor,
U. S. Department of Labor, Arlington, Virginia,
for the Secretary;
F. Thomas Rubenstein, Esq., Assistant General
Counsel, Westmoreland Coal Company, Big Stone Gap,
Virginia, for the Respondent.

Before: Judge Weisberger

Statement of the Case

In this proceeding, the Secretary (Petitioner) seeks a civil penalty for an alleged violation by the Operator (Respondent) of 30 C.F.R. 75.1003. Pursuant to notice, the case was heard in Bristol, Virginia, on June 25, 1990. At the hearing, Gary Wayne Jessee testified for Petitioner, and John Yorke testified for Respondent. At the conclusion of Petitioner's case, Respondent made a Motion to have the citation vacated, and decision was reserved. Subsequent to hearing, Petitioner and Respondent filed Proposed Findings of Fact and Briefs on August 10 and August 7, respectively

Stipulations

At the hearing, Petitioner read into the record the following stipulations:

1. The Westmoreland Coal Company is the owner and operator of the Bullet Mine which is the subject of this proceeding.
2. That the operations of the above mentioned mine is subject to the Mine Safety and Health Act.

3. That the Administrative Law Judge has the jurisdiction to hear and decide this matter
4. That Inspector Gary Jessee was acting in an official capacity when he issued the citation in question today, Citation Number 3352277.
5. That a true copy of the citation was served on a mine operator or its agents as required by the Act.
6. That there is no question today of the authenticity of the citation.
7. That the proposed penalty of \$105 will not adversely affect the Respondent's ability to continue in business.
8. That the Respondent has a favorable ratio of inspections -- violations per inspection day pursuant to Part 100 where the purposes of the tables that we have used. (sic).
9. That the Parties' Joint Exhibit 1 is an accurate rendition of the scene that the inspector came upon in issuing the citation in question.
10. That should an individual contact the trolley wire in question today, such a contact would lead to an injury leading to at least a temporary disabling injury or illness to the miner.

Findings of Fact and Discussion

I.

The West Main entry (also referred to as "West Mains" and "West Main's entry") at Respondent's Bullitt Mine contains a mine track and belt line. Vehicles traveling on the track are powered by poles in contact with a 300 volt wire that is suspended from the ceiling. At the intersection of the West Main entry, and the Four Left entry (mouth of the Four Left entry), a mine track and trolley wire branch off and run below the belt line to enter the Four Left entry. At the intersection of the West Main entry and the Four Left entry, the belt line is approximately 4 feet above the floor, and the trolley wire is suspended approximately 18 to 24 inches from the roof, and is also approximately 4 feet above the floor. The width of the belt line is approximately 48 inches, the distance between the tracks is approximately 44 inches, and, in a lateral direction, the wire is approximately 1 and 1/2 feet beyond the track. On February 12, 1990, Gary Wayne Jessee, while at the mine to perform an ABD Inspection, observed that the trolley wire that was under the belt line in

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the mouth of the Four Left entry, (the intersection between the Four Left and West Main entries), was not guarded.1

Jessee issued a Citation alleging a violation of 30 C.F.R. 75.1003, which, as pertinent, provides that trolley wires ". . . shall be guarded adequately: (a) at all points where the men are required to work or pass regularly under the wires; "

Thus, in order for there to be found a violation herein it must be established that there existed an unguarded point at which men are either: 1. required to work; 2 or 2. pass regularly under the wire.

At the time of the alleged violation, men were working in the Four Left entry approximately 300 feet outby the intersection with the West Main's track, dismantling the longwall equipment. Although there were three other entrances to that area, Jessee indicated, and essentially Yorke agreed, that the primary way from the Four Left longwall out of the mine was through the West Main entry, which necessitated going under the belt line. Yorke indicated that generally people travel from the West Main entry to the Four Left entry by a mantrip rather than on foot. Persons riding the mantrip sit on the floor of the mantrip. According to the uncontradicted testimony of Jessee, the mantrip extends more than 1 foot on either side beyond the tracks. Thus, inasmuch as

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the trolley wire was 1 and 1/2 feet in a lateral direction beyond the tracks, there is support for the testimony of Jesse that a person sitting on the driver's side of the mantrip would be an inch from the unguarded energized wire. In this connection, he indicated that he observed a full mantrip in the area of the unguarded wire in question. I thus conclude that when riding a mantrip, on the way to and from the Four Left entry from the West Main entry, miners do regularly pass at a point where the trolley wire was unguarded, and as such, Respondent herein did violate Section 75.1003(a), supra.3 (See, U. S. Steel, 6 FMSHRC 1664 (1984) (Judge Koutras)). As such, Respondent's Motion to have the Citation vacated is presently DENIED.

II.

Respondent did not rebut Jesse's conclusion that it would have been reasonably likely, if the condition herein was not corrected, for an injury to occur as a result of contact with the unguarded wire. Due to the fact that entry into the Four Left section is primarily by way of a mantrip from the West Main entry, persons riding the mantrip and sitting on the driver's side would be approximately 1 inch from the wire, which was energized at 300 volts. It certainly is clear that one coming in contact with the wire, which was energized at 300 volts, would be exposed to a hazard of being burned or electrocuted. (See,

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U. S. Steel Mining Company, Inc., 6 FMSHRC 2305 (1984)). In this connection, Respondent did not rebut or contradict Jessee's testimony that one riding in a car, especially in the inby end, would come in contact with the wire by being jostled or thrown against it due to a sudden stop of the trolley caused by a wreck or irregularities in the track. I thus conclude that the violation herein was significant and substantial. (See, U. S. Steel, supra; see, also U. S. Steel Mining Company, Inc., 6 FMSHRC 1617 (1984) (Judge Broderick)).

III.

In U. S. Steel Mining Company, Inc., 7 FMSHRC 865, 867 (1985), the Commission set forth its findings with regard to the purpose of the guarding requirement of 75.1003, supra, and the "strong" Congressional concern with the hazards associated with bare trolley wires as follows:

"The primary purpose of the guarding requirement in Section 75.1003 is to prevent miners from contacting bare trolley wires. As noted above, this standard repeats Section 310(d) of the Mine Act, 30 U.S.C. 870(d), which, in turn, was carried over unchanged from Section 310(d) of the 1969 Coal Act, 30 U.S.C. 801 et seq. (1976) (amended 1977). The legislative history of the 1969 Coal Act relevant to Section 75.1003 reveals a strong Congressional concern with the hazards associated with bare trolley wires:

This section requires that trolley wires and trolley feeder wires be insulated and guarded adequately at doors, stoppings, at mantrip stations, and at all points where men are required to work or pass regularly. . . Also, this section would require temporary guards where trackmen or other persons work in proximity to trolley wires and trolley feeder wires. The Secretary or the inspector may designate other lengths of trolley wires or trolley feeder wires that shall be protected.

. . . The guarding of trolley wires and feeder wires at doors, stoppings, and where men work or pass regularly is to prevent shock hazards.

Because of the extreme hazards created by bare trolley wires and trolley feeder wires, the committee intends that the Secretary will make broad use of the authority to designate additional lengths of trolley wires and trolley feeder wires that shall be protected.

Thus I follow the Commission's decision in U. S. Steel, supra, and conclude that the violation herein was of a high level of gravity.

Jessee testified, and his testimony was not contradicted, that there were no obstructions preventing a person from observing the fact that the guard was not in place at the area in question. Yorke testified that if the guard had not been in place the night before he would have noticed it, and he subsequently testified "it was in place the night before" (Tr. 106). Jessee indicated that he did not have any idea how long the guard had been down. Based on this testimony, I conclude that the violation herein resulted from moderate negligence on the part of the Respondent. Taking into account the remaining statutory factors set forth in Section 110(i) of the Act, I conclude that a penalty of \$400 is appropriate for the violation found herein.

ORDER

It is ORDERED that Respondent shall pay \$400, within 30 days from the date of this Decision, as a civil penalty for the violation found herein.

Avram Weisberger
Administrative Law Judge

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FOOTNOTES START HERE

1. It was Jessee's testimony that the West Mains' side of the wire was not guarded, and the Four Left side had a guard that was partially attached. It was the testimony of John Yorke, Respondent's assistant general foreman, who accompanied Jessee, that the guard for the trolley wire in the area in question was attached on the West Main side, but was down on the Four Left entry side. It is not necessary to resolve this conflict in testimony, as either version supports a conclusion that the wire in the area in question was not adequately guarded.

2. Jessee indicated that a person making the weekly examination would be on foot in the area, and also the belt examiner and preshift examiner would be in the area in question. He also indicated that once the work in the longwall was completed, a date board would be placed in the area for an examiner to initial. Yorke, in this connection, indicated that approximately 2 to 3 times a year on his shift, he has assigned men to clean under the belt. However, he indicated that they clean from the West Main's side, and do not work under the belt in the area under the unguarded wire. I thus conclude that the evidence is insufficient to establish that persons are required to work at a point under the unguarded wires.

3. I reject Respondent's arguments that, in essence, Section 75.1003, supra, is not violated when Miners in a mantrip pass under an unguarded wire. It is unduly restrictive to hold that Section 75.1003, supra, in requiring guarding on wires that men "pass regularly under," does not apply where men pass under the wires in a mantrip. Such an interpretation does violence to the clear wording of Section 75.1003, supra, which does not explicitly contain such a limitation. Moreover, an inference can not be logically drawn that in explicitly providing that wires be

guarded at mantrip stations (30 C.F.R. 75.1003(c)), it was intended that such stations are the only areas where miners riding in mantrips are to be protected from unguarded wires. To adopt such an interpretation would clearly not be consistent with the broad language of Section 75.1003(a), supra, requiring guarding "at all points" where men "pass regularly under." This language clearly does not limit the applicability of the phrase "pass regularly under," to only those areas where men pass under wires on foot, as opposed to riding in a mantrip. In addition, I note that, as defined in Webster's Third New International Dictionary (1986 ed.), the term "pass," as applied to travel, does not distinguish between the act of ambulating, or of being transported, as this term is defined as "1 . . . c: to proceed along a specified route: . . . "