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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. VA 90-14
A.C. No. 44-05415-03558-A

v.

No. 1 Mine

ROGER DEEL, EMPLOYED BY
BLACKFOOT COAL COMPANY, INC.,
RESPONDENT

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia, for
the Petitioner;
Mr. Roger Deal, McClure, Virginia, pro se, for the
Respondent.

Before: Judge Fauver

The Secretary brought this civil penalty action against a
mine foreman, charging that he knowingly violated a safety
standard, under the Federal Mine Safety and Health Act of 1977,
30 U.S.C. 801 et seq.

After a hearing on the merits, a bench decision was issued
on August 16, 1990. This decision supplements and confirms the
bench decision.

FINDINGS OF FACT

1. At all relevant times, Respondent, Roger Deel, was
employed as a section foreman, on the second shift, at the No. 1
Mine of Blackfoot Coal Company, Inc., in Dickenson County,
Virginia.

2. Despite a requirement of the roof-control plan to mine
from right to left in retreat mining, mine management had a
policy of mining from left to right. This practice saved

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production time, by avoiding the tramming of the continuous mining machine back to the right side of the line of cuts when the left end was reached. However, it was a dangerous practice and violated the roof-control plan.

3. Mr. Deel and other foreman followed this violative practice knowing that it violated the roof-control plan. On November 14, 1988, the continuous-miner operator, Richard Turner, was acting foreman on the first shift. He followed the same practice of mining from left to right, in extracting pillars, instead of complying with the roof-control plan. He had prior experience as a full-time foreman, and knew that the plan required him to mine from right to left. While he was operating the continuous miner, at about 11:00 a.m., a roof fall began in the gob area and moved to his immediate site, covering his mining machine with fallen rock. He was trapped in the machine until rescuers could reach him, about 3:25 p.m. Mr. Turner suffered permanent back injuries.

4. Respondent Deel had followed the same violative practice on the production day previous to Mr. Turner's accident. Another foreman, Brock, also had followed the same violative practice previous to Mr. Turner's accident.

DISCUSSION WITH FURTHER FINDINGS

Mine management had a policy or practice of ignoring the roof-control plan requirement to mine from right to left in extracting pillars. The foremen and acting foreman Turner followed this practice, including the Respondent, Roger Deel.

Mr. Deel "knowingly" violated the roof-control standard (and therefore 30 C.F.R. 75.220) within the meaning of section 110(c) of the Act, which provides:

(c) Whenever a corporate operator violates a mandatory health or safety standard or knowingly violates or fails or refuses to comply with any order issued under this Act or any order incorporated in a final decision issued under this Act, except an order incorporated in a decision issued under subsection (a) or section 105(c), any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d).

It is no defense that Mr. Deel was following management policy or orders in violating the roof-control plan. The Act, in section 105(c), protects a miner, including supervisors, who refuse to carry out a work assignment or practice that is in

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violation of a safety standard or is reasonably believed to be hazardous. The violation was serious, because it compromised roof control and increased the risk of a roof fall.

However, the government has singled out Mr. Deel, without charging other foremen who were following the same violative practice, and without charging mine management who were responsible for this violative practice and had a clear duty to prevent it. This approach to law enforcement does not meet the standard of fair and evenhanded justice that the public is entitled to expect from a government agency.

I find that Mr. Deel knowingly violated the cited safety standard, but that his penalty should be substantially reduced from the amount proposed by the Secretary (\$700), because the government has not shown evenhanded enforcement toward mine management and the other foremen.

Considering this factor and the criteria for civil penalties in section 110(i) of the Act, I find that a civil penalty of \$50 is appropriate for this violation.

CONCLUSION OF LAW

1. The judge has jurisdiction over this proceeding.
2. Respondent, Roger Deel, violated 30 C.F.R. 75.220 as charged in the Petition for Proposed Assessment of Civil Penalty.

ORDER

WHEREFORE, IT IS ORDERED that Respondent, Roger Deel, shall pay a civil penalty of \$50 within 30 days of the date of this decision.

William Fauver
Administrative Law Judge