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SOL (MSHA) V. SOUTHERN OHIO 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. WEVA 90-136 A.C. No. 46-03805-03956
v.	Martinka No. 1 Mine
SOUTHERN OHIO COAL COMPANY, RESPONDENT	

DECISION

Appearances: Glenn M. Loos, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia, for the Secretary of Labor (Secretary); Rebecca J. Zuleski, Esq., Furbee, Amos, Webb and Critchfield, Morgantown, West Virginia, for Southern Ohio Coal Co. (SOCCO).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks in this proceeding a civil penalty for an alleged violation of the mandatory safety standard in 30 C.F.R. 75.902. The violation was charged in a section 104(d)(2) order of withdrawal issued November 1, 1989, because an approved fail-safe ground check monitoring system was not provided for the grounding circuit for two cooling motors in the No. 3 Main belt conveyor drive unit. Both parties engaged in pretrial discovery. Pursuant to notice, the case was called for hearing on September 19, 1990, in Morgantown, West Virginia. Virgil Brown, Dennis Cain, and Stanley Shelosky testified on behalf of the Secretary; John Randolph Cooper, Kenneth G. Moore, and Paul McKinney testified on behalf of SOCCO. Both parties filed post hearing briefs. I have considered the entire record and the contentions of the parties and make the following decision.

FINDINGS OF FACT

I

At all times pertinent to this proceeding, SOCCO was the owner and operator of an underground coal mine in Marion County, West Virginia, known as the Martinka No. 1 Mine. SOCCO is a

large operator. Between November 1, 1987 and October 31, 1989, 1,010 violations were assessed and paid during 965 inspection days at the subject mine. One was a violation of 30 C.F.R. 75.902. This history is not such that a penalty otherwise appropriate should be increased because of it.

II

On October 31, 1989, Federal coal mine inspector, electrical specialist, Virgil Brown, while conducting a regular electrical inspection at the subject mine, received a written complaint from a miner under section 103(g) of the Act. The complaint (dated October 22, 1989) stated that the ground monitor packages on the No. 3 54 inch belt drive cooling pumps were not working on both pumps.

III

On November 1, 1989, Inspector Brown, accompanied by a mine foreman and a union representative, proceeded to the No. 3 belt. The belt drive was energized and had been in operation. The controller box was opened, disclosing two pump motors, one a 10 horsepower motor, the other 15 horsepower. The ground monitors had a jumper wire between the No. 3 and No. 4 tabs on the unit. The wire had been put on in lieu of a ground monitor circuit package which apparently had been installed but was not operative. Because the ground monitor circuit package was inoperative, the jumper wire was needed in order that the pumps continue running.

IV

The belt drive is powered by two 300 horsepower motors on a common frame with the cooling pumps. The cooling pumps must be operative for the belt drive to run. There are grounds on the belt drive, and while the belt drive is running, the entire system including the cooling motors is adequately grounded.

V

Inspector Brown issued an order of withdrawal under section 104(d)(2) of the Act because of the absence of a ground monitor on the grounding circuit for the two cooling motors. Although the violation was originally designated as significant and substantial, it was later modified to delete this designation, and the inspector concluded that an injury was unlikely to result from the violation. He concluded that it resulted from Respondent's unwarrantable failure because the equipment had been allowed to operate for approximately three weeks without ground monitors for the cooling motors. The pump motors can be made to operate with the "jog button," even though the ground for the

large 575 volt frames is disconnected. Such a situation would occur if the cooling motors were replaced or tested.

The evidence establishes that the jumper wire was inserted at the direction of John Randolph Cooper, general maintenance superintendent of the subject mine. Cooper believed that the many parallel grounding pads on the belt drive, and the fact that there was a common frame between the cooling controls and the acceleration control satisfied the standard. Inspector Brown agreed that as long as the belt drive was operating, the entire system was ground monitored. However, when work is being done on the pumps or pump motors, the belt system is required to be deenergized, and the ground monitor system would be inoperative. If the pump motors are started with the jog button, they would not be ground monitored, unless they had a separate operative ground monitoring package. I accept the inspector's testimony on this issue.

IV

The violation was abated by extending the monitor from the belt starter box up to the pump motors by attaching a length of wire. This took from 30 minutes to one hour. This method of abatement was permitted by the inspector to avoid a long shut down of the belt, and the order was terminated. Subsequently, operative ground monitor packages were installed on the pump motors.

REGULATION

30 C.F.R. 75.902 provides in part:

> On or before September 30, 1970, low- and medium-voltage resistance grounded systems shall include a fail-safe ground check circuit to monitor continuously the grounding circuit to assure continuity which ground check circuit shall cause the circuit breaker to open when either the ground or pilot check wire is broken . . .

ISSUES

1. Whether the evidence establishes a violation of 30 C.F.R. 75.902

2. If so, whether the violation resulted from Respondent's unwarrantable failure to comply with the standard?

3. If a violation is established, what is the appropriate penalty therefor?

CONCLUSIONS OF LAW

I

Respondent was at all times pertinent to this case subject to the provisions of the Mine Act in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

II

On November 1, 1989, and for some weeks prior thereto the No. 3 Main belt cooling motors in the subject mine were not provided with a ground monitor check circuit. This was a violation of 30 C.F.R. 75.902.

III

The violation was not serious in that it was unlikely to result in injury to a miner. This was so because the system was adequately grounded while the belt was in operation. The weekly electrical examination of the circuit breakers and the electrical equipment is conducted by visual examination without stopping the belt. The ground monitors are examined only on a monthly basis.

IV

Unwarrantable failure means aggravated conduct, constituting more than ordinary negligence. Emery Mining Corp., 9 FMSHRC 1997 (1987); Southern Ohio Coal Company, 12 FMSHRC 1498 (1990). "While negligence is conduct that is "inadvertent,' "thoughtless', or "inattentive', conduct constituting an unwarrantable failure is conduct that is "not justifiable' or is "inexcusable'." SOCCO, 12 FMSHRC at 1502.

Respondent here attempted to install the ground monitor packages in the cooling motors, but was unable to make them operational. It then intentionally by-passed the ground monitors in order to continue running the belt. Respondent believed in good faith that the many grounds and ground monitor systems on the belt drive itself provided a fail-safe ground monitor for the cooling motors. I do not accept this conclusion, but cannot conclude that it therefore constitutes inexcusable or aggravated conduct. The violation did not result from Respondent's unwarrantable failure to comply with the standard.

V

Respondent is a large operator with an average history of prior violations. The violation here was not serious. It resulted from Respondent's negligence. It was promptly abated in

good faith. Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is $250.

ORDER

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

1. Order No. 3111547 is AMENDED to a section 104(a) citation. The finding of unwarrantable failure is DELETED.

2. As amended, the citation is AFFIRMED.

3. Respondent shall, within 30 days of the date of this decision, pay the sum of $250 as a civil penalty for the violation found herein.

James A. Broderick
Administrative Law Judge