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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 90-141
A.C. No. 46-03805-03961

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);
David M. Cohen, Esq., Lancaster, Ohio and
Joseph S. Beeson, Esq., Robinson & McElwee,
Charleston, West Virginia, for Southern Ohio
Coal Company (SOCCO).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks a civil penalty for an alleged violation of 30 C.F.R. 75.1725(c) charged in a citation issued August 8, 1989. The citation resulted from the investigation of an accident occurring on May 5, 1989, and concluded that SOCCO was not following safe work procedures involving tagging and locking out machinery when workers are exposed to moving parts. Both parties conducted pretrial discovery. Pursuant to notice, the case was heard in Morgantown, West Virginia on September 19 and 20, 1990. James Young, John S. Guido and Louis DeRosa testified on behalf of the Secretary; William Laird and Randolph Ice testified on behalf of SOCCO. Both parties have filed posthearing 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. In the 24 months prior to the violation alleged in

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this proceeding, SOCCO had a history of 1049 paid violations in a total of 971 inspection days. None of these was a violation of 30 C.F.R. 75.1725(c). This history is not such that penalties otherwise appropriate should be increased because of it.

II

On August 8, 1990, Federal Coal Mine Inspector James Young, when he arrived at the subject mine site, was given a written request by two union representatives to investigate an accident which had occurred at the mine on May 5, 1989. The request stated the miner Sam Guido was injured when the No. 5 conveyor belt was turned on while Guido was working on it. Inspector Young interviewed Martinka foremen William Laird and John Gowers, and miners Louis DeRosa, Frank Renick, and Dempsey McHenry. He did not interview Sam Guido who was not at work that day.

III

Following his investigation Inspector Young issued a section 104(a) citation for a violation of 30 C.F.R. 75.1725(c) because Respondent was not following safe work procedures involving tagging and locking out machinery when miners were exposed to moving parts. The inspector determined that the violation was significant and substantial and was the result of SOCCO's moderate negligence.

IV

On May 5, 1989, a crew working under belt supervisor Laird was engaged in extending the 5-54 inch belt during the midnight shift. The section had advanced and the belt had to be extended by one block. The top rollers were installed, and bottom rollers had still to be installed. Laird travelled to the headgate to take up the slack in the belt. He was unable to take up the entire slack with the take-up device so he called foreman Gowers to tell him he was going to start the belt. Gowers did not tell Guido and DeRosa who were working on the belt that the belt was going to be started. Neither did Laird tell them before he went to the headpiece. Guido had returned to the belt after having urinated and his gloves were on the belt. He intended to finish setting the top roller using a "come-along" (also called a "red devil"), when the belt was turned on. Guido was an experienced beltman. DeRosa was about 10 feet from Guido and had gone to the tailpiece to get some additional cribs. He heard the belt "bump" once or twice, and heard Guido yelling after the belt started. The come-along bounced along the belt after it was started. Dempsey McHenry shut off the belt. Guido claimed that he sustained injuries to his leg.

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Guido has had a substantial number of prior work connected injuries at Martinka. He also has a history of absenteeism.

SOCCO has attacked Guido's credibility and suggests that his testimony is influenced by the fact that he has a pending personal injury suit against SOCCO arising out of the accident. However, the testimony of DeRosa alone establishes that the belt was started without warning when miners were working on or near it.

REGULATION

30 C.F.R. 75.1725(c) provides as follows:

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.

ISSUES

1. Whether the evidence establishes a violation of the standard as charged?

a. Whether extending a belt constitutes repairs or maintenance on machinery?

b. If so, whether motion of the belt was necessary to make adjustments?

2. If a violation is established, whether it was significant and substantial?

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

CONCLUSIONS OF LAW

I

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

II

I conclude that the action in extending the belt described in finding of fact IV constitutes maintenance on machinery as that term is used in the regulation 30 C.F.R. 75.1725(c). The term maintenance may mean preserving a thing in proper condition,

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or it may include continuance, extension or prolongation. It is defined in the American Heritage Dictionary of the English Language (New College edition 1976) as "1.a The act of continuing, carrying on, preserving or retaining something 3. The work of keeping something in proper condition." The Synonym Finder, J.I. Rodale (1978) lists the following synonyms for maintenance: "1. preservation, upkeep, annual upkeep, keeping up; 2. continuance, continuity, extension, prolongation; perpetuation, persistence, perseveration, repetition." (p.697) A belt move includes adding belt to an existing belt system, adding rollers, taking up the belt slack, and placing blocks to support the belt tail piece. All of these functions are necessary to produce coal as the face advances. The belt system is or includes machinery. Extending it involves adding and adjusting activities which constitute maintenance.

III

The evidence establishes that power was resumed on the belt; it was "bumped" once or twice before being started while miner Guido was performing maintenance work on the belt. There is conflicting evidence as to exactly what he was doing and whether he was actually on the belt when it started. I am not the proper forum to decide whether and to what extent Guido was injured as a result of the belt being turned on. I only have to decide whether a violation occurred. The evidence however, is clear that neither Guido nor DeRosa were informed that foreman Laird was going to start the belt. Although motion of the belt is necessary to make adjustments, it obviously cannot safely be accomplished while the belt is being worked on. All the affected miners must be informed if a belt which has been locked out is going to be started up. This was not done here. I conclude that a violation of 30 C.F.R. 75.1725(c) has been established

IV

Making repairs or adjustments on a belt while the belt is moving is a serious violation. This is so whether or not the injury Guido complains of resulted from the violation. Such a violation is reasonably likely to result in serious injury. Therefore it was appropriately designated as significant and substantial. Foreman Laird believed that he had informed the miners working on extending the belt that he was going to start the belt to take up the slack. In fact he informed foreman Gowers, and Gowers failed to notify Guido and DeRosa. I conclude that the injury resulted from SOCCO's negligence.

Based on the criteria in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$300.

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ORDER

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

1. Citation 3118169 issued August 8, 1989, is AFFIRMED.
2. Respondent shall within 30 days of the date of this decision pay the sum of \$300 for the violation found herein.

James A. Broderick
Administrative Law Judge