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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. PENN 90-17
A.C. No. 36-00929-03666

v.

Marion Mine

TUNNELTON MINING COMPANY,
RESPONDENT

DECISION

Appearances: Mark V. Swirsky, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia,
Pennsylvania, for the Petitioner;
Joseph A. Yuhas, Esq., Ebensburg, Pennsylvania,
for the Respondent.

Before: Judge Fauver

The Secretary seeks a civil penalty for an alleged safety violation, under 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

The parties have submitted the case on a stipulated record.

The key issue is whether 30 C.F.R. 75.202(a) applies to a part of a coal mine (1) which is required to be traveled weekly by a certified examiner and (2) in which miners other than certified mine examiners are not normally required to work or travel but may from time to time be required to do so, e.g., for rock dusting or for removing pumps or equipment.

It is stipulated that unsupported loose roof was found in the area cited in Citation No. 2894260, which charges a violation of 30 C.F.R. 202(a).

30 C.F.R. 75.202(a) provides:

75.202 Protection from falls of roof, face and ribs.

(a) The roof, face and ribs of areas where persons work or travel shall be supported or otherwise

controlled to protect persons from hazards related to falls of the roof, face or ribs and coal or rock bursts.

The regulation thus has three elements:

1. An area where persons work or travel
2. shall be supported or otherwise controlled
3. to protect persons from falls of roof, face or ribs.

The first element of the regulation is a coverage element: "where persons work or travel." The parties have stipulated that the area where loose roof was found "is required to be traveled weekly by a certified examiner" (Stip. 19) and that other miners "are not normally required to be in the cited area" but may work there "in certain situations such as for rock dusting, and for pump and equipment removal" (Stip. 25).

Respondent contends that 202(a) does not apply to the cited area because it is not an "active working" within the meaning of 30 C.F.R. 75.2(g)(4), which defines "active workings" as "any place in a coal mine where miners are normally required to work or travel." However, 202(a) does not limit its protection to "active" or "inactive" places in a mine, but simply applies to "areas where persons work or travel" This plain meaning is also illustrated by the published explanation of the rule, as follows:

For clarity, the final rule applies to all "areas where persons work or travel" replacing the existing requirement that this protection be afforded in all "active underground roadways, travelways and working places." [53 Fed. Reg. 2355 (Jan. 27, 1988).]

The regulation for weekly examinations requires that the certified examiner travel "in the return of each split of air where it enters the main return . . . , in the main return, at least one entry of each intake and return aircourse in its entirety, idle workings, and, insofar as safety conditions permit, abandoned areas." 30 C.F.R. 75.305. Miners are not permitted to travel under unsupported roof, by virtue of 202(b), which provides: "(b) No person shall work or travel under unsupported roof unless in accordance with this subpart." The exceptions permitting working or traveling under unsupported roof in Subpart C are not applicable to a man on foot, such as a mine examiner.

The interpretation of 202(a) urged by Respondent would permit an examiner or other miner (who only occasionally works or

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travels in a given area) to work or travel under unsupported roof, against the plain meaning of 202(a) and (b). Respondent contends that a different regulation, instead of 202(a), applies to the cited area. It relies on 30 C.F.R. 75.211(c), which provides:

When a hazardous roof, face, or rib condition is detected, the condition shall be corrected before there is any other work or travel in the affected area. If the affected area is left unattended, each entrance to the area shall be posted with a readily visible warning, or a physical barrier shall be installed to impede travel into the area.

Sections 202(a) and 211(c) are not mutually exclusive. I hold that the safety protection of 202(a) applies equally to certified weekly examiners and any other persons who "work or travel" in any area of an underground coal mine.

Citation No. 2894260 was properly issued. Considering all the criteria for a civil penalty in 110(i) of the Act, I find that a penalty of \$85 is appropriate for this violation.

ORDER

WHEREFORE IT IS ORDERED that:

1. Citation No. 2894260 is AFFIRMED.
2. Respondent shall pay a civil penalty of \$85 within 30 days of this decision.

William Fauver
Administrative Law Judge