

CCASE:
DRUMMOND COMPANY v. SOL (MSHA)
DDATE:
19910114
TTEXT:

Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

DRUMMOND COMPANY,
CONTESTANT

v.

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

CONTEST PROCEEDINGS

Docket No. SE 91-10-R
Citation No. 3020151;
10/4/90

Docket No. SE 91-11-R
Citation No. 3020153;
10/4/90

DECISION

Appearances: David M. Smith, Esq., Maynard, Cooper, Frierson
and Gale, Birmingham, Alabama, for the Contestant;
William Lawson, Esq., U. S. Department of Labor,
Office of the Solicitor, Birmingham, Alabama, for
the Respondent.

Before: Judge Weisberger

Statement of the Case:

These cases are before me based upon Notices of Contest filed by the Operator (Contestant) on October 26, 1990. On the same date Contestant filed a Motion to Expedite a Hearing on the issues raised by the Notice of Contest. In a conference call on October 29, 1990, between the undersigned and counsel for both Parties, it was agreed that a hearing be scheduled for November 14 and 15, 1990, and a hearing was subsequently held on those dates in Hoover, Alabama. Walter Deason and Sidney Hill testified for the Secretary (Respondent). George Capps, John M. Busby, Billy J. Johnson, and Larry Lee, testified for the Contestant.

At the close of the hearing, Contestant indicated that it sought an opportunity to submit Proposed Findings of Fact and a Brief, and the Parties were allowed to file same within 15 days after receipt of the transcript of the proceedings. The Parties were further granted a right to file a reply brief 5 days thereafter. Respondent filed a Brief on December 17, 1990, and Contestant filed Proposed Findings of Fact and Conclusions of Law on December 20, 1990. Contestant and Respondent filed Reply Briefs on December 27 and 26, respectively.

Findings of Fact and Discussion

I.

On October 4, 1990, while inspecting Contestant's Mary Lee No. 2 Mine, MSHA Inspector Walter W. Deason, issued a Citation alleging a violation of 30 C.F.R. 75.400 in the area of the 4315 conveyor belt drive. Section 75.400, supra, provides, as pertinent, that, inter alia, coal dust, including float coal dust deposited on rock-dusted surfaces, and loose coal shall not be permitted to accumulate.

The 4315 section conveyor belt transports coal from the face outby to the 430 belt line. In essence, Deason indicated that he measured an accumulation of float coal dust, up to 19 inches deep, beneath the take-up rollers and extending outby. The accumulation also extended across the 36 inch wide belt. Deason described the material as powdery dry, like gun powder, and real fine. After he issued the Citation in question, he had some miners shovel under the rollers to clean the accumulation. He indicated that the material that was shoveled was powdery dry.

According to Deason, he measured the material around the tight side of the belt with a ruler, and it was 16 inches deep. He described the material as black. He indicated that he stuck his stick in it, and opined that it was dust all the way through. However, according to Deason, he doubted he could have put his hand in the material, as it was compacted. On cross-examination he conceded that coal dust becomes compacted when it is wet.

Sidney Hill, Jr., an international representative employed by the United Mine Workers of America, who performs safety inspections, testified that he traveled with Deason on October 4, and that in the belt header there ". . . was indeed perhaps one of the worst cases of accumulation that I had observed." (Tr. 209). He described an accumulation of coal along the main rollers beneath the belt, which he estimated to be a foot and a half deep. He indicated that the material was loose and ". . . dry in some cases." (Tr. 209). Hill testified that subsequent to the discovery by Deason of the accumulation, it was removed with a shovel. Hill said he then got down on his hands and knees and examined the coal "and I would say for the most part it was dry coal." (Tr. 211).

I find that the testimony of Contestant's witnesses do not rebut the testimony of Respondent's witnesses which I find

establishes an accumulation of coal in the area in question. George Capps, a miner employed by Contestant who served as the Chairman of the Union's Mine Safety Committee on the dates in question, testified that he measured with a ruler the depth of coal indicated on a walking stick that Deason had inserted in the coal, and it showed a depth of only 9 inches. In the same connection, John M. Busby, Contestant's evening shift safety inspector, testified that the material, in essence, was at most 10 inches deep, and that on the tight side it tapered down from that level. I find the detailed testimony of Capps with regard to the procedure that he used in measuring the depth of the coal to be persuasive. I conclude, however, that the coal in the area in question to a depth of 9 inches, as testified to by Capps, is nonetheless indicative of an accumulation within the purview of Section 75.400, supra.

Capps indicated that with regard to the accumulation in the area where Deason measured the depth of the coal at the top of the take-up, "it was just mush, mushy stuff." (Tr. 230). He said that the material had some rocks in it, and that when he shoveled under the belt after the condition had been observed by Deason, the material was not dry. Busby indicated that, in the area where the power center is close to the belt line, he was a foot to a foot and a half from the material, and it contained rock dust coal and muck. He described it as hardened and ashen gray in color. However, he indicated that, on the tight side of the belt, the accumulation that was opposite the power center and between the two rollers contained some dry material. He also indicated that he saw float coal dust around the conveyor drive. He also agreed that under the take-up roller, where a roller was missing, the material "in general" was dry (Tr. 374-375). He described the accumulation that the belt was touching, as a mixture of lump coal, fine lump coal, and ashen particles, and that there was a "smattering" of black on top. (Tr. 337).

The testimony of Deason is confusing with regard to whether he termed the material in question coal dust or float coal dust. However, I conclude that Contestant's witnesses have not rebutted the testimony of Deason and Hill that the material in question, to a depth of at least 10 inches, contained coal that to some degree was not solid and was loose. Although Busby described the material as damp and wet, he indicated that it was not "running wet" (Tr. 388). Capps indicated that the material that he shoveled under the belt was not dry, and that at the at the top of the take-up it was wet and mushy.

I find the testimony of Busby and Capps inadequate to rebut either the testimony of Hill who indicated that he was on his hands and knees when he observed that the coal was dry for the most part, or the testimony of Deason that at least in some areas the coal was fine and powdery dry. Further, although Contestant's witnesses disagreed with Deason with regard to the

texture of the material in question, they, in essence, agreed with him that the belt was running in the material. Taking this fact into account, and considering the depth of the material being at least 10 inches, and the extent of the material, consisting of loose coal, which was found across the 36 inch belt and under the take-up rollers and extending outby thereby, I conclude that there was an accumulation of loose coal. As such I find that Contestant herein did violate Section 75.400, supra, as alleged.

II.

In the Citation at issue, Deason indicated that the violation was significant and substantial. None of Respondent's witnesses contradicted the testimony of Deason that a roller was missing from the take-up unit, and as a consequence the conveyor belt was rubbing against metal creating friction, which is a source for ignition. According to Deason, the belt, under the bottom of the rollers, was running in an accumulation of coal that was "powdery dry" (Tr. 29). He noted that the belt was "flipping it up in the air" (Tr. 29). Hill indicated that he was on his hands and knees and ". . . for the most part it was dry coal" (Tr. 211). On the other hand, Capps, while agreeing that the belt was turning in an accumulation of coal, testified that he shoveled under the belt and "it wasn't dry" (Tr. 264). Busby, who also shoveled the coal, indicated that the material that the belt was touching was "caked" (Tr. 376), and that "It was a mixture of lump coal, fine lump coal ashen particles. There was some rock dust in it and there was a smattering of black on top" (Tr. 337). However, on cross examination he agreed that "in general," the mixture was dry in consistency (Tr. 375). Also, although he testified that the material was damp to dry and was not "dusty dry" (Tr. 386), on cross examination, he indicated that the material directly underneath the missing roller "was fairly dry" (Tr. 385). Also, although he indicated that he did not see "a great deal of dust" being "stirred" by the belt, he nonetheless indicated that "there was float coal dust on the surface" (Tr. 348).

Thus, taking into account the presence of significant amounts of coal accumulation, the running of a conveyor belt in coal, the existence of dry coal particles, and the presence of friction, an ignition source, I conclude that, given the continuation of the violative condition herein, a hazard of a fire would have been reasonably likely to have occurred. Further, inasmuch as the flow of air went from the area in question inby, smoke from a fire in this area would be carried inby. It was the conclusion of Deason, which has not been rebutted by testimony from any of Contestant's witnesses, that serious injuries to miners would have resulted due to smoke inhalation or other hazardous conditions occasioned by a fire. Hence, I conclude that there was a reasonable likelihood of an

injury of a reasonably serious nature. I thus conclude that it has been established that the violation herein was significant and substantial (See, Mathies Coal Company, 6 FMSHRC 1 (January 1984)).

III.

Deason indicated that the violation herein was as a result of Contestant's unwarrantable failure. It thus is incumbent upon Respondent to establish that the accumulation herein resulted from Contestant's aggravated conduct (Emery Mining Corporation, 9 FMSHRC 1997 (1987)). For the reasons that follow, I conclude Respondent has not met this burden.

a. History of Accumulations at Conveyor Belts

At 1:03 a.m., on October 2, 1990, two days before Deason issued the Citation in question, he cited Contestant for an accumulation of coal beneath and around the take-up unit at the slope belt. According to Deason, he found that shift inspectors were not placing their initials in places they inspected. Deason testified that he then told Carl Ware, the foreman of the owl shift, to tell the fire bosses that they needed to make inspections and to place their initials on inspection reports. The following day at 4:16 p.m., Deason served Contestant with a Citation alleging an accumulation of coal under the belt line drive and the take-up unit of the 40 North No. 1 Conveyor Belt. On October 4, at 4:48 p.m., Deason served Contestant with a Citation alleging an accumulation of coal beneath the belt drive and a take-up unit of the 40 North No. 3 Conveyor Belt. Ten minutes later, Deason cited Contestant for an accumulation of coal from the end drive rollers to the discharge rollers at the 4050 section conveyor drive.

According to Deason, the accumulation at the slope belt was 13 inches deep as measured by him, and extended from rib to rib. He indicated that the accumulation 20 to 30 feet away from the take-up unit had been there for an extended period of time as it was impossible for coal to spill that far back off the belt. This testimony was not contradicted or otherwise impeached by Contestant.

According to Deason, the accumulation at the 40 North No. 1 Belt extended 50 to 60 feet and was 35 inches deep at the deepest point. Deason indicated that this condition was readily visible. He indicated that the material consisted of small particles of coal, and hence was not considered to be a spillage which is lumpy and is usually on the side of a belt. In contrast, the accumulation at the 40 North No. 1 belt was at the bottom of the belt. According to Deason it takes time for material to accumulate on the bottom. Hence, according to Deason, this accumulation did not occur overnight. Deason discussed this

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condition with Busby as follows: "I just -- basically I just told him, you know, we had to clean the accumulations up and got with him on the, you know, discussing the amount of time that it would take to clean the accumulations up, you know, and establish an abatement time" (Tr. 61). (sic).

In essence, Deason testified that the accumulation at the 40 North No. 2 Belt was up to 12 inches deep and the belt was rubbing against the accumulations for a distance of approximately 30 feet. This testimony was not impeached or contradicted by Contestant.

Essentially it was the testimony of Deason that the accumulations at the 4050 section conveyor drive extended 20 to 30 feet outby the belt and between the tracks. He indicated that the accumulations were up to 13 inches deep and consisted of small particles and that the material was not lumpy. He opined that a driver of a vehicle in the area would be able to see the accumulations.

After noting the accumulations in the 4050 section conveyor drive, Deason went to the area in question (4315 section conveyor belt) and in the neutral entry saw coal dust extending a distance of 7 crosscuts. (FOOTNOTE 1) He described the material therein as float coal dust and black, which led him to conclude that it presented a serious hazard. He then went to look for the source of the dust he had observed in the neutral entry, and went to the 4315 header where he observed dust being flipped in the air.

In general, Hill testified that on October 3 while inspecting the mine with Billy Ray Powell, a member of the Local Union's safety committee, he asked Powell the reason why the amount of coal had accumulated, and the latter told him that ". . . in the past they had some problems on the belt line and the conditions were ones that were being worked upon, . . ." (Tr. 207). However, Hill did not describe the nature of these problems, nor did he indicate that they were prevalent in the area in question.

b. The Length of Time the Coal Was Allowed to Accumulate

With regard to the accumulations in the areas in issue, Deason indicated that because the consistency of the material therein was powdery and real fine it had to have been ground. He thus concluded that the accumulations could not have occurred in the time that elapsed from the end of the previous day shift. Hill opined that inasmuch as there was no indication of any blockage on the belt which would have caused a rapid accumulation

(spillage), the accumulations herein occurred over a period of time. Neither Deason's nor Hill's testimony was impeached or rebutted by Contestant.

c. Visibility of the Accumulations

Deason, testified to having observed powdery dry accumulations at the 4315 header which were 19 inches deep. However, he did not indicate with any degree of specificity as to where he was when he observed this condition, and as to whether this condition was readily observable from the walkway side. Hill indicated in this connection that he walked with Deason from the tail roller to the take-up unit, and that "along the belt roller, the main roller, there was accumulations of coal beneath the belt and extended in varying degrees all the way back to the belt take-up unit. The coal was very deep." [sic] (Tr. 209). He indicated that these conditions were readily visible to him and ". . . they would be visible to a person walking by them, I would think" (Tr. 214).

According to Capps, when he made his own inspection of the area in question immediately prior to the arrival of Deason, the area "looked good" (Tr. 251), and there were no hazards. He indicated, essentially, that he was not able to see the belt running in accumulations or rubbing against the frame where the roller was missing, as the guards had not been removed. (FOOTNOTE 2) He also indicated that the belt line was clean and that, specifically, the area under the rollers was clean. However, he indicated that the take-up area was not clean, and that he would have seen that area if he would have looked through the screens.

Busby indicated that the area of the header is difficult to see because of the mesh screens, but conceded that the area in which the rollers are located is susceptible to spillage, and hence demands a closer inspection than other areas of the belt. Indeed he indicated that he kneeled down along the walkway or travel side of the belt, looked over the guards to the belt line, and saw an area of hardened material which extended under the belt to a depth of about 10 inches. He noted that he was standing one to one and a half feet away when he made this observation.

d. Analysis

I conclude that the weight of evidence establishes that Contestant did not use due diligence in inspecting for accumulations in the area in question. The weight of the

evidence specifically establishes that the accumulations in question would have been noticed upon a careful inspection. Due to the extent and depth of the accumulations (see I, *infra*), I conclude that it is highly likely that they existed at least 4 hours earlier when the preshift examination was made.

In its Brief, Respondent asserts that Contestant knew of the violation herein and did not abate it until cited by Deason. The record fails to establish such knowledge on the part of Contestant of the specific accumulations at the specific locations in issue, i.e., the 4315 section conveyor belt. (c.f., Southern Ohio Coal Company, 12 FMSHRC 1498 (1990)). The fact that accumulations on four other belt lines were found and cited by Deason, on October 2-4, 1990, does not per se establish either knowledge or aggravated conduct with regard to the specific accumulations herein at the 4315 belt header (see, Eastern Associated Coal Corporation, 12 FMSHRC 239 (1990)). There is insufficient evidence that Deason had any discussion with any of Respondent's personnel prior to the issuance of the Citation in issue, with regard to problems with accumulations at the belt lines. The only evidence proffered by Respondent is the testimony of Deason with regard to his conversation with Busby after he (Deason) found an accumulation at the 40 North No. 1 belt on the evening of October 3, 1990. (III, a, *infra*). A plain reading of this testimony reveals that it does not establish that Deason informed Busby of the need either to take care of accumulations in general on belt lines, or to be aware of such problems in the area in question. It would appear that Deason's comments to Busby were related solely to abating the accumulations at the 40 North No. 1 header. Similarly Deason's conversation with Ware on October 2, in which he told Ware to tell fire bosses of the ". . . need to be making these examinations and need to putting dates and times and initials. . ." (Tr 48), was in the context of Deason's concern with the failure by inspectors to enter their initials upon making examinations. There is no evidence that Respondent was informed by Deason of the need to make a thorough inspection of the area in question. Thus, the fact that Deason found accumulations after he spoke to Ware and Busby does not, per se, establish aggravated conduct.

Further, I reject the argument advanced by Respondent, that Contestant made a conscious decision not to stop production of coal to clean the accumulations, but rather to wait until the idle owl shift to do so. This argument is based on the testimony of Busby that, "normally," he would have had the cited conditions cleaned during the owl shift when the guards would be removed

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allowing the area on the tight side to be cleaned (Tr. 377).(FOOTNOTE 3)
Since the record does not establish that Respondent had knowledge of the accumulations herein, I do not place much weight on what Busby would have done, had he in fact known of the accumulations. I find this testimony too speculative. I place more weight on evidence of what Contestant actually did with regard to the removal of the accumulations.

In this connection, neither Deason nor Hill saw anyone shoveling coal from under the belt on October 4, prior to the issuance of the Citation. Busby also indicated that no one was shoveling when he walked into the 4315 area. On the other hand, Capps, in essence, testified that a miner was shoveling out from under the belt about 200 to 250 feet inby the headers. I find Capps' testimony credible inasmuch as none of the other witnesses who were present indicated specifically that they did not see a miner cleaning from under the belt, 200 to 250 feet inby the headers. Also, Busby testified that at the time of Deason's inspection he was told by Don Clark, the evening shift mine foreman, that the latter had previously assigned an employee to shovel. In addition, Deason, in essence, indicated that he saw that some accumulations had been shoveled on the tight side in the area of the header. In this connection, Busby testified that the first 25 or 30 feet inby the area in question, from the walkway across to the tight side, was clean and that "the residue with shovel markings was wet" (Tr. 393). This testimony has not been rebutted. I thus conclude that Respondent made some efforts to clean up the accumulations.

Based on all the above, I conclude that the record is insufficient to support a conclusion that the accumulations at issue resulted from Respondent's aggravated conduct. Hence, the violation herein is not the result of Respondent's unwarrantable failure.

Docket No. SE 90-11-R

On October 4, 1990, Deason issued Citation/Order No. 3020153 alleging a violation of 30 C.F.R. 75.303 in that "adequate belt examinations" were not conducted on the day and evening shifts

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"in that the record books indicate none observed" on the 40 North, Nos. 1, 2 and 3, 430, and 4315 section belts. (FOOTNOTE 4)

Section 75.303, supra, in essence, provides that within 3 hours immediately preceding a shift, certified persons shall examine every working section, and that "belt conveyors on which coal is carried shall be examined after each coal-producing shift has begun." Section 75.303, supra, further provides as follows:

Such mine examiner shall place his initials and the date and time at all places he examines. If such mine examiner finds a condition which constitutes a violation of a mandatory health or safety standard or any condition which is hazardous to persons who may enter or be in such area, he shall indicate such hazardous place by posting a "danger" sign conspicuously at all points which persons entering such hazardous place would be required to pass, and shall notify the operator of the mine.

In order for Respondent to establish a violation herein for a failure to examine, it must first be proven that there were hazardous conditions that were not reported in an area required to be examined, i.e., "active workings." That term is defined in 30 C.F.R., Section 75.2(g)(4) as ". . . any place in a coal mine where miners are normally required to work or travel." In essence, the testimony of Deason described accumulations of coal, for which he cited Contestant, at the slope belt, 40 North No. 1 belt, 40 North No. 3 belt, and 4050 Section drive. (Docket No. SE 91-10-R, III, (a) infra). Contestant has not rebutted or impeached Deason's testimony in this regard. Deason indicated in his testimony that the 40 North belt No. 1, and the area cited concerning the 4050 belt, were areas that were regularly traveled. Deason also indicated that in the area of the slope belt that contained an accumulation of coal, the take-up unit and rollers were not guarded, in violation of 30 C.F.R. Section 75.1722(a), as the guards had rusted and were torn. He noted that this was in an area that was traveled daily and where miners worked daily. None of these conclusions were rebutted or

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impeached by Respondent. I thus conclude that it has been established that there were violative conditions in areas required to be examined.

Deason indicated that if one would walk by, one could not help but see the condition of the guarding at the slope belt. This opinion was not rebutted or impeached. In addition, Deason's testimony that guards had been removed on the tight side of the 4315 belt header, was corroborated by Capps and Busby.

Although there were accumulations and a guard missing in the 4315 header area, these facts were not reported in the Preshift Mine Examiner's Report, for the period from September 25, 1990, through the evening shift of October 4, 1990. The 2:00 p.m. to 2:30 p.m. examination of October 3, 1990, indicates "belt needs cleaning," but did not specify the specific accumulations at the header, nor did it note the missing guard. In the same fashion, the Preshift Report for the period from 8:00 p.m. to 10:30 p.m., October 3, 1990, indicates "cleaned on belt," but does not specify the area that is in question. (FOOTNOTE 5)

Contestant did not offer the testimony of any of its examiners to attempt to establish that the violative accumulations at the 40 North No. 1 and 4050 belts were examined and reported to the Operator. (FOOTNOTE 6) Nor did Respondent offer any testimony to establish that the violative condition of missing guards at the 4315 belt was examined and reported.

Similarly the Preshift Mine Examiner's Reports for the 4050 Section conveyor drive for the period from September 25, 1990, through the night shift of October 4, 1990, do not report any accumulations at the rollers. The remarks for the 6:00 a.m., examination of September 25-28, October 1-3, were not accorded any probative value as they were not legible and could not be understood.

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The Preshift Mine Examiner's Report for the period from September 25, 1990, through the day shift of October 4, 1990, did not indicate any of the accumulations at the slope, 40 North No. 2 and 3 belts, as set forth above, infra.

Hence, it is concluded that inasmuch as Contestant did not report the conditions set forth above, infra, it did violate Section 75.303. supra. (FOOTNOTE 7)

Deason had told Ware on October 2, to inform the fire bosses of the need to make inspection and enter dates, times, and initials. Subsequently, Deason observed hazardous conditions of missing guards at the 4315 header, and accumulations of coal at the 40 North No. 1 and 4050 belts, areas that were regularly traveled. The record fails to establish that these areas containing hazardous conditions were examined. No evidence was presented to excuse Contestant's actions in this regard. In this circumstances, I conclude, that the failure to examination was the result of Contestant's unwarrantable failure (See, Emery, supra).

ORDER

Docket No. SE 91-10-R.

It is ORDERED that, the Notice of Contest is sustained in part in that Citation/Order No. 3020151 shall be AMENDED to reflect the fact that the Citation therein was not the result of Contestant's unwarrantable failure.

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It is further ORDERED that, in all other respects the Notice of Contest is DISMISSED.

Docket No. SE 91-11-R

It is ORDERED that the Notice of Contest is sustained in part in that Citation/Order No. 3020153 shall be AMENDED to reflect that it is to be reduced from Section 104(d) Order to a Section 104(d)(1) Citation. It is further ORDERED that, in all other respects, the Notice of Contest be DISMISSED.

Avram Weisberger
Administrative Law Judge

(FOOTNOTES START HERE)

1. Each crosscut is 70 feet in length.
2. On the date in issue 7 mesh guards measuring approximately 4 by 8 feet were in place.
3. In this connection, Respondent in its Brief, also refers to the testimony of Capps that, in essence, screens (guards) are "never" taken down while the belt is running, and that "usually" this is done during the owl shift when the belt is shut down (Tr. 297). I do not place much weight on these conclusions, as the record does not establish the basis for these conclusions. There is no evidence that Capps had personal knowledge of these matters, nor does the record indicate the source he relied on for his conclusions.
4. The Section 104(d) Order in issue is predicated upon the underlying Section 104(d)(1) Citation, discussed in Docket No. SE 91-10-R, infra, wherein I found that the violation therein was not the result of Contestant's unwarrantable failure. Hence, the Order should be amended to a Section 104(d) Citation.
5. Entries in the preshift examination section in the Examiner's Reports for: 10/1/90, 10/2/90 for the period 5:10 a.m. to 5:12 a.m., 10/3/90 for the period 5:10 a.m. to 5:12 a.m., and the remarks for October 4, 1990, for the time period 4:00 a.m. to 4:12 a.m., were not accorded any probative value as they were not legible and could not be understood.
6. Busby indicated that, within the scope of his duties, he normally examines the belt line, although there is a designated belt examiner. However, he did not make any examination on October 3 or 4, and could not state when he last examined it prior to the date the Citation herein was issued, i.e., October 4.
7. Thus, since a violation of Section 75.303, supra, has been established, it is not necessary to resolve the conflict in testimony between Busby and Deason with regard to the distance of the unguarded area at the 40 North No. 3 belt, and as to whether

or not the area that was unguarded at the 40 North No. 2 belt was regularly traveled or not.

Deason also cited missing guards at the 4050 belt. However, there was not a mandated requirement to make a preshift examination of the area of the 4050 belt where the guard was missing, as Busby's testimony that no one works around the tail piece, was not contradicted by Deason who indicated that the area was not heavily traveled. Further, although Deason indicated that people go to that area to clean the belt, Busby indicated that, in such an event, the belt is turned off. Since this area did not have to be inspected, it is not necessary to resolve the conflict between Deason and Johnson with regard to whether the missing guard at the 4050 belt drive exposed a pinch point.