

CCASE:  
SOL (MSHA), PETITIONER v. CONSOLIDATION COAL  
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TTEXT:

Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges  
2 Skyline, 10th Floor  
5203 Leesburg Pike  
Falls Church, Virginia 22041

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

v.

CONSOLIDATION COAL COMPANY,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. WEVA 90-122  
A.C. No. 46-01438-03830

Ireland Mine

DECISION

Appearances: Page H. Jackson, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia, for  
the Petitioner;  
Walter J. Scheller, III, Esq., Consolidation Coal  
Company, Pittsburgh, Pennsylvania, for the  
Respondent.

Before: Judge Koutras

Statement of the Case

This proceeding concerns proposals for assessment of civil penalties filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(a), seeking civil penalty assessments in the amount of \$482, for two alleged violations of certain mandatory safety standards found in Part 77, Title 30, Code of Federal Regulations. The respondent filed a timely contest and a hearing was held in Pittsburgh, Pennsylvania.

Issues

The issues presented in these proceedings are (1) whether the conditions or practices cited by the inspector constitute violations of the cited mandatory safety standards, (2) whether the violations were "significant and substantial," and (3) the appropriate civil penalties to be assessed for the violations, taking into account the statutory civil penalty criteria found in section 110(i) of the Act.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq
2. Commission Rules, 29 C.F.R. 2700.1, et seq.
3. Mandatory safety standards 30 C.F.R. 77.505 and 77.516.

Stipulations

The parties stipulated to the following (Tr. 6-8):

1. The respondent's mine is subject to the Act and the presiding judge has jurisdiction to hear and decide this case.
2. The contested citations were issued to the respondent by a duly authorized representative of the Secretary of Labor and they were properly served on the respondent.
3. The payment of civil penalty assessments for the violations will not adversely affect the respondent's ability to continue in business.
4. With regard to cited mandatory safety standard 30 C.F.R. 77.516, the applicable National Electrical Code referred to therein is the 1968 Code.
5. Independent contractor R. G. Johnson was issued a citation identical to the one served on the respondent for a violation of mandatory safety standard 30 C.F.R. 77.505.

Discussion

Section 104(a) "S&S" Citation No. 2896648, issued by MSHA Inspector Spencer A. Shriver on January 22, 1990, cites a violation of mandatory safety standard 30 C.F.R. 77.505, and the cited condition or practice is described as follows: "On the contractor 3 phase 480 volt power at 4 north airshaft, the 600 MCM conductors do not enter the safety switch through proper fittings. Mine operator connected to contractor load while this violation existed."

Mandatory safety standard 30 C.F.R. 77.505, provides as follows:

77.505 Cable fittings; suitability.

Cables shall enter metal frames of motors, splice boxes, and electric compartments only through proper fittings. When insulated wires, other than cables, pass through metal frames, the holes shall be substantially bushed with insulated bushings.

Section 104(a) "S&S" Citation No. 2896649, initially issued by Mr. Shriver on January 22, 1990, and subsequently modified on January 29, 30, and 31, 1990, cites an alleged violation of 30 C.F.R. 77.516, and the cited condition or practice is described as follows:

At 4 north substation, operator provided power to contractor by three 333 KVA 124070-480 volt transformers. Connected primary ungrounded wye/secondary grounded wye. This transformer connection will not permit sufficient current to flow to operate protective devices and clear a ground fault. A phase-to-ground fault was found on the 480 cable which served the 3-phase space heaters in the hoist house.

Reference article 110-2, 1968 National Electric Code. A phase-to-ground fault on 480 volt circuit which is not cleared, would result in phase-to-phase voltage across the primary transformer winding or 12470 volts on windings rated 7200 volts.

Mandatory safety standard 30 C.F.R. 77.516, provides as follows:

77.516 Electric wiring and equipment; installation and maintenance.

In addition to the requirements of 77.503 and 77.506, all wiring and electrical equipment installed after June 30, 1971, shall meet the requirements of the National Electric Code in effect at the time of installation.

MSHA Inspector Spencer A. Shriver, an electrical engineer who holds a master's degree in electrical engineering, confirmed that he issued the citations in the course of his inspections at the mine, and he testified in support of the violations and explained his negligence and gravity findings, including the significant and substantial (S&S) nature of the violations (Tr. 19-152; 314-317). Supervisory Inspector Paul M. Hall, chief electrical engineer, who accompanied Mr. Shriver during his inspections, and Mr. Elio L. Checca, an electrical engineer from MSHA's Bruceton Safety Technology Center, also testified on behalf of the petitioner (Tr. 153-255; 361-363).

In defense of the violations, the respondent presented the testimony of Mr. Gary S. Harvey, an electrical engineer responsible for electrical construction activities, and Mr. John M. Burr, electrical engineering manager (Tr. 256-318).

On November 19, 1990, I issued an order affording the parties an opportunity to file posthearing arguments and briefs. Thereafter, by letter dated November 27, 1990, the petitioner's counsel advised me that the parties reached a proposed settlement for both of the alleged violations. The parties then submitted a joint motion pursuant to Commission Rule 30, 29 C.F.R. 2700.30, seeking approval of a proposed settlement of the case. Pursuant to the terms of the settlement, the petitioner has agreed to vacate Citation No. 2896649, and to modify Citation No. 2896648, to allege a non-significant and substantial violation. The respondent has agreed to pay the full amount of the proposed civil penalty assessment of \$241, for this violation, and has represented to the petitioner that there are presently no transformers on mine property with an ungrounded wye, grounded wye configuration and that, in the future, no transformers with such a configuration will be allowed on any mine property subject to the Act.

In support of the proposed settlement, the petitioner has submitted information pertaining to the six statutory civil penalty criteria found in section 110(i) of the Act. The petitioner has also submitted a reasonable justification for the approval of the settlement. With regard to the vacated citation, the petitioner points out that it is concerned that the contested citation, as modified, failed to adequately inform the respondent of the specific provisions of the National Electrical Code of 1968 which the issuing inspector believed the transformer installation violated. In view of this possible defect in the citation, and the respondent's expressed representations regarding present and future transformer installations, the petitioner has determined that, in this instance, vacating Citation No. 2896649 furthers the purposes of the Act.

#### Conclusion

After careful review and consideration of the entire record in this case, including the arguments advanced by the parties in support of the settlement disposition of this case, I conclude and find that the proposed settlement is reasonable and in the public interest. Accordingly, the motion to approve the settlement IS GRANTED, and the settlement IS APPROVED.

#### ORDER

1. Section 104(a) "S&S" Citation No. 2896649, initially issued on January 22, 1990, and subsequently

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modified on January 29, 30, and 31, 1990, citing an alleged violation of 30 C.F.R. 77.516, IS VACATED.

2. Section 104(a) "S&S" Citation No. 2896648, issued on January 22, 1990, citing a violation of 30 C.F.R. 77.505, IS MODIFIED to delete the significant and substantial ("S&S") finding, and as modified, the citation IS AFFIRMED.

3. The respondent IS ORDERED to pay a civil penalty assessment of \$241, in satisfaction of Citation No. 2896648, and payment is to be made to MSHA within thirty (30) days of the date of this decision and order. Upon receipt of payment by MSHA, this matter is dismissed.

George A. Koutras  
Administrative Law Judge