

CCASE:  
SOL (MSHA) v. BEECH FORK PROCESSING, INC  
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TTEXT:

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

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

v.

BEECH FORK PROCESSING, INC.,  
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 90-398  
A.C. No. 15-16162-03531

Mine No. 1

DECISION

Appearances: Thomas A. Grooms, Esq., Office of the Solicitor,  
U.S. Department of Labor for the Secretary of Labor  
(Secretary); Ted McGinnis, Vice President, Beech  
Fork Processing, Inc., for Respondent (Beech Fork).

Before: Judge Broderick

STATEMENT OF THE CASE

The Secretary seeks civil penalties for thirteen alleged violations of mandatory health and safety standards at the subject mine. Pursuant to notice the case was called for hearing in Prestonsburg, Kentucky, on February 12, 1991. Kellis Fields and Thomas Goodman, both Federal coal mine inspectors, testified on behalf of the Secretary. Ted McGinnis testified on behalf of Beech Fork. The parties waived their right to file post-hearing briefs. Based on the entire record and the contentions of the parties, I make the following decision.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I

PRELIMINARY FINDINGS

Beech Fork produces approximately 2,000,000 tons of coal annually, approximately 1,000,000 of which is produced at the subject mine. It employs approximately 100 persons. The subject mine had a history of 188 paid violations during the 24 month period prior to the violations involved in this proceeding. Five were violations of 30 C.F.R. 75.400; seven are violations of 75.1100; fourteen are violations of 77.400. Beech Fork is a medium sized operator. Its history of prior violations is not such that penalties otherwise appropriate should be increased

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because of it. Ted McGinnis testified that Beech Fork which began operation in 1985 has lost money each year. He testified that it suffered a financial loss during 1990, but no documentation was offered to show Beech Fork's financial situation. The evidence does not establish that penalties which may be assessed in this proceeding will have any effect on its ability to continue in business. The Secretary has stipulated that in the case of each violation involved herein, Beech Fork demonstrated good faith in attempting to achieve rapid compliance after notification of the violations.

The subject mine was from 9 feet to 11 feet high. It is generally dry from October to January or February and generally wet or moist in the spring. Inspector Fields testified that the No. 1 mine was a "good looking operation." He stated that he always received good cooperation from mine management. The mine has a large rock content; from 50 percent to 60 percent of its mined product is rejected as rock.

## II

### ACCUMULATIONS

CITATION 3364810

On April 12, 1990, Federal Coal Mine Inspector Kellis Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 75.400 because of an accumulation of float coal dust inside a belt control box. 30 C.F.R. 75.400 provides that coal dust including float coal dust deposited on rock dusted surfaces and loose coal shall not be permitted to accumulate in active workings or on electric equipment therein. The control box received 440 volt ac power. There were electrical connections inside the box including contactors and breakers. The evidence of the accumulations is uncontradicted. It posed a hazard of ignition or explosion, which could result in fire and smoke in the entry. Miners travel in the entry and it was adjacent to a secondary escapeway. I conclude that the violation charged is established. The dampness of the area reduces the hazard somewhat, but float coal dust can burn on water. The hazard is also reduced because of the large rock component in the mined product, thus reducing the combustibility of the dust. Nevertheless, I conclude that the violation was serious.

A violation is properly designated as significant and substantial if it is established that the hazard contributed to will be reasonably likely to result in injury to a miner. United States Steel Mining Company, 7 FMSHRC 1125 (1985). The hazard here is an ignition or explosion. Float coal dust is highly combustible and, in the presence of an ignition source, an ignition or explosion is reasonably likely to occur and to cause

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serious injuries. Therefore, I conclude that the violation was properly designated as significant and substantial.

Based on the criteria in section 110(i) of the Act, I conclude the \$250 is an appropriate penalty.

CITATION 3365506

On May 8, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 77.202 because of an accumulation of loose fine coal and coal dust, including float dust on the first floor of the preparation plant. The accumulation ranged from 1 inch to 4 inches deep. Sources of ignition present included belt rollers and conveyors which could become stuck or frozen and result in friction, and other belt drives and motors in the prep plant which could overheat or "go to ground." The violation is established by the evidence. As was the case with respect to citation 3364810, supra, I conclude that an accumulation of float coal dust in the presence of ignition sources is very hazardous and reasonably likely to result in injury. I conclude that the violation was properly designated as significant and substantial, and that an appropriate penalty for the violation is \$225.

### III

#### FIRE SUPPRESSION SYSTEMS

CITATION 3364811

On April 12, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 75.1100-3 because the deluge fire suppression system on the belt line was inoperative. The light and alarm were working, but water did not flow through the system. The standard requires that all firefighting equipment shall be maintained in a usable and operative condition. That the fire suppression system cited here was not maintained in an operative and usable condition was not contradicted. A violation was established. The hazard to which this violation contributes is fire and smoke which could travel inby from the belt conveyor to the section. A fire could result from stuck rollers, friction, or coal spillage including float coal dust. The inspector testified that these are common occurrences in coal mines. However, there is no evidence of any such conditions in the area of the cited violation. The evidence does not establish that the hazard contributed to is reasonably likely to result in serious injury. The citation was not properly designated as significant and substantial. See United States Steel Mining Company, supra. However, the violation was serious and resulted from Beech Fork's negligence. I conclude that an appropriate penalty for the violation is \$150.

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CITATION 3364813

On April 12, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 75.1101-2 because the deluge type fire suppression system for the 3A belt conveyor drive was inadequate in that it had only 24 feet of branch lines, whereas 50 feet is required. The evidence establishes the violation. It was not serious, and unlikely to result in injury. Twenty dollars (\$20) is an appropriate penalty for the violation.

CITATION 3364621

On April 16, 1990, Inspector Fields issued a section 104(a) citation charging a violation of 30 C.F.R. 75.1100-3 because the dry chemical type fire suppression system on a shuttle car was inoperative. The hoses going to the tank were broken off. The condition would be obvious to anyone checking the equipment. The traction motor on the shuttle car has electrical components and the cable going back to the power center carries 440 volt ac power. If the traction motor shorted out and ignited accumulations of oil, grease or coal dust, or a cut in cable caused a spark, a fire could result, which could cause smoke inhalation injuries to miners on the section. However, there is no evidence of any oil, grease or coal dust, and no evidence of any electrical problems or defects in the motor or cable. Therefore, the evidence fails to show that the hazard contributed to was reasonably likely to result in injuries to miners. The citation was not properly designated as significant and substantial. The violation was serious, however, and resulted from Beech Fork's negligence. I conclude that an appropriate penalty is \$150.

#### IV

#### GUARDING VIOLATIONS

CITATION 3364812

On April 12, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 75.1722 because a belt conveyor drive was not adequately guarded. The guard did not extend to the discharge roller. The roller, 1-1/2 inches to 2 inches in diameter, was located in a position where a miner could reach in and be caught between the belt and the roller. Respondent does not deny that the conveyor drive was inadequately guarded. It asserts that many of the conditions cited as guarding violations were accepted by prior inspectors. This is not a defense. The United States Court of Appeals stated in *Emery Mining Corp. v. Secretary of Labor*, 744 F.2d 1411, 1416 (10th Cir. 1984):

. . . as a general rule those who deal with the Government are expected to know the law and may not rely on the conduct of government agents contrary to law . . .

\* \* \*

Particularly where mandatory safety standards are concerned, a mine operator must be charged with knowledge of the Act's provisions and has a duty to comply with those provisions.

Injuries commonly result from miners getting hand, arm or clothing caught in unguarded rollers. The guarding violation cited here was reasonably likely to result in a serious injury. It was properly designated significant and substantial. It was serious and resulted from Beech Fork's negligence. I conclude that an appropriate penalty based on the criteria in section 110(i) of the Act is \$300.

CITATION 3364814

On April 12, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 75.1722 because a guard at the No. 3A belt conveyor drive was not adequate in that it did not extend out far enough to prevent a miner from reaching in and becoming caught between the belt and the discharge roller. The evidence establishes that the cited violation existed. The violation is similar to that charged in Citation 3364812. It was properly designated as significant and substantial in that the hazard contributed to was likely to result in serious injury. Based on the criteria in section 110(i) of the Act, I conclude that \$300 is an appropriate penalty for the violation.

CITATION 3365508

On May 8, 1990, Inspector Fields issued a section 104(a) citation charging a violation of 30 C.F.R. 77.400 because a guard was not provided for the discharge roller on the recovery belt. No guard had ever been provided at this point. The roller was next to a confined walkway and is required to be examined every day. A guarding violation is likely to result in a miner getting his/her hand, arm or clothing caught on moving machinery and suffering serious injury. The violation was established, and was properly designated as significant and substantial. The violation was obvious, and Beech Fork's negligence is high. An appropriate penalty for the violation under the criteria in section 110(i) is \$325.

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CITATION 3365509

On May 8, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 77.400 because of an inadequate guard at the tail roller for the stacker belt. The guard did not extend out far enough to prevent a miner from reaching in to a pinch point. The pinch point opening was from 12 inches to 14 inches. A serious violation was established. It was significant and substantial. A penalty of \$300 is appropriate.

CITATION 3365511

On May 8, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 77.400 because a hole had been cut in the center of a guard on an air compressor pulley exposing the pulley to a miner's hand. The hole had apparently been cut in the guard to enable a miner to grease the pulley. Respondent should have been aware of it. The violation is established; it was significant and substantial since an injury was likely to result. A penalty of \$250 is appropriate.

V

OTHER VIOLATIONS

CITATION 3365510

On May 8, 1990, Inspector Fields issued a section 104(a) citation charging a violation of 30 C.F.R. 77.205 because of stumbling hazards on the concrete floors and walkways throughout the shop area of the preparation plant. The hazards included engine parts, motor blocks, electrical cords, and oil and grease covered by sweeping compound. Maintenance workers and foremen travel regularly in the area. The same violation had previously been cited in the same area. The violation is established by the preponderance of the evidence. It was reasonably likely to result in injury. Therefore it was properly designated as significant and substantial. Two hundred dollars (\$200) is an appropriate penalty.

CITATION 3365512

On May 8, 1990, Inspector Fields issued a section 104(a) citation alleging a violation of 30 C.F.R. 77.410 because of an inoperative back up alarm on a water truck which operated on haulage roadways to keep down the dust. The truck was a Mack coal truck on which a water tank had been installed. It had 10 wheels, was 7 to 8 feet wide and the driver had blind spots to his rear. There were other trucks in the area, and miners frequently worked or walked on and near the roadway. The water truck was operated 3 or 4 times per day. It had an alarm but it

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was inoperative when the inspector tested it. A violation was established. Because many people were in the area, the violation was reasonably likely to result in injury and therefore was properly designated significant and substantial. I conclude that \$200 is an appropriate penalty.

CITATION 3365407

On June 6, 1990, Federal Coal Mine Inspector Thomas E. Goodman issued a section 104(a) citation for a violation of 30 C.F.R. 77.1710(d) because two employees working under a highwall installing a canopy were not wearing hard hats. The standard requires that hard hats be worn where falling objects may create a hazard. Cracks and loose rock were present in the highwall and presented a hazard of falling objects. The violation was established. A roof fall from the same highwall had occurred on May 18, 1990, entrapping and injuring 2 miners who were working in a portal under a canopy. The violation cited here was likely to result in serious injuries to the two miners. It was properly designated as significant and substantial. Two hundred dollars (\$200) is an appropriate penalty for the violation.

ORDER

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

1. Citations 3364810, 3365506, 3364812, 3364814, 3365508, 3365509, 3365511, 3365510, 3365512 and 3365407 are AFFIRMED as issued included the designation in each citation of a significant and substantial violation.

2. Citation 3364813 is AFFIRMED.

3. Citations 3364811 and 3364621 are MODIFIED to remove the designation of a significant and substantial violation and, as modified, are AFFIRMED.

4. Respondent shall, within 30 days of the date of this decision pay the following civil penalties for the violations found herein:

CITATION	30 CFR STANDARD	AMOUNT
3364810	75.400	\$ 250
3365506	77.202	225
3364811	75.1100-3	150
3364813	75.1100-2	20
3364621	75.1100-3	150
3364812	75.1722	300
3364814	75.1722	300



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3365508	77.400	325
3365509	77.400	300
3365511	77.400	250
3365510	77.202	200
3365512	77.410	200
3365407	77.1710(d)	200

James A. Broderick  
Administrative Law Judge