

CCASE:  
SOL (MSHA) v. ROCHESTER & PITTSBURGH COAL  
DDATE:  
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TTEXT:

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

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

CIVIL PENALTY PROCEEDING

Docket No. PENN 90-188  
A. C. No. 36-02402-03805

v.

Greenwich Collieries

ROCHESTER & PITTSBURGH COAL  
COMPANY,  
RESPONDENT

DECISION

Appearances: Thomas Brown, Esq., U. S. Department of Labor,  
Office of the Solicitor, Philadelphia,  
Pennsylvania, for the Secretary of Labor  
(Secretary);  
Joseph A. Yuhas, Esq., Ebensburg, Pennsylvania,  
for Rochester & Pittsburgh Coal Company (R&P).

Before: Judge Broderick

STATEMENT OF THE CASE

In this proceeding, the Secretary seeks civil penalties for four alleged violations of mandatory health and safety standards. On November 26, 1990, the Secretary filed a motion to approve a partial settlement with respect to three of the citations. The first involved a violation of 30 C.F.R. 75.1704 because two air lock doors were permitted to remain open. A penalty of \$247 was originally assessed. The parties proposed a reduction to \$125 because further investigation revealed that miners had coincidentally moved equipment through the area, using the two doors. The violation was inadvertent and had not existed for a significant period of time. The parties agreed further to delete the significant and substantial finding.

The other two citations involved violations of 30 C.F.R. 75.1107-1(a)(3) because two items of electrical equipment were left unattended within 2 feet of the coal rib. They were originally assessed at \$112 each. The parties requested a reduction to \$50 each because the likelihood of a fire was found to be less than originally believed. The parties also agreed to delete the significant and substantial findings. I stated on the record that I approved the motion.

The case involving the remaining alleged violation was called for hearing in Johnstown, Pennsylvania, on March 7, 1991. Samuel Brunatti testified on behalf of the Secretary. William Shaner and Dennis Homady testified on behalf of R&P. I granted the Secretary's motion to permit the submission of a posthearing deposition of Anthony Turran. However, the deposition was not filed and is not a part of this record. Both parties have filed Posthearing Briefs. I have considered the entire record and the contentions of the parties in making the following decision.

FINDINGS OF FACT

1. Rochester & Pittsburgh is the owner and operator of an underground coal mine in Cambria County, Pennsylvania, known as Greenwich Collieries No. 2 Mine.
2. The mine produces more than one million, five hundred thousand tons of coal annually. Rochester & Pittsburgh produces more than 8 million tons annually. It is a large operator.
3. In the 24 months prior to the citations involved in this proceeding, the mine had 958 violations in 1,293 inspection days; 42 of the violations were of 30 C.F.R. 75.1704. This history shows approximately .75 violations of all standards per inspection day, and 1.25 violations each month of the standard involved in this case. I consider this an unfavorable history of prior violations, and will increase any penalty assessed herein because of it.
4. Rochester & Pittsburgh demonstrated good faith in attempting to achieve rapid compliance after the citation was issued.
5. Federal Coal Mine Inspector Samuel Brunatti conducted a Section 103(i) spot inspection of the subject mine on May 1, 1990. He found that the alternate escapeway track entry for the M11K Section of the subject mine was not being maintained so as to permit miners to escape quickly to the surface in the event of an emergency, in that the clearance from supply cars to rib in several locations was 3 feet, 5 feet and 4.5 feet. He issued a citation charging a violation of 30 C.F.R. 75.1704. The original citation stated that "these areas are to be maintained at a width of at least 6 feet." (G. Ex 2, p. 1). The citation was modified on May 1, 1990, to delete references to the reduction in width and to the requirement that a 6 foot width be maintained. (G. Ex. 2, p. 4).
6. From the end of the track outby for a distance of approximately 200 feet, supply cars were parked along the track. The width of the entry from the supply cars to the rib varied from 3 feet to 6 feet: at some points it was 3 feet, at some 4 feet, 4-1/2 feet, 5 feet, and 6 feet depending on the rib,

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which was not regular. These distances were measured by Inspector Brunatti. The inspector was uncertain as to the extent of the narrowed areas. He stated that the area of the 3 feet width extended only 4 or 5 feet (Tr. 30), but that he would "be guessing" at the other narrowed areas because of the irregularity of the rib. (id.) The cars were 2-1/2 feet to 3 feet high but, when loaded, could with their contents reach the roof.

7. There is a dispute as to the height of the entry. Inspector Brunatti testified that it was approximately 4 or 4-1/2 feet. William Shaner, UMWA Representative on the Mine Accident and Violation Reduction Program, estimated the height of the entry to be "over five foot." (Tr. 51.) The mine safety inspector for R&P, Dennis Homady testified that the average height of the coal seam varied from 48 inches to 60 inches, but that the track entries were cut slightly higher than average. The entry height was not measured at the time the citation was issued or afterwards. The entry no longer exists. Inspector Brunatti is 6 feet, 1 inch, or 6 feet, 2 inches tall. He weighs about 280 or 290 pounds. He testified that he walked through the cited area bent over at about a 45 degree angle. Shaner is approximately 5 feet, 7 inches tall. He testified that he had to bend his head to walk in the entry. Considering all the testimony, I find that average height of the cited portion of the entry was approximately 5 feet.

8. The stretchers used at the subject mine were 18 inches to 22 inches wide. These were measured by Inspector Brunatti after he issued the citation. The stretchers are 7 feet long.

9. Respondent conducted a test on March 5, 1991, in an underground area of the mine where the entry height ranged from 5 feet, 8 inches to 6-1/2 feet, and the distance from supply cars to ribs ranged from 34 inches to 6 feet, for a distance of approximately 150 feet. Four people were carrying another person on a stretcher and experienced no delays in carrying the stretcher through the area. The stretcher was 20-1/2 inches wide and 7 feet long.

#### REGULATION

30 C.F.R. 75.1704 provides in part as follows:

. . . at least two separate and distinct travelable passageways which are maintained to insure passage at all times of any person, including disabled persons, and which are to be designated as escapeways . . . shall be provided from each working section continuous to the surface escape drift opening or continuous to the escape shaft or slope facilities to the surface, and shall be

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maintained in safe condition and properly marked . . . . Escape facilities approved by the Secretary or his authorized representative, properly maintained and frequently tested, shall be present at or in each escape shaft or slope to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency.

#### ISSUES

1. Whether the standard requires that the entire escapeway be maintained so as to allow all persons, including disabled persons, to escape quickly to the surface in the event of an emergency?

2. Whether the escapeway involved in this proceeding was maintained in accordance with the standard?

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

#### CONCLUSIONS OF LAW

##### I

Rochester & Pittsburgh is subject to the provisions of the Mine Act in the operation of the subject mine, and I have jurisdiction over the parties and subject matter of this proceeding.

##### II

The standard in question requires in its first sentence that designated escapeways be maintained to insure passage of any person including a disabled person. The third sentence provides that escape facilities, approved by the Secretary and properly maintained and frequently tested, from the shaft or slope to the surface shall be present to allow all persons including disabled persons to escape quickly to the surface in case of an emergency. The Secretary argues that "escape facilities" include the entire escapeway from the working section to the surface, and therefore the adverb "quickly" must be taken to modify the phrase "to insure passage" used in the first sentence of Section 75.1704. The wording of the standard will not permit such a construction. The third sentence obviously refers to mechanical facilities, such as elevators, lifts, etc., designed to bring miners to the surface. See *Utah Power & Light Company*, 11 FMSHRC 1926, 1930 (1989).

The question remains, however, whether on May 1, 1990, the alternate escapeway track entry was being maintained so as to insure passage of a disabled person in case of an emergency. The travelable passageway between the supply cars and the rib was from 3 to 6 feet wide. The stretchers were from 18 inches to 22 inches wide. Thus, there was a minimum clearance of 14 inches, or 7 inches on each side. Inspector Brunatti has had experience evacuating people on a stretcher from an underground mine. He testified that if a disabled person were evacuated through the passageway involved herein it would be necessary to put the stretcher down and readjust it in the narrowed areas, and valuable time might be lost in an emergency. He stated that the height of the entry would dictate that four persons would be necessary to carry a disabled person on a stretcher, because the carriers would have to carry the stretcher while bent over. Inspector Brunatti conceded that the 3 foot wide area was "passable" by four people carrying a disabled person on a stretcher, but "they'd have to probably set the stretcher down or shift around, come to a complete stop and maybe get an individual on each end to shift the stretcher through." (Tr. 45.)

The height of the passageway in the entry where R&P simulated a rescue was significantly higher (5 feet, 8 inches to 6-1/2 feet), although of approximately the same width as the cited area. For this reason, I discount the testimony that the rescuers experienced no difficulty or delay in transporting a person on a stretcher.

Inspector Brunatti's testimony must also be discounted because he significantly understated the height of the escapeway, and relied on the reduced height in concluding that rescuers would have difficulty in transporting a disabled person on a stretcher. He also relied on the MSHA policy that escapeways must be maintained at a width of at least 6 feet. Finally, he conceded that the areas involved were passable, but not rapidly (Tr. 46).

I conclude that the weight of the evidence does not establish that the cited escapeway was not maintained to insure passage at all time of any person, including a disabled person.

#### ORDER

Based on the above findings of fact and conclusions of law, and relying on the motion to approve a partial settlement, IT IS ORDERED:

1. Citation Nos. 3302406, 3302407, and 3302408 are MODIFIED to delete the findings that the violations are significant and substantial, and as modified, are AFFIRMED.

2. Citation No. 2892777 is VACATED.

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3. Rochester & Pittsburgh shall, within 30 days of the date of this decision, pay the following civil penalties:

CITATION	30 C.F.R.	AMOUNT
3302406	75.1704	\$125
3302407	75.1107-1(a)(3)	50
3302408	75.1107-1(a)(3)	50
	Total	\$225

James A. Broderick  
Administrative Law Judge