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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. CENT 91-106
A.C. No. 29-00095-03559

v.

York Canyon Underground Mine

THE PITTSBURG & MIDWAY COAL
MINING CO-YORK CNYN
COMPLEX,

RESPONDENT

DECISION

Appearances: Ernest Burford, Esq., Office of the Solicitor,
U.S. Department of Labor, Dallas, Texas,
for Petitioner;
John W. Paul, Esq., Englewood, Colorado,
for Respondent.

Before: Judge Cetti

This case is before me upon a petition for assessment of civil penalties under Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. the "Act." The Secretary of Labor, on behalf of the Mine Safety and Health Administration, (MSHA), charges the operator of the York Canyon Underground Mine with six 104(a) S&S, violations of mandatory regulatory standards found in 30 C.F.R. Part 77.

The operator filed a timely answer contesting the alleged 104(a) S&S violations and the appropriateness of the proposed penalties.

Pursuant to notice, a hearing on the merits was held before me on September 18, 1991, along with other cases involving the same parties and attorneys.

Stipulations

At the hearing, the parties read into the record the following stipulations:

1. The Pittsburg and Midway Coal Company has engaged in the mining and selling of coal in the United States and its mining operations affect interstate commerce.

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2. Pittsburg Midway Company is the owner and operator of the York Canyon Mine, MSHA ID number 29-00095.

3. Pittsburg Midway Coal Company is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

4. The Administrative Law Judge has jurisdiction in this matter.

5. The subject citations were properly served by a duly authorized representative of the Secretary upon an agent of Respondent on the date and place stated therein, and may be admitted into evidence for the purpose of establishing their issuance and not for the truthfulness or relevancy of any statements asserted therein.

6. The exhibits to be offered by Respondent and the Secretary are stipulated to be authentic, but no stipulation is made as to their relevance or the truth of the matters asserted therein.

7. The proposed penalty will not affect the operator's ability to remain in business.

8. The operator demonstrated good faith in abating the violations.

9. Pittsburg & Midway Coal Company is a large operator of a coal mine with at least one million tons of production in 1990.

10. The certified copy of the MSHA assessed violations history accurately reflects the history of this mine for the two years prior to the date of the citation.

ISSUES

The primary issues presented by the parties were whether or not the six 104(a) citations were properly designated significant and substantial violations and the appropriateness to the proposed penalties.

Citation No. 3242500 - (Back-up alarm)

In this citation MSHA charges Respondent with a 104(a) S&S violation of 30 C.F.R. 77.410. The violative condition alleged reads as follows:

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The #631D Caterpillar Scraper in operation outby the coal prep plant was not equipped with an adequate automatic device that when such equipment is put in reverse will give audible alarm.

At the hearing, the Respondent withdrew its contest to Citation No. 3242500 including its designation as a significant & substantial violation of 30 C.F.R. 77.410 and to MSHA's proposed civil penalty of \$112.

Based upon the record, it is found that there was a violation of this mandatory safety standard; that a discrete safety hazard existed and that there was a reasonable likelihood, evaluated in terms of continued normal mining operation, that the hazard contributed to would result in serious injury.

Accordingly, it is found the violation is a significant and substantial violation and the full amount of MSHA's \$112 proposed penalty is assessed.

Citation No. 3242463 (Berm on service road)

After taking considerable testimony from the witnesses on Citation No. 3242463 (berm on service road) the parties agreed the violation was not S&S and Petitioner moved to withdraw the S&S designation. The motion was granted since it was clear from the evidence presented that there was no reasonable likelihood that the hazard contributed to, evaluated in terms of continued normal mining, would result in an event in which there would be serious injury.

Citation Nos. 3242494, 3242496, 3242498 (Circuit breakers)

At the hearing, the Petitioner also modified the three citations involving failure to properly identify circuit breakers from S&S to non-significant and substantial violations as there was insufficient evidence to establish a reasonable likelihood that the hazard contributed to would result in serious injury.

Citation No. 3242493 (Guarding on pump shaft)

Considerable testimony was taken on this citation, particularly on the issue of whether this violation was properly designated S&S. During the time allowed for filing of post-hearing briefs, the Secretary was permitted to amend the citation to delete the S&S designation and to change paragraph 10A of the citation pertaining to "gravity" from "reasonably likely" to "unlikely

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ly." This amendment was permitted in light of the evidence adduced at the hearing. The preponderance of the evidence established that there was not a reasonable likelihood that the hazard contributed to, evaluated in terms of continued normal mining, would result in serious injury.

Assessment of Penalty

Section 110(i) of the Act mandates consideration of six criteria in assessing civil penalties. This statutory criteria has been considered in assessing the penalties assessed in the Order below.

Pittsburg & Midway Coal Company is a large operator of a coal mine with at least one million tons of production in 1990. The certified copy of the MSHA assessed violations history received with evidence accurately reflects the history of this mine for the two years prior to the date of the citation. The operator demonstrated good faith in abating the violations.

Exposure to the hazard caused by the violations was very low, the gravity was low and the violations resulted from the operator's negligence which was low to moderate in degree.

The penalties assessed below will not affect the operator's ability to remain in business.

ORDER

Citation No. 3242500 including the finding that the violation is significant and substantial, is AFFIRMED and a civil penalty of \$112 is ASSESSED.

Citation Nos. 3242463, 3242493, 3242494, 3242496, and 3242498 are MODIFIED to delete the S&S designation and a penalty of \$100 is ASSESSED for each of the violations.

Respondent is ordered TO PAY to the Secretary of Labor a civil penalty in the sum of \$612 within thirty (30) days of the date of this Decision and, upon receipt of payment, this matter is dismissed.

August F. Cetti
Administrative Law Judge