

CCASE:
SOL (MSHA) v. U. S. STEEL MINING
DDATE:
19920212
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.

U. S. STEEL MINING COMPANY,
INC.,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 91-819
A. C. No. 46-05868-03544

Pinnacle Prep Plant

Docket No. WEVA 91-1607
A. C. No. 46-01816-03771

Gary No. 50 Mine

DECISION

Appearances: Javier I. Romanach, Esq., Office of the Solicitor,
U. S. Department of Labor, Arlington, Virginia,
for the Secretary;
Billy M. Tennant, Esq., U. S. Steel Mining
Company, Inc., Pittsburgh, Pennsylvania, for the
Respondent.

Before: Judge Maurer

These consolidated cases are before me based upon petitions for assessment of civil penalty filed by the Secretary alleging violations of various mandatory standards set forth in Volume 30 of the Code of Federal Regulations.

Pursuant to a notice of hearing, these cases were heard on October 16, 1991, in Oak Hill, West Virginia. At that hearing, the parties proposed to settle both of the citations at issue in Docket No. WEVA 91-819. The written motion that was later filed requested approval of the respondent's agreement to pay \$112, the full amount of the proposed penalty for Citation No. 3340442. The motion also requested approval of the Secretary's proposed vacation of Citation No. 3340443. Based on the Secretary's representations, I conclude that the proffered settlement is appropriate under the criteria contained in section 110(i) of the Mine Act. The terms of this settlement agreement will be incorporated into my order at the end of this decision.

There remained for trial one section 104(a) citation contained in Docket No. WEVA 91-1607, and assessed at \$20.

Both parties have filed post-hearing proposed findings and conclusions and/or briefs, which I have considered along with the entire record in making the following decision.

STIPULATIONS

The parties have agreed to the following stipulations, which I accept:

1. The undersigned administrative law judge has jurisdiction to hear and decide this case.

2. Inspector Larry Cook was acting in his official capacity as a federal coal mine inspector on March 27, 1991, when he issued Citation No. 3741045.

3. Citation No. 3741045 was properly issued to respondent's agents.

4. Abatement of the condition cited in the listed citation was timely.

5. The penalty of \$20 will not adversely affect the respondent's ability to continue in business.

6. The respondent does not dispute the facts in the proposed assessment data sheet (Petitioner's Ex. No. 3).

DISCUSSION

Citation No. 3741045, as modified, alleges a violation of the mandatory standard found at 30 C.F.R. 75.512-2 (footnote 1) and charges as follows:

All underground electric equipment was not being examined weekly as required. Records of examinations for high voltage disconnects, vacuum circuit breakers, transformers and rectifiers show that weekly examinations were made for a three month period from October through December 1990. Beginning in January 1991 through this date (3/27/91) only monthly examinations were made and recorded.

The operator does not contest the fact that weekly examinations were not being done on the cited equipment, only that they were required in the first instance. Respondent argues that the cited equipment is required to be examined on a monthly basis only and that is what they were doing at the time the citation was written.

Therefore, the issue presented for decision is whether such equipment as high voltage disconnects, vacuum circuit breakers, transformers and rectifiers are "electric equipment" required to be examined and tested weekly pursuant to 30 C.F.R. 75.512-2.

Speaking of section 75.512, the MSHA "Coal Mine Inspection Manual: Underground Electrical Inspections," dated June 1, 1983, (Petitioner's Ex. No. 6) at page 29 states that:

The section requires that each individual piece of electric equipment, including locomotives, personnel carriers, electric track switches and derails, compressors, car hauls, conveyor units, pumps, rock-dusting machines, battery-powered equipment and permissible equipment, be examined and tested. The required examinations and tests must be thorough enough to insure that the electric equipment has not deteriorated through neglect, abuse or normal use into an unsafe condition that could result in a shock, fire, or other hazard to the miners.

The term "electric equipment" is not defined in the MSHA regulatory scheme, but the Secretary has proffered the definition used by the Institute of Electrical and Electronics Engineers (IEEE). In the IEEE Standard Dictionary of Electrical and Electronics Terms (Petitioner's Ex. No. 7), equipment (electrical engineering) is defined as:

Equipment (electrical engineering). A general term including materials, fittings, devices, appliances, fixtures, apparatus, machines, etcetera, used as a part of, or in connection with, an electrical installation.

Respondent maintains that the term "electric equipment," within the meaning of 75.512, means electrically-powered mobile or portable equipment which performs a physical task by converting electrical energy into mechanical energy and does not include devices in electrical circuits that perform electrical functions exclusively. Therefore, respondent argues that since transformers, rectifiers, disconnects and circuit breakers are normally sited in a permanent location where they remain as stationary components of an electrical circuit, they are not "electric equipment" contemplated by section 75.512. Furthermore, respondent points out that transformers and

~333

rectifiers perform electrical functions exclusively and unlike electric equipment such as shuttle cars, do not transform electrical energy into mechanical energy.

Also, respondent argues that 30 C.F.R. 75.800-3 and 30 C.F.R. 75.900-3 require only monthly testing and examination of circuit breakers. But I agree with Inspector Cook that 75.512 is a general inspection requirement that is to be performed on a weekly basis whereas the 75.800-3 and 75.900-3 inspection requirements are additional specific tests to be performed on the equipment on a monthly basis. The two sets of requirements can logically exist simultaneously. They are not mutually exclusive. It is not an either/or proposition.

I believe the Secretary's interpretation of her own regulation is the more reasonable; but even if, for the sake of argument, I felt that both the petitioner and the respondent had an equally plausible interpretation, it is well-settled that an agency's interpretation of its own regulation is "of controlling weight unless it is plainly erroneous or inconsistent with the regulation." *Bowles v. Seminole Rock Co.* 325 U.S. 410, 414 (1945). A regulation must also be interpreted so as to harmonize with and further rather than conflict with the objective of the statute it implements. *Emery Mining Corp. v. Secretary of Labor ("MSHA")*, 744 F.2d 1411 (10th Cir. 1984).

In this case, I find MSHA's interpretation of the regulation to be reasonable and consistent with the objectives of the Mine Act and is to be preferred. Accordingly, I find that respondent violated 30 C.F.R. 75.512-2 because the cited items of electric equipment had not been examined on a weekly basis, as charged in the citation.

Therefore, based on the criteria contained in section 110(i) of the Act, I conclude that an appropriate penalty for the violation is \$20, as proposed.

ORDER

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

1. Citation Nos. 3340442 and 3741045 ARE AFFIRMED.
2. Citation No. 3340443 IS VACATED.
3. Respondent, shall within 30 days of the date of this decision pay the sum of \$132 as a civil penalty for the violations found herein.

~334

4. Upon payment of the civil penalty, these proceedings ARE DISMISSED.

Roy J. Maurer
Administrative Law Judge

Footnote starts here:-

1. 30 C.F.R. 75.512-2 provides as follows: The examinations and tests required by 75.512 shall be made at least weekly. Permissible equipment shall be examined to see that it is in permissible condition.

And section 75.512 itself states in relevant part: All electric equipment shall be frequently examined, tested, and properly maintained by a qualified person to assure safe operating conditions.