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MSHA V. CONSOLIDATION COAL
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 91-1045
Petitioner : A.C. No. 36-04281-03732
v. :
: Dilworth Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

DECISION

Appearances: Caryl Casden, Esq., and H. P. Baker, Esq., (on the Brief), Office of the Solicitor, U.S. Department of Labor, Philadelphia, Pennsylvania, for the Petitioner;
Walter J. Scheller III, Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania, for the Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 C.F.R. 801 et seq., the "Act," charging the Consolidation Coal Company (Consol) with one alleged violation of the mandatory standard at 30 C.F.R. 75.1103-4. Five other citations in this case were the subject of a partial settlement decision issued November 27, 1991. The general issue before me is whether Consol violated the cited regulatory standard as alleged, and, if so, what is the appropriate civil penalty to be assessed.

The citation at bar, No. 3468340, charges as follows:

The petition for modification Docket No. M-86-49-C dated December 5, 1986, for the carbon monoxide system at the mine was not being used as described. In that under Item No. 5 of the petition the audible and visual alarm was not sent to a surface location where a responsible person was on duty at all times. The hard line phone system used between the master command center in Moundsville, West Virginia, and Dilworth Mine was inoperable. There was no alarm system that is continuously manned on the surface of Dilworth Mine.

It is undisputed that on the date of the alleged violation, January 30, 1991, Respondent then had in place a point-type fire detection system meeting the requirements of the cited mandatory standard. It is the Secretary's position however, that in light of her approval of a petition for modification of the cited mandatory safety standard pursuant to section 101(c) of the Act (permitting the use under certain circumstances of a carbon monoxide fire detection system with audio and visual alarms connected to a monitored surface location) Consol was required to comply not with the cited standard but with the terms of the approved petition for modification. (Footnote 1)/

Consol maintains on the other hand that by its own specific terms the approved petition for modification is inapplicable to the case at bar. For the reasons that follow, I find that the approved petition is indeed inapplicable hereto and that since Consol was in compliance with the cited standard there was in fact no violation.

The approved petition for modification at issue provides that "a low-level carbon monoxide [early warning fire detection] system shall be installed in all belt entries utilized as intake

1/ Section 101(c) of the Act provides as follows:

"Upon petition by the operator or the representative of miners, the Secretary may modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that an alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard, or that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. Upon receipt of such petition the Secretary shall publish notice thereof and give notice to the operator or the representative of miners in the affected mine, as appropriate, and shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of such operator or representative or other interested party, to enable the operator or the representative of miners in such mine or other interested party to present information relating to the modification of such standard. Before granting any exception to a mandatory safety standard, the findings of the Secretary or his authorized representative shall be made public and shall be available to the representative of the miners at the affected mine. The Secretary shall issue a decision incorporating his findings of fact therein, and send a copy thereof to the operator or the representative of the miners, as appropriate. Any such hearing shall be of record and shall be subject to section 554 of Title 5 of the United States Code."

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air-courses" (Government Exhibit No. 4). From this unambiguous language it is clear that only those belt entries utilized as intake air courses are to be governed by the approved petition. Since it is undisputed that none of the belt entries were being utilized as intake air courses, the approved petition for modification is clearly inapplicable. Since it is further undisputed that Consol continued to utilize the point-type sensor fire detection system required by 30 C.F.R. 75.1103-4, and that the system was fully operational on the date of the citation, there was no violation.

Under the circumstances it is not necessary to reach the question of whether the approved petition for modification superseded the cited mandatory standard.

ORDER

Citation No. 3468340 is hereby vacated.

Gary Melick
Administrative Law Judge

Distribution:

Caryl Casden, Esq., and H. P. Baker, Esq., Office of the Solicitor, U.S. Department of Labor, Room 14480 Gateway Building, 3535 Market Street, Philadelphia, PA 19104 (Certified Mail)

Walter J. Scheller III, Esq., Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, PA 15241-1421 (Certified Mail)

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