

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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MAY 26 1992

SECRETARY OF LABOR : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. SE 91-32
Petitioner : A. C. No. 40-03011-03510
v. : S&H Mine No. 1
S AND H MINING, INCORPORATED, :
Respondent :

DECISION

Appearances: Mary Sue Taylor, Esq., Nashville,
TN, for Petitioner;
Mr. Paul G. Smith, Lake City, TN,
for Respondent.

Before: Judge Fauver

This case involves a petition for civil penalties, under § 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et sea.

Having considered the hearing evidence and the record as a whole, I find that a preponderance of the substantial, reliable, and probative evidence establishes the following Findings of Fact and further findings in the Discussion that follows:

FINDINGS OF FACT

1. S&H Mining Incorporated owns and operates an underground coal mine, known as Mine No. 7, in Campbell County, Tennessee, where it produces coal for sale or use in or substantially affecting interstate **commerce**.
2. Federal Mine Inspector Don McDaniel, who specializes in electrical inspections, issued Citation 3174041 on May 11, 1990, under § 104(d)(1) of the Act. This citation was not contested by the operator and stands as issued.
3. During an inspection of Mine No. 7 on May 14, 1990, Inspector McDaniel was accompanied by Tommy **McCoo**, a mine foreman. Dwight Lindsey had conducted the preshift exam at the mine on May 14, 1990. At the section power center, Inspector McDaniel stepped on a cable and saw the cable coupler for the

feeder drop down, tripping the circuit breaker. The coupler fell because there was no upper locking device. He found wedges that were placed under the cable coupler in an attempt to hold it in place. The locking device for the coupler was broken on top, the bolts to hold it in place were stripped, and the locking device had been removed. Mr. Lindsey told Inspector McDaniel that he had noticed the condition during his preshift examination and that he had placed the wedges under the cable coupler to hold it in place. Based on this condition, Inspector McDaniel issued Order 3174055 for an unwarrantable failure to comply with 30 C.F.R. § 75.902, which provides that cable couplers shall be constructed so that the ground check continuity conductor shall be broken first and the ground conductors broken last when the coupler is uncoupled. Without a properly functioning lock, the ground conductor would break before the ground check continuity conductor, creating a safety hazard.

4. The cable coupler has a male section, connected to the cable, and a female section, on the power center. There are three phase wires and a ground wire on the four corners of the male connector. In the center of the male connector two pilot wires serve as a ground monitor system, to break the circuit if the ground wire is not functioning. The ground wire is on the top right corner of the male connector. The pilot wires are much smaller than the ground or the phase wires and are susceptible to breaking. A defect in the ground monitor system, e.g., a defective relay, could go undetected for a substantial period. The regulations require that the power center be examined monthly.

5. The male section of the coupler is designed to be locked to keep it from falling down, to ensure that the ground wire will not drop out first. If the system is functioning properly, the pilot wires will disengage the circuit breaker if the ground wire has dropped out. In a small but significant number of cases, including some instances at S&H mines, the circuit will not break because of an undiscovered defect in the ground check system.

6. The lack of a lock on the cable coupler, if combined with a fault in the pilot wire system, could allow the belt feeder to operate for an extended period without a ground wire. Such a condition, in the event of a ground fault on the feeder, could lead to electrical shock or death.

7. The lack of a lock could also allow the cat head to slip and hang attached with only two phase wires connected to the power center. In this condition, the power could arc to the detached third phase wire, and potentially start a mine fire or burn out the circuit breaker, jeopardizing miners working around the feeder or its circuit.

Order 3174056

8. On May 15, 1990, Inspector McDaniel traveled with mine Foreman Tommy **McCoo** to examine the splices in the high voltage cables. He examined one splice in a **4160-volt** cable, using a tick tracer meter, designed to pick up stray current. He had used this meter for a number of years without errors in the readings as confirmed by physical inspections of the interior of splices. The meter indicated stray current was emitting from the splice. There were no signs of exterior damage to the splice or the cable.

9. Phase wires in a high-voltage cable are covered with copper shielding when they come from the manufacturer. The shielding is required to prevent stray current from penetrating the outer cable insulation. The shielding must be overlapped by at least one-half inch to prevent escaping current. Splices are made with a splice kit, which includes the necessary shielding material.

10. Inspector McDaniel asked who had made the splice and was told that it was made by Charles White, who is the mine superintendent and mine electrician. The inspector stated that his inspection indicated there was little or no shielding on the phase wires inside the splice. He found this to be a violation of 30 C.F.R. § 75.804, which requires that underground **high-voltage** cables be equipped with metallic shields around each ground conductor and that splices provide continuity of all components. Because the splice was made by Mr. White, Inspector McDaniel issued Order 3174056, charging an unwarrantable failure of mine management to comply with the safety standard, under § 104(d)(1) of the Act. Mr. White accompanied Inspector McDaniel to the splice, and opened the splice in his presence. There were repeating one-half inch gaps in the shielding on two of the phase wires for the entire distance of the splice. After examining the splice, Inspector McDaniel found that the person making the splice should have known that the phase wires were not adequately shielded, because of the size and number of the gaps in the phase wire shielding. Inspector McDaniel based this opinion on experience in having made a number of these splices, as well as his years of experience as an MSHA electrical inspector. It was Inspector McDaniel's opinion that Mr. White's position as superintendent and electrician for the company made the company responsible for a high degree of negligence displayed in the making of this splice.

11. The lack of phase wire shielding created a safety hazard because the current would eventually work through the insulation and could cause in an explosion, fire, or electrocution of a miner. The danger presented did not require that a person actually touch the wire to be electrocuted. It was reasonably likely that an accident would occur because the cable

was in an entry which was regularly traveled and the mine floor was wet. Charles White testified that he made the splice, but did not intentionally inadequately wrap the phase wires. He stated that he occasionally would use the old shielding that was on the phase wires instead of using the shielding provided in the splice kit. He also said that he made the splice under time constraints with only cap lighting. He acknowledged that the phase wire shielding had gaps in it, but he disputed the size of the gaps. I credit Inspector McDaniel's testimony as to the size of the gaps and the other conditions he observed.

DISCUSSION WITH FURTHER FINDINGS

Order 3174055

The top locking device on the feeder cable coupler was broken and had been removed. On May 14, 1990, Inspector McDaniel saw the coupler fall from its top locking position because wedges had been placed there instead of a locking device. This condition was a violation of 30 C.F.R. § 75.902.

Mr. Lindsey, who performed the preshift exam that morning, knew that the locking device was broken and had been removed. He was the operator's agent and certified examiner charged with finding and reporting hazardous conditions. He found this hazardous condition and not only failed to report it in his preshift report, but attempted to bypass the safety lock by using wedges. Mr. Lindsey's actions demonstrate aggravated conduct beyond ordinary negligence, imputable to the operator. Eastern Associated Coal Corp., 13 FMSHRC 178, 187 (1991). The violation was therefore "unwarrantable" under § 104(d)(1) of the Act.

Without the inspection of Inspector McDaniel, the cable coupler would have remained in an unsafe condition for a substantial period. It is reasonably likely that this condition would result in the operation of the feeder without ground fault protection. Given the wet mining conditions, it is reasonably likely that, in the event of a ground fault, someone working in the area would suffer an electrical shock. Additionally, continued mining could well result in arcing between the two connectors and could cause a mine fire or burn out the circuit breaker. The violation was "significant and substantial" within the meaning of § 104(d)(1) of the Act.

Order 3174056

This order involved an improper high voltage splice that created a hidden, serious danger. Mine conditions were wet, and the cable was located in a traveled area. The splice was made by Charles White, who was mine superintendent and mine electrician. It was one of many splices of this type that Mr. White had made. He is an experienced electrician who is well aware of the reason

for adequate shielding in a splice and the required method for providing that shielding.

Once sealed, an unsafe splice is not detectable to the naked eye. Given the danger involved in the failure to adequately shield a high-voltage splice, Mr. White had a high duty to ensure that the splice was made properly before sealing it. In addition, Mr. White is a member of management charged with the duty to ensure that the mine is safe for those who work there. He is **also an electrician**, and is charged with greater knowledge of the dangers involved concerning high voltage splices. I find that his conduct in making an unsafe splice was aggravated, beyond ordinary negligence. I therefore find that this was an unwarrantable violation.

Under continued mining operations the unsafe splice was reasonably likely to result in an electrical shock, of high voltage, causing death or serious injury. The violation was **"significant and substantial"** within the meaning of § 104(d)(1) of the Act.

Civil Penalties

Considering all of the criteria for civil penalties in § 110(i) of the Act, I find that the following civil penalties are appropriate for the violations found herein:

<u>Order</u>	<u>Civil Penalty</u>
3174055	\$400
3174056	\$400
	<hr/>
	\$800

CONCLUSIONS OF LAW

- 1, The judge has jurisdiction in this proceeding.
2. Respondent violated 30 C.F.R. § 75.902 as alleged in Order 3174055.
3. Respondent violated 30 C.F.R. § 75.804 as alleged in Order 3174056.

ORDER

WHEREFORE IT IS ORDERED that:

1. Orders 3174055 and 3174056 are AFFIRMED.

2. Respondent shall pay the above civil penalties of \$800 **within** 30 days from the date of this Decision.


William Fauver
Administrative Law Judge

Distribution:

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