

CCASE:
SOL (MSHA) V. RAMBLIN COAL
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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.

RAMBLIN COAL COMPANY, INC.,
RESPONDENT

CIVIL PENALTY PROCEEDING

Docket No. KENT 90-429
A. C. No. 15-16685-03510

Docket No. KENT 90-430
A. C. No. 15-16685-03511

No. 8 Mine

DECISION

Appearances: Joseph B. Lockett, Esq., Nashville,
TN, for Petitioner;
Billy Shelton, Esq., Pikeville, KY,
for Respondent.

Before: Judge Fauver

These cases were brought by the Secretary seeking civil penalties for alleged violations of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. By Order of July 1, 1991, KENT 90-430 was stayed, and in KENT 90-429, Citations 3367128, 3510164, and 3510419 were settled, and Citation No. 3509948 was stayed. An evidentiary hearing was held as to the remaining citations.

Having considered the hearing evidence and the record as a whole, I find that a preponderance of the substantial, probative, and reliable evidence establishes the following Findings of Fact and warrants the following Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The judge has jurisdiction in this proceeding.

2. Respondent employs about 20 employees at its Mine No. 8, which produces 125,000 to 150,000 tons of coal per year for sales or use substantially affecting interstate commerce. The coal seam in Mine No. 8 is 32 to 36 inches high.

Citation No. 3368936

3. Citation No. 3368936 was issued on November 28, 1989, by Inspector Thomas Charles for a violation of 30 C.F.R.

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75.402. The evidence sustains the charge. Rock dust had no been applied as required to the following areas in the 002-0 section: the No. 1 entry starting 40 feet outby the face and extending for 170 feet; the last row of open crosscuts across the section; and the No. 2 entry starting at the outby corner of the last open crosscut and extending outby for 80 feet. The areas in question were very black. Two spot band samples were taken by Inspector Charles, and they support the citation. Inspector Randy Wellman accompanied Inspector Charles and confirmed his findings.

4. Respondent should have observed and corrected this condition before the inspection, and was therefore negligent. Electrical equipment on the section provided an ignition source, and it was reasonably likely that an explosion or fire could occur, killing or seriously injuring 13 persons on the section.

5. A penalty of \$168 is appropriate, considering the criteria for a civil penalty in 110(i) of the Act.
Citation No. 3367127

6. Citation No. 3367127 was issued on January 26, 1990, by Inspector James Frazier for a violation of 30 C.F.R. 75.601-1. The evidence sustains the charge. The trip setting for the number 6 cable supplying power from the power center to the Lee Norse roof bolting machine was improperly set. The cable should be set no higher than 300 amperes, but was set on 450. This created a danger of fire or smoke inhalation in the event of a short circuit or over-current. The power was on this piece of equipment when the violation was observed by Inspector Frazier.

7. The violation was obvious and an electrician employed by Respondent was in the area. Respondent was therefore negligent. It was reasonably likely that a fire might occur, causing serious injuries.

8. A penalty of \$54 is appropriate.

Citation No. 3510451

9. Citation No. 3510451 was issued on February 21, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.601-1. The evidence sustains the charge. The trip setting for the cable connecting the section power center breaker to the mobile coal drill was not set properly. A number 6 cable was being used, and the setting for this cable should be set no higher than 300 amps. It was set at 550 amps. The power was on this piece of equipment when the violation was observed.

10. The violation was obvious and should have been corrected before the inspection. Respondent was therefore

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negligent. It was reasonably likely that the cable might catch on fire if it were subjected to more current than it was designed to withstand. This could result in severe burns.

11. A penalty of \$54 is appropriate.

Citation No. 3510452

12. Citation No. 3510452 was issued on February 21, 1990, by Inspector Harris for a violation of 30 C.F.R. 75.512. The evidence sustains the charge. The trailing cable (about 220 volts) on the Lee Norse roof bolter was not maintained in a safe condition. The cable had a damaged place exposing about one inch of the underlying power conductors. The metal part of the conductor was exposed. This cable is ordinarily handled by hand by the roof bolter helper, who keeps it out of the way of the roof bolter and other equipment in the mine.

13. The violation was obvious and should have been corrected before the inspection. Respondent was therefore negligent. It was reasonably likely that the roof bolter helper might touch the bare conductor and suffer a fatal electrical shock.

14. A penalty of \$98 is appropriate.

Citation No. 3510194

15. Citation No. 3510194 was issued on March 6, 1990, by Inspector Harris for a violation of 30 C.F.R. 77.1605(k). The evidence sustains the charge. The guard along the outer bank of the elevated roadway to the mine was not sufficient to prevent a vehicle from leaving the roadway. An adequate guard had been installed originally, but the roadway was built up by adding ballast until the guard was beneath the surface. Further, in an area where posts had been installed the earth had slipped or eroded until there was no berm or guard for about 200 feet. The total length of roadway affected was 800 to 1,000 feet.

16. The road was frequently traveled and the condition was obvious and dangerous. Respondent was therefore negligent. Coal trucks, supply vehicles, and miners driving to and from work regularly used the roadway. It was reasonably likely that one of these vehicles might travel off the roadway, causing fatal injuries to the driver. A fall of 80 to 100 feet to the bottom of the hollow would result.

17. A penalty of \$136 is appropriate.

Citation No. 3510199

18. Citation No. 3510199 was issued on March 6, 1990, by Inspector Harris for a violation of 30 C.F.R. 75.1722(a). The evidence sustains the charge. Inspector Harris observed the Joy cutting machine being trammed from one working place to another with no guard on the cutter chain. The coal in this mine is 32 to 36 inches. The machine operator had poor visibility because of the height of the coal and the size of the machine.

19. Respondent should have observed and corrected this condition and was therefore negligent. The machine was set to travel about 60 feet to another working place. With 15 people in the mine, it was reasonably likely that a miner might come into contact with the cutting chain, causing serious injuries.

20. A penalty of \$112 is appropriate.

Citation No. 3509741

21. Citation No. 3509741 was issued on March 28, 1990, by Inspector James Frazier for a violation of 30 C.F.R. 77.513.

22. The evidence sustains this charge. A dry wooden platform or insulated mat had not been provided for the number two charger, which was used to charge scoop batteries. The charger (480 volts) was on the mine surface and was fully exposed to the weather.

23. Respondent should have observed and corrected this condition, and was therefore negligent. It was reasonably likely that someone might receive a fatal electrical shock. The charger was used several times a day to plug or unplug batteries for charging.

24. A penalty of \$112 is appropriate.

Citation No. 3510420

25. Citation No. 3510420 was issued on March 28, 1990, by Inspector James Frazier for a violation of 30 C.F.R. 77.513. The evidence sustains the charge. A dry wooden platform or insulated mat had not been provided for the number one charger, which was used to charge scoop batteries. The charger (480 volts) was on the mine surface and was fully exposed to the weather.

26. Respondent should have observed and corrected this condition, and was therefore negligent. It was reasonably likely that someone might receive a fatal electrical shock. The charger was used several times a day to plug or unplug batteries for charging.

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27. A penalty of \$112 is appropriate.

Citation No. 3509742

28. Citation No. 3509742 was issued on March 28, 1990, by Inspector Frazier for a violation of 30 C.F.R. 75.503. The evidence sustains the charge. A scoop used in and inby the last open crosscut was not maintained in a permissible condition. There was an opening in excess of .005 inches in the main panel board; a rear headlight had no set screw in the lens and the headlight was not secured to the frame; there was no set screw in a packing gland nut; and the headlight on the right front of the scoop had no set screw in the packing gland nut. These problems created a danger of fire or explosion through ignition of coal dust.

29. Respondent should have observed and corrected this condition, and was therefore negligent. It was reasonably likely that a spark might ignite the coal dust in the air, causing an explosion or fire with serious injuries. Ten persons worked on the section.

30. A penalty of \$157 is appropriate.

Citation No. 3510415

31. Citation No. 3510415 was issued on March 28, 1990, by Inspector James Frazier for a violation of 30 C.F.R. 77.208(d). The evidence sustains the charge. Two compressed gas cylinders were placed beside the parts building and were not secured in a safe manner. There was a great deal of scrap metal in this area, which was frequently traveled by persons obtaining parts from the building or just going about ordinary surface duties.

32. Respondent should have observed and corrected this condition, and was therefore negligent. It was reasonably likely that the cylinders might fall or be knocked over, causing an explosion or causing the cylinder to become a missile if the cylinder were punctured.

33. A penalty of \$112 is appropriate.

Citation No. 3509946

34. Citation No. 3509946 was issued on April 10, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.305. The evidence sustains the charge. The last recorded date in the record book entitled "Examination of Emergency Escapeways and Facilities; Smokers Articles; Fire Doors" was April 2, 1990. This examination is required to be made and recorded at intervals not to exceed seven days. The mine produces coal five days a week.

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35. Respondent was aware of the need to record the examinations. Negligence was moderate. It was unlikely that the violation would result in any injury. It was not significant and substantial.

36. A penalty of \$112 is appropriate.

Citation No. 3509947

37. Citation No. 3509947 was issued on April 10, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.300. The last recorded date in the record book entitled "Daily and Monthly Examination of Ventilation Equipment" was April 3, 1990. This examination is required to be made and recorded on a daily basis. The mine produces coal five days a week.

38. Respondent was aware of the need to record the examinations. Negligence was moderate. It was unlikely that the violation would result in any injury. It was not significant and substantial.

39. A penalty of \$112 is appropriate.

Citation No. 3510198

40. Citation No. 3510198 was issued on March 6, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.301-4(a). The evidence sustains the charge. Inspector Harris attempted to take an air reading in the No. 7 active working entry and found no perceptible movement of air. An anemometer was used to take the air reading, and the blades of the instrument did not turn. The problem was caused by a line brattice, which did not reach the floor and did not adequately direct the flow of air to the face.

41. It was obvious that the line brattice did not reach the floor of the mine, and that the flow of air would therefore be short-circuited. Respondent was therefore negligent. It was reasonably likely that the two persons working in the entry could sustain serious injuries or disease as a result of this condition.

42. A penalty of \$119 is appropriate.

Citation No. 3510200

43. Citation No. 3510200 was issued on March 6, 1990, by Inspector Harris for a violation of 30 C.F.R. 75.208. The evidence sustains the charge. An area of unsupported roof, about 10 feet long and 20 feet wide, was present in the No. 3 entry working place where coal had been loaded out. There was no visible warning device nor a barricade to prevent travel into the

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area of unsupported roof. Inspector Harris testified that the roof appeared to be fragile shale, susceptible to sloughing and falling. The height of the coal was about 36 inches.

44. Respondent should have observed and corrected this condition and was therefore negligent. It was reasonably likely that someone would enter the area and be struck by falling roof, sustaining fatal or severe injuries.

45. A penalty of \$112 is appropriate.

Citation No. 3509801

46. Citation No. 3509801 was issued on March 28, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.400. The evidence sustains the charge. Accumulations of coal, coal dust, and float coal dust mixed with oil were present on a scoop used to load and haul coal in the face area. The accumulations covered much of the area of the scoop, including electrical components of the machine. This presented a danger of fire should the machine overheat or if some electrical problem occurred.

47. This condition was readily visible. Respondent was therefore negligent. It was reasonably likely that a fire might be started or propagated because of the accumulations, causing serious injuries.

48. A penalty of \$85 is appropriate.

Citation No. 3509802

49. Citation No. 3509802 was issued on March 28, 1990, by Inspector Sam Harris for a violation of 30 C.F.R. 75.503. The evidence sustains the charge. A scoop used to load and haul coal in the face area was not in a permissible condition. There was an opening in excess of four thousandths of an inch between the panel board cover and the supply compartment. The lens in the right headlight was displaced, and there was no set screw in the packing gland nut. The same headlight was not secure due to loosening of the set screws. There was an opening in excess of four thousandths of an inch between the main compartment and its cover. Finally, the parking brake on the scoop would not hold the machine stationary.

50. These conditions presented a number of dangers. The primary danger was caused by the openings between the covers of the electrical compartments which could cause a spark to escape, igniting coal dust and causing a fire or explosion. An ignition was reasonably likely to occur, with 13 persons on the section exposed to danger of serious injuries.

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51. A penalty of \$157 is appropriate.

ORDER

1. Respondent shall pay the above penalties of \$1,812 within 30 days of the date of this Decision.

2. The civil penalties in the settlements approved on the record, if not previously paid, shall be paid by Respondent within 30 days of this Decision.

3. The STAYS in Docket Nos. KENT 429 and 430 are LIFTED, and all citations charging excessive history violations are DISMISSED.

4. This Decision and Order and the settlement approved on the record constitute a final disposition of all issues in these proceedings.

William Fauver
Administrative Law Judge