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SOL (MSHA) V. LJ'S COAL  
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Federal Mine Safety and Health Review Commission  
Office of Administrative Law Judges

SECRETARY OF LABOR,  
MINE SAFETY AND HEALTH  
ADMINISTRATION (MSHA),  
PETITIONER

v.

LJ'S COAL CORPORATION,  
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. KENT 90-356  
A. C. No. 15-16477-03526

Docket No. KENT 90-399  
A. C. No. 15-16637-03528

No. 3 Mine

Docket No. KENT 90-400  
A. C. No. 15-16477-03529

Docket No. KENT 90-401  
A. C. No. 15-16637-03505

No. 4 Mine

DECISION ON REMAND

Before: Judge Weisberger

On August 4, 1992, the Commission issued a decision in these cases in which it remanded the cases to me ". . . for the limited purpose of determining whether the failure to report an unplanned roof fall in violation of 30 C.F.R. 50.10, was S&S. In this regard, the judge shall analyze each element of the Mathies test and set forth findings of fact and conclusions of law, and the reasons or bases supporting his determinations." (14 FMSHRC \_\_\_\_\_, slip op. p.6, Docket No. KENT 90-356 et al (August 4, 1992)).

In its decision (14 FMSHRC, supra, slip op p.4-5) the Commission set forth as follows the four elements of the Mathies test.

In Mathies Coal Co., 6 FMSHRC 1 (January 1984), the Commission further explained:

In order to establish that a violation of a mandatory standard is significant and substantial under National Gypsum the Secretary must prove: (1) the underlying violation of a mandatory safety standard; (2) a discrete safety hazard -- that is, a measure of danger to safety -- contributed to by the violation; (3) a reasonable likelihood that the hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a

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reasonably serious nature. 6 FMSHRC at 3-4. See also, *Austin Power Co. v. Secretary*, 861 F.2d 99, 104-05 (5th Cir. 1988), aff'g 9 FMSHRC 2015, 2021 (December 1987) approving Mathies criteria).

In the case at bar, I previously found a violation of 30 C.F.R. 50.10, in that the Operator had not reported a roof fall. This finding was based on the testimony of the inspector, that was not impeached or rebutted, that a cavity in the roof was evidence of a rock fall, and that it was not reported. I conclude that the first element of the Mathies, supra test has been met.

The second element in the Mathies test requires the Secretary to prove a danger to safety "contributed by the violation." Mathies supra. Hence, the inquiry is to focus on whether the violation has contributed to a discrete safety hazard, i.e. whether the failure to report the roof fall contributed to a safety hazard.

As a consequence of the roof fall herein which was not reported, a roof-bolting machine was entrapped. According to the inspector, the machine was removed by the operator without the use of supports. The inspector further indicated that the area of roof fall, approximately 20 to 30 feet wide and 20 feet high, would require a "considerable" amount of support in the form of bolts, cribbing, and posts in order to remove the bolter (Tr.80).

According to the inspector, upon notification of a roof fall which entrapped equipment, MSHA would issue an order ensuring the safety of the area pending an investigation. Also, the operator might be required to submit a plan instructing all employees on how the roof will be supported, and the manner in which work will be advanced to recover the equipment. Under these circumstances, the failure to report the roof fall contributed to the hazard of miners being exposed to unsupported roof.

The third element set forth in Mathies, supra, requires proof of a reasonable likelihood that the hazard contributed to will result in an injury. In this connection the inspector indicated that, based on the "massive" (Tr.85) nature of the fall, and the hazards involved in the removal of the entrapped bolter without the installation of a roof supports, he concluded that a injury would be reasonably likely to occur "because of this condition" (Tr.84). This opinion was not contradicted or unpeached by the operator. I conclude that the third element set forth in Mathies, supra has been met.

Should an injury have occurred as a result of miners working under unsupported roof as a consequence of the violation herein, it is clear that there would have been a reasonable likelihood that the resulting injury would have been of a reasonably serious

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nature. Hence, the forth element set forth in Mathies has been met.

For all these reasons, I conclude that the violation herein was significant and substantial.

Avram Weisberger  
Administrative Law Judge