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MSHA V. (CONSOLIDATION COAL) ALLAN GOODE  
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 91-2096
Petitioner	:	A.C. No. 46-01438-03900A
	:	
v.	:	Ireland Mine
	:	
ALLAN GOODE, Employed by	:	
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia, for  
Petitioner;  
David J. Hardy, Esq., Charleston, West Virginia,  
for Respondent.

Before: Judge Fauver

This is a petition for a civil penalty against a foreman  
under 110(c) (Footnote 1) of the Federal Mine Safety and  
Health Act of 1977, 30 U.S.C. 801 et seq.

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 Findings of Fact and  
further findings in the Discussion below:

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1 Section 110(c) provides: "Whenever a corporate operator  
violates a mandatory health or safety standard or knowingly  
violates or fails or refuses to comply with any order issued  
under this Act or any order incorporated in a final decision  
issued under this Act, except an order incorporated in a decision  
issued under subsection (a) or section 105(c), any director,  
officer, or agent of such corporation who knowingly authorized,  
ordered, or carried out such violation, failure, or refusal shall  
be subject to the same civil penalties, fines, and imprisonment  
that may be imposed upon a person under subsections (a) and (d)."

FINDINGS OF FACT

1. At all relevant times, Consolidation Coal Company operated Ireland Mine in West Virginia, producing coal for sale or use in or substantially affecting interstate commerce.

2. Respondent, Allan Goode, was employed by Consolidation Coal Company as a section foreman at the Ireland Mine for 23 of his 26 years at the mine, supervising seven to nine miners. His typical crew consisted of two roof bolters, a continuous miner operator, a loading machine operator, two shuttle care operators, a mechanic and sometimes two center roof bolters.

3. On or about March 8, 1990, (Footnote 2) Goode's crew was cutting an overcast in the 3 North Face Section. An overcast requires a higher cut than normal because two entries will cross over the area. In addition, 12 foot planks are installed on 2 1/2 to 3 foot centers with wire mesh. Without an overcast, roof planks are normally on 4 foot centers and wire mesh is not used.

4. Goode's crew was using a 1036 Jeffrey Continuous Miner Machine. George Holmes was the miner operator, the left bolter was Donald Conner, and the right bolter was Charles Minor. The continuous miner was equipped with a mounted, or "integral," roof bolting machine and plank jack on each side of the miner, and an automated temporary roof support system ("ATRS") of four jacks (two jacks on each side of the miner).

5. Permanent roof support in the overcast required double planks with wire mesh and, if necessary, cribbing boards to fit irregular places in the roof. To build an overcast, the continuous miner cuts down existing roof support and cuts into the roof to raise the height for the overcast. The miner is then backed up to a supported roof area, where a double plank, a section of wire mesh, and if necessary cribbing boards are stacked on the plank jacks. The miner is then trammed forward and the ATRS jacks are raised firmly against the roof. After that is done, the roof bolters raise the plank jacks, drill the roof holes and install roof bolts pinning the double plank and materials to the roof. The ATRS is then lowered and the cycle is repeated.

6. The two plank jacks on the continuous miner were between the front and rear ATRS jacks. The roof control plan provided that the roof bolters "will not advance in by the last permanent [roof] support until the ATRS system is placed firmly against the roof." Each crew member was fully aware of this requirement.

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2 The petition alleges a violation on March 9, 1990. The witnesses were not in agreement whether the incident in question was on March 8, 1990, or March 9, 1990. My finding is that it was on or about March 8, 1990. This is not a significant variance.

7. On the night in question, the crew installed the first plank without incident. When they were installing the second plank, pieces of the roof fell, knocking down the mesh, cribbing boards and plank. Goode came upon the scene when members of the crew were trying to free the wire mesh from rocks that had fallen from the roof.

8. Goode was known for having a short temper, and became angry on the spot. He asked the miners "What in the hell is going on?" and impatiently stated that "one man" could do the job. With that, Goode climbed up on the continuous miner and helped to restack the plank, mesh and cribbing boards on the plank jacks. The miner was trammed forward to the new plank position. The ATRS jacks were raised. Goode, on top of the continuous miner and crouching between the front and rear ATRS jacks, steadied the stacked material on the plank jacks, waiting for the bolters to raise the plank jacks and bolt the plank. The stack held by Goode came loose, and a plank fell against Charles Minor, hitting him on the head. Minor told Goode, "This is unsafe" and Goode replied, "So is walking down the street, but we have to do it." Tr. 80. Minor and other members of the crew were intimidated by Goode's angry tone and manner; they had come to recognize Goode's displays of temper as permitting no response or explanation from a subordinate, evoking only silence and motivation to "keep out of his way."

9. Goode and the crew restacked the material on the plank jacks and Goode again steadied the material, crouching between the ATRS jacks, while the bolters lined up the auger holes and raised the plank jacks. Goode left as the bolters were drilling through the plank between the ATRS jacks.

10. During the bolting of the second plank, the ATRS system was not firmly placed against the roof. The left ATRS jacks were not touching the roof because of the cavity left by the roof fall. The left front jack was 12 to 18 inches from the roof and the left rear jack was not touching the roof. This meant that Goode and the two roof bolters worked out by the last permanent roof support when the ATRS jacks were not firmly placed against the roof. This was a violation of the roof control plan.

11. Page Whorton was on the left side of the miner and observed that the two left-side ATRS jacks were not touching the roof. He told the left roof bolter, Conner, that the left jacks were not touching the roof. Conner immediately said "something" to Goode but Whorton could not hear the words. Goode continued with the process of having the crew install and bolt the second plank out by the last permanent roof support.

12. Whorton did not tell Goode the ATRS system was not firmly against the roof because (1) he told Conner and Conner immediately spoke to Goode, (2) he assumed Goode knew the ATRS was not firm against the roof and that Goode decided to install the second plank despite this fact, and (3) he was intimidated by Goode's angry manner and voice.



13. Charles Minor, the right bolter, observed that at least one of the left ATRS jacks was not touching the roof. He did not tell Goode because (1) he felt intimidated by Goode's angry remarks to him and (2) he assumed that Goode knew the ATRS system was not firmly against the roof and that Goode decided that, despite this fact, he wanted the crew to drill and bolt the second plank. They did so, even though this violated the roof control plan.

14. Donald Conner, the left roof bolter, testified that he did not see the ATRS jacks and could not tell whether or not they were touching the roof. He testified that he told Goode they were having problems and that if the ATRS did not reach the top they should get jack extensions or put blocks under the miner cleat tracks, to raise the ATRS to reach the top. Tr. 150. Goode testified that no one said anything to him about jack extensions or suggested to him in any way that the ATRS was not firm against the roof, and that he could not see the ATRS jacks because he was crouched on top of the miner, steadying the stack of materials on the plank jacks.

15. Charles Minor reported the incident to David Clarke, the UMWA Safety Committeeman, because he felt that Goode was responsible for violating the roof control plan. The union requested MSHA to investigate the matter under 103(g) of the Act. On March 19, 1990, an MSHA inspector investigated and cited the corporation for a violation of the roof control plan. On March 22, 1990, the company notified Minor and Conner they were suspended with intent to discharge for violating the roof control plan. The company did not take action against Goode. The company paid a civil penalty of \$1,300.00 for the roof control violation, without contest.

16. The discharge decision went to arbitration under the labor management contract. The arbitrator found that the company had cause to discipline Minor and Conner but "compelling extenuating circumstances" mitigated against discharge. Specifically, the arbitrator found that "Foreman Goode, acting on behalf of, and as mine management, had such knowledge of the precipitant commission of the violation as to constitute culpable fault by management." Exh. G-12, p. 7. The arbitrator reversed the discharges and ordered suspensions of Minor and Conner without pay from March 22, 1990, until their next scheduled workshift after his decision on April 3, 1990.

#### DISCUSSION WITH FURTHER FINDINGS

On or about March 8, 1990, Goode and his crew installed a plank, mesh and cribbing boards outby the last permanent roof support when the ATRS was not firm against the roof. The crew had never done this before. They knew it violated the roof control plan and that if ATRS jacks did not reach the roof, they should use jack extensions or put blocks under the cleat tracks of the miner to be sure that the ATRS was firm against the roof. The main explanation for the crew's conduct that night is Foreman



Goode's behavior. His demeanor in losing his temper and screaming at employees made it very difficult for subordinates to tell him the ATRS was not engaged properly. His actions indicated to the crew that he was angry about the delay in installing the second plank; by angrily standing on the miner and steadying the plank for drilling, he indicated that he wanted the crew to advance the miner, line up the augers, drill the roof holes, and bolt the plank to the roof without further comment or delay. The arbitrator found that Goode displayed "culpable fault by Management" in connection with the violation by the roof bolters. I similarly find that Goode was at fault based on the evidence in this case.

Although Goode contributed to a violation of the roof control plan by his conduct (intimidating the crew and showing an angry, aggressive intention to install the second plank without further comment or delay by any of the crew), the question under 110(c) of the Act is whether, as an agent of the corporation he "knowingly authorized, ordered, or carried out such violation ...."

Section 3(c) of the Act defines "agent" as "any person charged with responsibility for the operation of all or part of a coal or other mine or the supervision of the miners in a coal or other mine." This includes section foremen.

The Commission has interpreted the term "knowingly" as follows:

"Knowingly," as used in the Act does not have any meaning of bad faith or evil purpose or criminal intent. Its meaning is rather that used in contract law, where it means knowing or having reason to know. A person has reason to know when he has such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence. 92 F. Supp. at 780. We believe this interpretation is consistent with both the statutory language and the remedial nature of the Coal Act. If a person in a position to protect employee safety and health fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition, he has acted knowingly and in a manner contrary to the remedial nature of the statute.

Secretary v. Richardson, 3 FMSHRC 8, 16 (1981), 689 F.2d 632 (6th Cir. 1982), cert. denied, 461 U.S. 928 (1983).

There is no testimony that anyone told Goode directly that the ATRS did not reach the roof, and the evidence is unclear whether Goode could see the jacks from his crouched position on





the miner. I credit Whorton's testimony that he told Conner that the left ATRS jacks did not reach the roof and that Conner immediately spoke to Goode. However, Conner testified that he told Goode if or in case the ATRS jacks did not reach the roof they should get jack extensions or put blocks under the miner cleat tracks.

The deciding issue is whether Good had reason to know that the ATRS was not firmly placed against the roof. Goode knew that there was a roof fall that left a cavity about 1 1/2 feet deep by about 6 to 8 feet long, and the cavity ran from the left side of the miner to the right (as Goode looked inby). Tr. 217. He had reason to believe that at least some of the ATRS jacks would go into the cavity and might fail to press against the roof. Also, the wire mesh above the left ATRS jacks did not audibly "crunch" against the roof and in the circumstances Goode had a reasonable duty to listen for the crunch. Ordinarily, he could expect the roof bolters to observe the ATRS jacks and to be sure that they were pressed against the roof before they advanced to raise and bolt the plank. However, by his demeanor in (1) screaming at employees and displaying intense anger at the crew's delay in installing the second double plank, and (2) angrily climbing up on the continuous miner to steady the plank while waiting for the bolters to raise the plank, drill the roof and bolt the plank, Goode created a safety risk that his crew would be intimidated and not tell him if the ATRS did not reach the roof.

I find that Goode's unsafe conduct, combined with a reasonable likelihood that the ATRS jacks in the cavity would not reach the roof and the fact that the wire mesh on the left side did not audibly "crunch" against the roof, gave Goode reason to know (Footnote 3) that the roof control plan was being violated. I therefore find that Goode "knowingly authorized, ordered or carried out [a] violation" within the meaning of 110(c) of the Act.

Impatience and anger by a supervisor are not conducive to a safe working environment or compliance with safety standards. Goode's conduct endangered Goode, who steadied the plank outby the last permanent roof support, and endangered the two bolters, who drilled the roof and bolted the plank outby the last permanent roof support. (Footnote 4)

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3 "A person has reason to know when he has such information as would lead a person exercising reasonable care to acquire knowledge of the fact in question or to infer its existence." Secretary v. Richardson, supra, 3 FMSHRC 16.

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4 I do not accept the suggestion by Conner's testimony that the bolters were under supported roof when they drilled and bolted the plank. He suggested that they did not have to extend their bodies beyond the last roof support and could steady the plank, drill the roof, and bolt the plank within "arm's length" of the last roof support. I find that the roof control plan forbade

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Considering the applicable criteria in 110(i) for assessing a civil penalty, I find that a penalty of \$1,000.00 is appropriate for this violation.

CONCLUSIONS OF LAW

1. The judge has jurisdiction.
2. Respondent knowingly violated 30 C.F.R. 75.220(a)(1) (roof control plan) within the meaning of 110(c) of the Act.

ORDER

WHEREFORE IT IS ORDERED that Respondent, Allan Goode, shall pay a civil penalty of \$1,000.00 within 30 days from the date of

William Fauver  
Administrative Law Judge

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advancing beyond the last roof support -- whether by an arm, a leg or the entire body.