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SOL (MSHA) V. WILLIAMS BROTHERS  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-752  
Petitioner : A.C. No. 15-16666-03512  
v. :  
: No. 3 Mine  
WILLIAMS BROTHERS COAL :  
COMPANY, INCORPORATED, :  
Respondent :

DECISION

Appearances: Mary Sue Taylor, Esq., U.S. Department of Labor,  
Office of the Solicitor, Nashville, Tennessee  
for Petitioner;  
Hufford Williams, Vice President, Williams Brothers  
Company, Incorporated, pro se,  
for Respondent.

Before: Judge Feldman

In this proceeding the Secretary seeks to impose a civil penalty on the respondent for an alleged non-significant and substantial violation of the mandatory safety standard in Section 77.1605(d), 30 C.F.R. 77.1605(d).(Footnote 1) Pursuant to notice, an evidentiary hearing was held in Prestonsburg, Kentucky, wherein Clifford Crum testified on behalf of the Secretary and Hufford Williams testified for the respondent. The parties stipulated to my jurisdiction in this matter and waived the filing of post-hearing briefs. At the culmination of the hearing, I issued a bench decision vacating the citation in issue and dismissing this case. This decision formalizes my bench ruling.

The dispositive facts in this matter are not in dispute. On March 23, 1992, Mine Safety Inspector Clifford Crum issued Citation No. 3810327 for an alleged violation of Section 77.1605(d). The citation was based upon one inoperable right lower front headlight and two inoperable rear taillights on the respondent's Caterpillar front-end loader, Model No. 980B,

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1 Section 77.1605(d) provides: "Mobile equipment shall be provided with audible warning devices. Lights shall be provided on both ends when required." The subject front-end loader was equipped with the requisite audible warning system. (Tr.46).

located on the surface of the respondent's underground No. 3 Mine. (Footnote 2) It is undisputed that the front-end loader had three operational headlights on the front and two operational headlights on the rear. It is also undisputed that two operational headlights on the front and two operational headlights on the rear satisfy the requirements of Section 77.1605(d). (Tr. 31-32). Inspector Crum testified however, that the respondent was cited under the theory that all equipment on a piece of machinery must be operational. (Tr. 20-21). In this regard, Crum considered the violation to have been abated when the respondent replaced the front headlight and removed the inoperable taillights. (Tr. 19-20). At the hearing, I issued the following bench decision which is edited with non-substantive changes:

The issue is whether Section 77.1605(d) has been violated. This section requires loading and haulage equipment to have lights on both ends. The operable part of this section is lights in the plural sense.

In issue is the condition of the front and rear of this front-end loader. Starting with the front, the equipment has a standard two light operational mode with two additional headlights that can be added as an option.

The undisputed testimony indicates that three of the four front headlights were operational. Mr. Crum's testimony indicates that if only two headlights were operational and there were only two headlights installed on the vehicle, there would be no violation. However, we have the anomalous situation of a citation issued for three operational headlights where only two headlights are required.

My view of Section 77.1605(d) is that if two lights are sufficient, certainly three lights are sufficient. Although it would have been preferable to have the fourth light operational, I find that the three operational headlights satisfied Section 77.1605(d) with regard to the front of the loader.

Turning to the rear end of the loader, the testimony reflects two operational headlights. What were not operational were two taillights. Mr. Crum testified that removal of these inoperable taillights abated the

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2 The loader is only used on the surface to load stockpiled coal into dump trucks. It travels approximately 50 to 60 feet during the loading process. It is used only during the day shift from approximately 6:00 a.m. until 3:00 p.m. (Tr 41-43).

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alleged violation with respect to the rear of the vehicle. I am hard pressed to conclude that there's been a violation with regard to the rear because the taillights were inoperable if removing the taillights abates the situation.

Therefore, I conclude that both the front and rear of the loader satisfied the requirements as intended under Section 77.1605(d) in that headlights were provided on both ends. I am hereby vacating the citation and dismissing the case. (See Tr. 56-58).

ORDER

In view of the above, Citation No. 3810327 IS VACATED and this civil penalty proceeding IS HEREBY DISMISSED.

Jerold Feldman  
Administrative Law Judge

Distribution:

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