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

OFFICE OF ADMINISTRATIVE LAW JUDGES
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CONSOLIDATION COAL COMPANY,	:	CONTEST PROCEEDINGS
Contestant	:	
v.	:	Docket WEVA 92-657-R
	:	Order No. 3108710;1/13/92
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 92-658-R
ADMINISTRATION (MSHA),	:	Citation No. 3108711;1/13/92
Respondent	:	
	:	Humphrey No. 7 Mine
	:	
	:	Mine ID 46-01453
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 92-838
Petitioner	:	A. C. No. 40-01453-04005
v.	:	
	:	Humphrey No. 7 Mine
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	

DECISION

Appearances: Charles M. Jackson, Esq., Office of the Solicitor, U.S. Department of Labor, Arlington, Virginia for the Secretary of Labor;
Daniel Rogers, Esq., Consolidation Coal Company, Pittsburgh, Pennsylvania, for Consolidation Coal Company.

Before: Judge Weisberger

Statement of the Case

These consolidated proceedings involve the issue of the validity of various citations and orders issued by the Secretary (Petitioner), to the Operator (Respondent), alleging violations of various mandatory safety standards. Pursuant to notice, a hearing was held in Washington, Pennsylvania, on December 1, 1992. At the hearing, Petitioner moved to vacate Order No. 3108710 (Docket WEVA 92-657-R), and this motion was granted based on the representations and documentation submitted by

Petitioner. Petitioner also moved to approve a settlement that the parties had reached with regard to Citation Nos. 3108711, 3108762, 3108920, and 3108604. These motions were granted based upon the representations of counsel. In addition, Petitioner moved to withdraw Citation No. 3108711, and this motion was granted based upon the representations of counsel.

At the hearing, Charles J. Thomas testified for Petitioner, and Mike Jackson, and Stanley Brozick, testified for Respondent. Petitioner filed a post-hearing brief on January 21, 1993. Respondent filed a post-hearing brief on January 29, 1993.

Findings of Fact and Discussion

I. Violation of 30 C.F.R. 75.1003(c)

On January 16, 1992, MSHA Inspector Charles J. Thomas, while inspecting the 6 SW Longwall at Respondent's Humphrey No. 7 Mine, approached the working section in a covered personnel carrier. Two other personnel carriers were located inby on this same track, one in front of the other. The trolley wire, which supplies power to the personnel carrier, and which was suspended from the roof of the entry, was not guarded above the outby personnel carrier. Thomas issued Citation No. 3108919 alleging that "... the trolley wire is not guarded over the extra personnel carrier at the man-trip station", in violation of 30 C.F.R. 75.1003. At the hearing, the parties agreed that the issue to be determined is whether the cited condition constitutes a violation of 30 C.F.R. 75.1003 which, as pertinent, provides that "trolley wires shall be guarded adequately ... (c) at man-trip stations". The initial issue to be determined is whether the personnel carriers are "man-trips", and whether the area where the outby carrier was located on January 16, 1992, was a "man-trip station".

A. Man-Trips

The personnel carriers at issue are covered, have a capacity of transporting 12 men, and are used to transport a longwall crew, consisting of 7 men, to and from the section. The personnel carrier has two trolley poles, one located at the inby end of the carrier, and the other at the outby end of the carrier. These poles are utilized to make the connection with the overhead trolley wire and thus provide power to move the personnel carrier. When the personnel carrier is traveling inby it uses only the inby trolley pole. To prepare the personnel carrier for the outby trip, the operator of the carrier has to remove the inby trolley pole from the trolley wire and connect it to the pole "dog." The operator must then "undog" the outby pole, and connect it to the trolley wire.

The term "man-trip" is not defined in either the regulations

or in Section 310(d) of the Federal Mine Safety and Health Act of 1977, "the 1977 Act", or Section 310(d) of the Federal Coal Mine Health and Safety Act of 1969 ("the 1969 Act"), both of which contain the same language as Section 75.1003, supra.

According to Stanley Brozick, Respondent's Safety Supervisor at the mine in question, he does not know of any definition of the term "man trip." He opined that a covered carrier is not a "man-trip". He explained that prior to 1971 or 1972, Respondent, and other operators, utilized uncovered "man-trips" pulled by locomotives to transport miners to and from the section. He indicated that these man-trips did not remain on the section, but instead dropped persons off as they travelled inby. He indicated that the places where persons entered and exited the man-trip were termed mantrip stations. However, Brozick indicated that, now, a "man-trip" is considered synonymous with the term "portal bus." Mike Jackson, a safety escort employed by Respondent at the Humphrey No. 7 Mine, concurred. In contrast, Thomas opined that a "man-trip" is the same as a personnel carrier as the latter carries miners. Hence, the record fails to convincingly establish a recognized definition in the mining industry of the term "man-trip". (Footnote 1)

Respondent refers to 30 C.F.R. 75.1403-6 and 30 C.F.R. 75.1403-7 as support for its proposition that personnel carriers powered by electricity from a trolley wire are not to be considered man-trips, which are pushed or pulled by locomotives. Sections 75.1403-6, supra, and Section 75.1403-7 supra, contain criteria by which an inspector is to be guided in issuing safeguards to minimize hazards with respect to the transportation of men. Separate criteria are provided for "self-propelled personnel carriers" and for "man-trips". The terms "self-propelled personnel carrier" and "man-trip" are not defined in Section 75.1403-6, supra, and Section 75.1403-7, supra. There is no indication that a personnel carrier powered by electricity from a trolley wire, to which it is connected by way of a pole attached to the personnel carrier, is not within the scope of the term "man-trip."

In U.S. Steel Company, Inc., 7 FMSHRC 865 at 868 (1988) the Commission set forth its analysis of Section 75.1003 supra as

1Petitioner, at the hearing, made reference to the following definition of the "man-trip" as set forth in A Dictionary of Mining, Mineral, and Related Terms (United States Department of the Interior, (1967)): "a. A trip made by mine cars and locomotives to take men rather than coal, to and from the working places." Inasmuch as this defines the term "mantrip" when used as an adverb, it is not of much probative value with regard to a definition of that term when used as a noun, as in the instant case.

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follows:

As the language of section 75.1003 specifies, in order to effectuate the purpose of the standard, guarding is especially necessary at mantrip stations. Miners are discharged at such stations and pass under trolley wire in the process. Further, a common hazard presented by unguarded trolley wire at a mantrip station is the possible shock hazard to the mantrip operator when he stands to remove the trolley pole from the overhead wire.

Clearly the hazards intended to be protected against by Section 75.1003, supra, apply to all vehicles transporting miners that are powered by trolley wires. Since the carriers at issue are used to transport miners to and from the working section, I find that they are man-trips within the purview of Section 75.1003, supra.

B. Man-trip Station

During normal mining operations, one personnel carrier is left in place to be used, in the event of an emergency, by those personnel working on the section between shifts. The other carrier transports men to the section at the beginning of the shift, and then transports them from the section at the end of the shift.

During normal mining operations, a specific area, such as the one in question, is used by miners to get off the personnel carrier at the beginning of the shift, and to enter the personnel carrier at the end of the shift. However, as the longwall mining advances outby, the area in which the miners get on and off the personnel carrier is also moved outby. According to Thomas, the locations where miners enter and exit the personnel carrier are moved outby approximately once a week, depending upon the speed at which the longwall face advances outby. Respondent's witnesses have not contradicted or impeached this testimony.

In U.S. Steel Company, Inc., supra, at 868, the Commission, in evaluating whether the location where the man-trip therein stopped was a "man-trip station" at which the trolley wire must be guarded, held that "... a mantrip station can be established through routine or regular stopping practice, as well as by explicit designation. Such a construction of the standard is founded in the practicalities of daily mining operation and furthers the protective concerns of Congress cited above." In this connection, the Commission, in U.S. Steel, supra, at 867, analyzed the legislative intent regarding the enactment of the language in the 1969 Act that is repeated in Section 75.1003(c), supra, as follows:

The primary purpose of the guarding requirement in

section 75.1003 is to prevent miners from contacting bare trolley wires. As noted above, this standard repeats section 210(d) of the Mine Act, 30 U.S.C.

870(d), which, in turn, was carried over unchanged from section 310(d) of the 1969 Coal Act, 30 U.S.C.

801, et seq., (1976) (amended 1977). The legislative history of the 1969 Coal Act relevant to section 75.1003 reveals a strong Congressional concern with the hazards associated with bare trolley wires:

This section requires that trolley wires and trolley feeder wires be insulated and guarded adequately at doors, stoppings, at mantrip stations, and at all points where men are required to work or pass regularly Also, this section would require temporary guards where trackmen or other persons work in proximity to trolley wires and trolley feeder wires. The Secretary or the inspector may designate other lengths of trolley wires or trolley feeder wires that shall be protected.

. . . The guarding of trolley wires and feeder wires at doors, stoppings, and where men work or pass regularly is to prevent shock hazards.

Because of the extreme hazards created by bare trolley wires and trolley feeder wires, the committee intends that the Secretary will make broad use of the authority to designate additional lengths of trolley wires and trolley feeder wires that shall be protected.

S. Rep. No. 411, 91st Cong., 1st Sess. 77 (1969), reprinted in Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94th Cong., 1st Sess., Part 1 Legislative History of the Federal Coal Mine Health and Safety Act of 1969, at 203 (1975):

In U.S. Steel, supra, at 868, the Commission, in analyzing Section 75.1003, supra, indicated that to effectuate the purpose of Section 75.1003, supra, guarding is necessary at man trip stations where miners are discharged and walk under trolley wires. Also recognized was the hazard at a man-trip station of a possible shock to the man-trip operator when he stands to remove the trolley pole from the overhead wire.

According to Thomas, in essence, due to the requirement of only a 12 inch minimum clearance between the rib and the carrier on the tight side of the entry, the operator of the carrier normally slides back an access door in the roof of the carrier to allow him to reach up and "undog" the trolley pole and attach it

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to the trolley wire. Since the pole must be "undogged" from a spring, and placed on the trolley wire, which according to Mike Jackson, Respondent's expert, is located a minimum of 16 inches from the roof of the carrier, I conclude that there was a possible shock hazard to the man-trip operator when engaging in this activity under unguarded wire at the area in question at the beginning and end of a shift.

Further, since the use of the area in question by miners to exit and enter personnel carriers was not random or a one-time-only stop, but instead was used regularly, although for a limited time, I conclude within the framework of U.S. Steel, supra, that the particular location in question was a man-trip station. Since the trolley wire above the area in question was not guarded, I conclude that Respondent violated Section 75.1003 supra.

II. Significant and Substantial

According to Thomas, in order to "undog" the trolley pole and place it on the trolley wire, operators of the carrier in question have their arms, head and shoulders outside the access door, and on top of the carrier. He indicated that he has driven a portal bus, and he positioned his head outside on top of the carrier while "undogging" the trolley wire. He also said that most of the operators he observed performing this procedure, positioned their head outside, on top of the carrier. He indicated that if a person 6-foot tall was required to do this procedure, his head would be a foot from the wire.

Thomas indicated that he has always seen operators performing the "undogging" procedure using two hands. Thomas indicated that it takes two hands to "undog" the pole, as it is spring loaded. According to Thomas, in the procedure of moving the pole from the "dog" to the trolley wire, the operator's hand would be between an inch and a foot away from the wire. He indicated that generally, the operator would be exposed to the hazard of shock or burn, if he were to come in contact with the trolley wire when he reached in to "undog" the trolley pole and put it on the wire.

Thomas opined that a reasonably serious injury was reasonably likely to occur as a result of the lack of guarding herein. He explained that contact with the wire would have been reasonably likely to occur, as the procedure of undogging the pole and placing it on the wire had to be performed twice a shift, on each of three daily shifts. He indicated that generally the working conditions are cramped, and that if the operator should get mud on his shoes and slip, he then "could" come in contact with the wire (Tr.82). On-cross-examination he indicated that such contact "may occur someday" (Tr.83).

Jackson indicated that he has operated a carrier and, in general, he used one hand to put the pole on the wire. He also indicated that there is no reason for the operator to place his head out of the vehicle. In this connection, he indicated that an operator would be less likely to put his head out if the wire is unguarded, as the visibility is better, and it is thus easier to see where to place the pole on the wire. Brozick indicated that the base of the pole is practically at eye level. Hence, according to Brozick, to release the "dog", it is not necessary for the operator's head to be above the carrier except, on occasion, if the roof is low.

A "significant and substantial" violation is described, in section 104(d)(1) of the Mine Act, as a violation "of such nature as could significantly and substantially contribute to the cause and effect of a coal or other mine safety or health hazard." 30 C.F.R. 814(d)(1). A violation is properly designated significant and substantial "if, based upon the particular facts surrounding the violation there exists a reasonable likelihood that the hazard contributed to will result in an injury or illness of a reasonably serious nature." Cement Division, National Gypsum Co., 3 FMSHRC 822, 825 (April 1981).

In Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), the Commission explained its interpretation of the term "significant and substantial" as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor 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 reasonably serious nature.

In United States Steel Mining Company, Inc., 7 FMSHRC 1125, 1129, the Commission stated further as follows:

We have explained further that the third element of the Mathies formula "requires that the Secretary establish a reasonable likelihood that the hazard contributed to will result in an event in which there is an injury." U.S. Steel Mining Co., 6 FMSHRC 1834, 1836 (August 1984). We have emphasized that, in accordance with the language of section 104(d)(1), it is the contribution of a violation to the cause and effect of a hazard that must be significant and substantial. U.S. Steel Mining

Company, Inc., 6 FMSHRC 1866, 1868 (August 1984);
U.S. Steel Mining Company, Inc., 6 FMSHRC 1573,
1574-75 (July 1984).

The question of whether any particular violation is significant and substantial must be based on the particular facts surrounding the violation, including the nature of the mine involved, Secretary of Labor v. Texasgulf, Inc., 10 FMSHRC 498 (April 1988); Youghiogheny & Ohio Coal Company, 9 FMSHRC 2007 (December 1987).

The first two elements of the Mathies test have been met, inasmuch as I have found that there was a violation of 75.1003 supra. The evidence also clearly establishes that, due to the violation herein, the hazard of contact with a 120 volt trolley wire resulting in injuries was contributed to. The issue herein is whether the third element of Mathies has been met, i.e., whether there was a reasonable likelihood of an injury producing event, i.e. contact with the unguarded trolley wire. Certainly, given the proximity of the wire to the roof of the carrier, there was a possibility of the operator making inadvertent contact with the unguarded wire in the procedure of "undogging" the pole, and placing it on the wire. Petitioner has not described with specificity the exact manner in which the undogging of the trolley pole is performed, aside from Thomas' testimony that the "dog" is spring loaded and two hands are required to perform this procedure. Also, the distances between the operators hands and the trolley wire that Thomas testified to are, at best, estimates, and vary with the height of the roof and the height of the operator. Petitioner has not proffered documentation of any incidents where inadvertent contact with an unguarded wire has resulted from "undogging" a pole from a carrier of the type in issue, and placing it on a trolley wire. For all these reasons, I conclude that it has not been established that there was a reasonable likelihood of contact with the wire. Accordingly, it has not been established that the violation herein was significant and substantial.

III. Penalty

According to Thomas, the cited condition would have been obvious to a trained foreman, as it was obvious to him. Also, on July 30, 1990, October 11, 1990, November 12, 1991, and November 25, 1991, Respondent had been previously cited for not having a guarded trolley wire at a man-trip station, and Respondent paid the penalties assessed for these violations. Further, Thomas indicated that, prior to the date of the citation, at issue, he had a discussion with the mine foreman, and John Haizer, the superintendent, with regard to how much guarding was necessary. I conclude that Respondent's negligence herein was moderate. Further, considering the gravity of the violation, as evidenced by Thomas' testimony that should one come

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in contact with the electric trolley wire, burns or electric shock could result, and considering the remaining factors set forth in section 110(i) of the Act, I conclude that a penalty of \$300 is appropriate for this violation.

ORDER

It is hereby ordered that (1) Respondent shall, within 30 days of this decision, pay a civil penalty of \$300 for the violation cited in Citation No. 3108919, and a civil penalty of \$930, based on the granting of the parties' Motion to approve a settlement regarding Citation Nos. 3108711, 3108762, 3108920, and 3108604; (2) Order No. 3108710 (Docket No. WEVA 92-657-R) is VACATED; (3) Citation No. 3108711 be withdrawn; and (4) Citation No. 3108919 be amended to a violation that is not significant and substantial.

Avram Weisberger
Administrative Law Judge

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