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SOL (MSHA) V. CONSOLIDATION 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, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. PENN 92-854
Petitioner : A.C. No. 36-04281-03801
v. :
 : Dilworth Mine
CONSOLIDATION COAL COMPANY, :
Respondent :

DECISION

Appearances: Theresa C. Timlin, Esquire, Office of the
Solicitor, U.S. Department of Labor,
Philadelphia, Pennsylvania, for Petitioner;
Daniel Rogers, Esquire, Consolidation Coal
Company, Pittsburgh, Pennsylvania, for
Respondent

Before: Judge Melick

This case is before me upon the petition for civil penalty
filed by the Secretary of Labor pursuant to Section 105(d) of
the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801,
et seq., the "Act" charging the Consolidation Coal Company
(Consol) with one violation of the mandatory standard at
30 C.F.R. 75.516.

The citation at bar, No. 3699508, alleges a "significant
and substantial" violation of the noted standard and, as amended,
charges as follows:

The 550 Volt D.C. Trolley wire was not supported
on well-insulated insulators and was in contact
with combustible material in that the insulators
failed to insulate the trolley wire's electrical
current from the mine roof. The insulators that
were installed for the J Mains Haulage at Mouth
of 1-D, just outby 73" crosscut and just inby
75 crosscut failed allowing heat and sparks to
track across the insulating material and to start
heating the area where the hanger was supported.
The hanger at 1-D had a small flame, at 73" cross-
cut the mine roof was heated up and a lot of smoke
put out and at 75 crosscut there were sparks
observed. This citation is issued in conjunction

with 107-A order No. 3699507.

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The cited standard reads as follows:

All power wires (except trailing cables on mobile equipment, specially designed cable conducting high-voltage power to underground rectifying equipment or transformers, or bare or insulated ground and return wires) shall be supported on well-insulated insulators and shall not contact combustible material, roof, or ribs.

The essential facts in this case are not in dispute. On July 2, 1992, an inspection party consisting of MSHA Inspector Ron Hixson, Union Representative Marlon Whoolery, and Company Representative Pat Wise found "hot" trolley wire hangers at three locations in the Dilworth Mine. The 600-volt DC trolley wire at the Dilworth Mine is suspended from the mine roof by pipes inserted into the roof upon which insulated hangers are hung with "bull-dog" clamps. The trolley wires are attached to the hangers, which are designed to act as insulators (see Government Exhibit Nos. 1 and 2). These hangers have been installed approximately every ten feet for the five miles of trolley line throughout the mine.

As the inspection party approached J Mains air shaft 6 area they saw a one to three inch flame at the base of one of the hangers. Whoolery observed that the yellow plastic covering the trolley wire was on fire. The trolley wire was immediately deenergized and the hanger replaced. According to Whoolery, who actually removed and replaced the hanger, the insulation inside the hanger had completely burned out.

The inspection party found a second hot hanger at 73-1/2 crosscut. Hixson first smelled smoke some 500 to 660 feet before observing black billowing smoke coming from the mine roof above the hanger. The hot area of mine roof, about 2 feet in diameter, was picked-out and the area cooled with water before the old hanger was replaced. Whoolery, who also removed this hanger, observed that the insulation inside had become chalky white.

The third hot hanger was found at the No. 75 crosscut. According to Hixson the hanger was arcing with electrical current, like static electricity, along the base of the hanger. The power was again removed from the trolley wire and this insulator was also replaced. According to Whoolery, the insulated hanger was not in itself involved, but rather there was arcing from the bull-dog across the dirigo. Accordingly, Whoolery replaced only the dirigo.

According to Inspector Hixson, the hangers cited in this case were not performing as insulators. Carol Boring, electrical engineer for the MSHA Division of Safety, agreed,

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concluding that the first two hangers cited in this case had already failed as insulators when they were discovered. She defined the term "insulator" as a material that provides protection by separating conducting surfaces by a dielectric substance or air space permanently offering a high resistance to the passage of current and to disruptive discharge through the substance of space (See Government Exhibit No. 4). With respect to the third cited hanger, Ms. Boring opined that the arcing across the dirigo showed initiation of a breakdown of both insulators. She concluded, therefore, that in all three instances the hanger systems were not providing insulation and thus were not "insulators" and were in violation of the cited standard.

The Secretary argues that there was a violation of the cited standard under either of two theories. First, that while there was no physical contact between the energized power wires and the combustible roof there was electrical "contact" in violation of the cited standard when electrical current tracked across the hangers and, second, that the hangers, when cited, were not in fact "insulators" as required by the cited standard.

In a recent decision involving the same standard at issue herein, Judge Weisberger, in Consolidation Coal Company v. Secretary, 15 FMSHRC 392 (March 1, 1993), cogently analyzed the relevant law as follows:

Section 85.516 supra requires that wires such as the trolley wires in issue shall be supported on 'well-insulated insulators and shall not contact combustible materials roof or ribs'. Hence, the plain language of Section 75.516 supra indicates that this Section is violated only if, (1) the insulators are not 'well-insulated' or (2) the trolley wires contact combustible material, roof, or ribs.

1. Well-insulated insulators

Section 75.516-1 defines well insulated insulators as meaning 'well-installed insulators'. At best, the evidence herein tends to establish that the insulators did not serve their intended purpose due perhaps to moisture. However, there is a lack of evidence to base a conclusion that the insulators were not 'well-installed'. There is no evidence in the record to base a conclusion as to the manner in which the insulators were installed. Indeed, the parties stipulated that the insulators at issue were 'well installed'. (Tr. 115) Thus, I conclude that the trolley wires were well insulated.

2. Trolley wires in contact with combustible material

Also, Section 75.516 supra is violated if the trolley wire comes in 'contact' with combustible material, roof or ribs. Section 75.516 supra contains the identical language that was set forth in Section 305(k) supra of the 1969 Act and which was incorporated in the 1977 Act. Neither the 1969 Act nor the regulations clarify as to whether section 305(k) (Section 75.516 supra) intended to prohibit physical or electrical contact between trolley wire and combustible material. However, enlightenment as to as to Congressional intent is found in the legislative history of the 9169 Act. The Senate Report, in its section by section analysis, indicates that section 206(g) of the Senate Bill, whose language was reiterated in Section 305(k) of the 1969 Act, requires that all power conductors be 'not allowed to touch combustible material, roof, or ribs.' (Legislative History, supra at 193). To the same affect, the House Report in its analysis of Section 305(l) of the House Bill whose language was reiterated in Section 305(k) of the 1969 Act, states that Section 305(l) requires that all underground power conductors be 'not allowed to touch combustible materials, roof, or ribs.' (Legislative History, supra, at 1079). Thus, I conclude that Congress intended that trolley wires not touch combustible material i.e. not come in physical contact with these materials.

I agree with Judge Weisberger's analysis that the Congress intended that trolley wires not touch combustible materials in the sense that they not come in physical contact with these materials. I therefore reject the Secretary's first theory of a violation. I note that the Secretary did not seek review of Judge Weisberger's decision.

In regard to the Secretary's alternate theory of a violation I note that rather than amend the convoluted definition in 30 C.F.R. 75.516-1 that "well-insulated" insulators does not mean what it says, but rather means "well installed" insulators, the Secretary, with creditable creativity, now argues that the cited hangers, though admittedly obtained and originally installed as "insulators," were not in fact "insulators" at all because they failed to perform the insulating function of "insulators." Indeed, there is no dispute with the expert testimony of MSHA Electrical Engineer Carol Boring that the cited hangers had in fact become conductors of electrical current and were no longer performing the function of insulators. Since, according to the Secretary's regulations, "well insulated"

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does not mean what it says but rather means "well installed," it is not redundant to read Section 75.516 as requiring well installed "insulators" that in fact are sufficiently well insulated to be considered "insulators." Since the hangers cited herein were in fact not performing the function of "insulators" they were not in fact "insulators" and accordingly did not meet the requirements of the cited standard.

The facts clearly support the Secretary's undisputed finding that the violations were "significant and substantial" and of high gravity. I accept the inspector's assessment of low negligence under the circumstances. There is no dispute that Consol had been running frequent infra-red scans of the hangers throughout the Dilworth Mine and that any of the hangers could fail at any time, particularly in this especially damp mine. Considering all available evidence under the Section 110(i) criteria, I find that the Secretary's proposed penalty of \$240 is indeed appropriate.

ORDER

Citation No. 3699508 is AFFIRMED as amended and the Consolidation Coal Company is directed to pay a civil penalty for the violation charged therein of \$240 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge
703-756-6261

Distribution:

Theresa C. Timlin, Esq., Office of the Solicitor, U.S. Department of Labor, Room 14480 Gateway Building, 3535 Market Street, Philadelphia, PA 19104 (Certified Mail)

Daniel Rogers, Esq., Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, PA 15241-1421 (Certified Mail)

Robert H. Stropp, Esq., United Mine Workers of America, 900 Fifteenth Street, N.W., Washington, D.C. 20005 (Certified Mail)

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