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SOL (MSHA) V. BOBBY LEE PRICE  
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SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING  
MINE SAFETY AND HEALTH :  
ADMINISTRATION (MSHA), : Docket No. KENT 92-577  
Petitioner : A.C. No. 15-11986-03552 A  
v. :  
: Mine No. 211  
BOBBY LEE PRICE, Employed by :  
CROCKETT COAL COMPANY, :  
Respondent :

DECISION

Appearances: J. Philip Smith, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia, for  
the Petitioner;  
Bobby Lee Price, Elkhorn City, Kentucky, pro se,  
for the Respondent.

Before: Judge Koutras

Statement of the Case

This is a civil penalty proceeding filed by the petitioner against the respondent pursuant to section 110(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c), charging the respondent with an alleged "knowing" violation of mandatory safety standard 30 C.F.R. 75.220. At the time of the alleged violation, the respondent was employed by the Crockett Coal Company as a section foreman.

The respondent contested the alleged violation and filed an answer to the petitioner's proposal for assessment of a civil penalty in the amount of \$600. A hearing was held in Pikeville, Kentucky, and the parties appeared and participated fully therein. The parties waived the filing of posthearing briefs, but I have considered their arguments made on the record in the course of the hearing in my adjudication of this matter.

Issues

The principal issue presented in this case is whether or not the respondent knowingly authorized, ordered, or carried out the alleged violation. If he did, the next question presented is the appropriate civil penalty which should be assessed against the respondent taking into account the civil penalty criteria found

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in Section 110(i) of the Act. Additional issues raised by the parties are disposed of in the course of this decision.

#### Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977, P.L. 95-164.
2. Section 110(c) of the 1977 Act, 30 U.S.C. 820(c).
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

#### Discussion

Section 104(a) "S&S" Citation No. 3519163, issued on January 14, 1991, by MSHA Inspector Ronald Hayes, cites a violation of 30 C.F.R. 75.220, and the cited condition or practice is described as follows:

The approved roof control plan is not being complied with on the MMU 001-0, which is in the process of extracting pillars, because the pillar block which was located between the No's 6 and 7 entries was almost entirely extracted. The cuts taken from this coal block were approximately 30 feet wide and from (approximately) 25 to 30 feet deep. The block of coal was approximately 50 feet by 50 feet, and after the extraction only 5 small coal blocks were left ranging from approximately 2 to 4 feet wide and from (approximately) 6 to 8 feet long. All the cuts were intersected with one another, leaving nothing in the center of the block on the outby side of it.

The approved roof control states that the extraction of pillars shall be a 3 cut plan. The cuts shall be 20 feet wide and 20 feet deep. Also, a butt off was driven to the right of the No. 8 entry approximately 60 feet outby the last open crosscuts, where advance mining was stopped for the extraction of pillars. This butt off was approximately 60 to 70 feet deep and the left side of the butt off was extracted beginning at the end of the butt off and continuing back to within 10 feet of the No. 8 entry. This extraction was from 50 to 60 feet wide and the cuts were from 20 to 25 feet deep and only 8 wooden roof supports were installed in the center of the extraction. Also, the No.'s 3 thru 8 headings were advanced approximately 60 to 70 feet inby the last open crosscut. These entries also had coal extracted from the left and right side of the entries. The extraction began in the face of the entries and continued outby to within approximately 10 feet of the

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last open crosscut. The cuts taken from them were approximately 25 to 30 feet deep and only a few wooden roof supports were installed.

The approved roof control plan does not have any kind of provisions included in it that shows this kind of extraction of coal. This citation is in conjunction with 107-a Order No. 3519162, and therefore no abate time is set and will not be abated until the provisions written in the 107-a Order No. 3519162 are met.

#### Petitioner's Testimony and Evidence

MSHA Inspector Ronald Hayes identified a copy of an MSHA Mine Legal Identify Form concerning the Crockett Coal Company, and he confirmed that this company was in fact a corporation (Exhibit P-1, Tr. 10). Mr. Hayes also identified a copy of the section 104(a) citation that he issued on January 14, 1991, as "a contributing factor" to a section 107(a) order that he issued on that same day (Exhibits P-2 and P-3; Tr. 1-18). He also identified copies of the approved mine roof control plan which was in effect at the time he issued the citation, and a copy of a map and sketch that he made documenting his observations of the pillar area that had been extracted (Exhibits P-4 and P-5; Tr. 20-22).

The respondent Bobby Lee Price agreed that the Crockett Coal Company was a corporation, but he stated that the company has been sold and that he was no longer in its employ. However, he confirmed that he was employed by Crockett Coal at the time the citation was issued by Mr. Hayes (Tr. 10). He also confirmed that he was familiar with the conditions or practices cited by Mr. Hayes as a violation, as well as the roof control plan relied on and cited by the inspector (Tr. 19, 22).

Inspector Hayes testified that MSHA Inspector James Osborne, who was regularly assigned to the mine in question, was not in the office at the time "a tip" was received from a Kentucky Department of Mines inspector that he had "observed a mining practice that wasn't right" and had withdrawn miners. Since Mr. Osborne was not available, the acting office supervisor asked Mr. Hayes to go to the mine for an inspection. After making a copy of the mine pillar plan, Mr. Hayes went to the mine and met with the state inspector. Mr. Hayes then informed mine manager Robert Jessee that he was going underground to conduct an inspection. He also met with Mr. Price, and proceeded underground in the company of Mr. Jessee, Mr. Price, and the state inspector (Tr. 23-26).

Mr. Hayes explained the observations he made during his inspection, and he stated that the coal pillar between the No. 6 and No. 7 entry had been extracted and that the remaining blocks

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of coal were two to four feet wide and approximately six to seven feet long. He also observed that very few timbers had been set and that there were "hill seams" in the roof. Based on his observations, he informed Mr. Jessee and Mr. Price that he was issuing a section 107(a) order (Tr. 27). Mr. Hayes stated that he discussed the size of the remaining pillar stumps that were left after the coal was extracted, and that Mr. Jessee and Mr. Price agreed with his calculations. Mr. Hayes stated that he did not go into the stump areas to measure them because "all the coal was gone, it was dangerous up there", and that he was not going inby roof support (Tr. 28).

Mr. Hayes stated that the three-cut pillar roof control plan required that eight-foot corners be left when a pillar is mined, and that the blocks on the bottom part of the pillar are to be eight-foot square. He stated that Mr. Price was supervising the work when the pillar was cut and when he asked Mr. Price about it, "he said he had instructed those men to cut that pillar block that way". Mr. Hayes identified a copy of an MSHA "Possible Knowing and Willful Violation Review Form" that he filled out and submitted documenting the admission made to him by Mr. Price (Exhibit P-6; Tr. 30-31). Mr. Hayes stated that he also recorded in his notes Mr. Price's statement that "he instructed his miner man to extract the pillar between six and seven entries" (Tr. 31).

Mr. Hayes testified that Mr. Price had a copy of the roof control plan in his pocket and admitted that he was familiar with it and knew the roof control requirements (Tr. 32). Mr. Hayes explained how the pillar block should have been cut under the approved plan, and he stated that all of the cuts had intersected together, and there was no eight foot block left on the corner as required (Tr. 34). He also believed that the roof cracks and hill seams, standing alone, constituted adverse roof conditions, and that coupled with the smaller blocks that were left, he believed there was a possibility of "a major roof fall and multiple deaths" from these conditions (Tr. 35). He explained that the pillar blocks are designed to hold up the roof, and the more that is taken out, the more weight will likely cause a roof fall (Tr. 37).

Mr. Hayes stated that he could not prove that men went inby roof support, and he confirmed that a remote controlled miner was used and it could take a 35-foot cut without exposing anyone past the roof bolts. However, men were in the entry, and if the roof fails above the anchorage and falls out, it will crack all the way to the pillar. The potential for a roof fall, and the presence of the miner operator and shuttle cars in the area prompted him to issue the imminent danger order (Tr. 38-39). He also explained several additional conditions that contributed to that order (Tr. 39-40).

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Mr. Hayes stated that Mr. Price gave him the following explanation as to why the pillars were mined the way he found them (Tr. 42):

- A. They stopped mining here and they had projections to go on. According to Mr. Price when I had -- that is why they stopped this and did this. And according to Mr. Price -- I asked him why they did cut this pillar this way and that was to get a good roof fall, because they needed to get quick coal, because they were getting out of this mine.

They were pulling out of it to possibly sell or trade, or whatever to another company or corporation that was to come in. But they were shutting down.

- Q. They were trying to get out all of the coal they could?

- A. Trying to get all the coal the could at that time.

Mr. Hayes stated he based his "high negligence" finding on the fact that Mr. Price "told them to cut the pillar that way", and since he was the foreman, "he was responsible" (Tr. 45).

On cross-examination, Mr. Hayes confirmed that he did not measure the pillar cuts and just estimated them (Tr. 46). Mr. Price stated that "we set back and looked at the pillars where they had been cutting them and we agreed that the blocks were smaller than eight foot" (Tr. 46). Inspector Hayes agreed that this was true (Tr. 46). Mr. Price also stated that he told MSHA'S special investigator that the blocks "were approximately from three to six foot and maybe bigger in behind, where we couldn't see them" (Tr. 47). Mr. Hayes stated that "we had no idea what the backside looked like", and that "we were talking about these front two and this one in the center" (Tr. 47).

Mr. Hayes explained the timbering that he observed, and he confirmed that some of the timbers were properly in place, but that others that were required were missing and not set (Tr. 50-51).

Mr. Hayes explained the dangers in leaving only two to four foot pillar corners, instead of the required roof control plan eight square foot corners as follows at (Tr. 62-63):

- A. My opinion, the way this block was pulled with these stress cracks in the roof which is making adverse conditions, which makes a roof fall potential larger than what it would

normally be, it would have been an imminent danger to those people setting those timbers or mining the next block of coal right here.

Because if this had failed, with the stress cracks in that mine, there is a very great possibility it would have overrode these breaker timbers and come in on those people that was over here mining this area right here, this block which had to be mined next.

Q. So there was a potential there for rock falling on people.

A. Yes, there was. The potential was there.

Q. Inby unsupported roof.

A. Inby -- If they were under supported roof, it was a potential they would fall in on them. Yes, it was.

And, at (Tr. 68):

Q. These stress cracks were in the area that we're concerned with here.

A. Yes, they were all over the place.

Q. And what your point is, is that leaving these pillars this small with those added stress cracks there created --

A. And going by the minimum plan and not doing anything else to help that adverse condition of the stress cracks, yes, it caused an imminent danger.

Charlie D. Bryant, testified that on January 14, 1991, he was employed at the mine as a continuous miner helper. He identified a copy of a statement that he made to MSHA Special Investigator James Frazier when Mr. Frazier interviewed him on April 9, 1991 (Exhibit P-7; Tr. 70-72). Mr. Bryant confirmed that he was present when Mr. Hayes inspected the mine on January 14, 1991, and he confirmed that he made the following statement to Mr. Frazier (Tr. 72-73):

Q. "We pulled one block before the inspector got to the section. We took the cuts two sumps wide (twenty-two feet). All of the cuts in the block cut together. Bobby Price told us to leave a three to four-foot stump on the corner." Is that correct?

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A. Yes, Sir.

Q. Is that the correct statement of --

A. Yes.

Q. Did he give these instructions to you, and who else, sir?

A. Me and the continuous miner operator which was -- Darrell Caudill, I think, was the day that it was started. Darrell Caudill or Thomas Wright was there. But it was given specifically, yes.

Q. And is that how you all cut them?

A. Yes, Sir.

Q. You just left three or four-foot stumps?

A. Yes, Sir.

Q. And do you know, in fact, that it's supposed to be eight foot square?

A. I was told by Thomas Wright it was, yes, sir.

Q. So you knew this was supposed to be eight foot square, but you cut it the way you were told to by Mr. --

A. Yes, Sir.

Mr. Bryant explained how the pillar cuts were made, and he confirmed that he made no measurements of the cuts because "I wasn't going to go in there and measure it, but they told us to leave a three to four-foot stump on the end" (Tr. 74-76).

MSHA Inspector James E. Frazier, testified that he conducted a special investigation of Mr. Price's case. He stated that the coal produced at the mine in question was transported to the company that leased the coal to the Crockett Coal Company, and it was then shipped out of state. At the time of his investigation, approximately 15 employees worked at the mine, and it produced 800 tons a shift, and Mr. Price worked as a section foreman (Tr. 77-79).

Mr. Frazier identified a copy of a statement made to him by Mr. Price when he interviewed him on April 3, 1991 (Exhibit P-8), and he confirmed that Mr. Price signed the statement, and that he gave him an opportunity to review the statement and to make any

corrections. Petitioner's counsel quoted the following relevant portions of Mr. Price's statement (Tr. 80-81):

Q. I direct your attention to page two there. Near the top of the page there or somewhere near the top, it says, "I came back to work on January 9, 1991. I had been off since January 3, 1991. When I came back to work on January 9, 1991, the headings had been winged from right to left over to number two, I think. I worked on the left side developing x-cut..." I take it that means crosscuts. Is that right?

A. Yes, Sir.

Q. "...And entries and on the right side doing the same. The shift of January 3, 1991, our section had not started retreat work. On Monday, January 14, 1991, my crew started retreat mining the pillars.

"I knew the pillar plan...this mine had for a continuous miner. They had a three-cut plan. We were supposed to cut twenty two wide. I followed the cut sequence according to the plan. All of the timbers were set, plus five more additional timbers than the plan required.

"I stayed with the miner during the entire extraction of this pillar. This pillar block was supposed to be forty feet times forty feet. This area was developed on sixty-foot centers. The miner was operated with remote control.

"We cut this block the same way we had for years. No emphasis had ever been placed on leaving eight-foot stumps on the bottom end of the blocks. It was always hard to turn a place and maintain the eight-foot stumps. This stump we had left was in a triangular slope. It was probably only two feet in some place, but I'm sure it was thicker in some of it."

Mr. Frazier confirmed the accuracy of the statements made by Mr. Price, and confirmed that Mr. Price admitted that the stumps were not eight foot, that he knew the roof control plan, and that the stumps were only two feet in some places (Tr. 82). Mr. Frazier was of the opinion that this was a violation of the roof control plan, that Mr. Price "virtually admitted" a violation of the plan, and was highly negligent because "he knew the plan and he knew the bottom stumps were less than eight feet" (Tr. 84). Based on all of his interviews and his mining

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experience, Mr. Frazier was of the opinion that "the stress hill seams and the small blocks of coal being left, it was a dangerous situation" (Tr. 84).

Mr. Price acknowledged that he made the statement to Mr. Frazier (Tr. 84), but stated as follows at (Tr. 85):

Mr. Price: On these blocks here, and stumps and things we were talking about here, and where it says I told the miner man, you know, to cut them this way, I told the miner operator to go to that area where we were going to start extracting pillars that morning. I did not tell him to cut them and leave two or three-foot stumps, which these stumps were bigger. But I did make this statement to Mr. Frazier.

#### Respondent's Testimony and Evidence

Respondent Bobby Lee Price, confirmed that a state mine inspector was at the mine prior to the inspection by Mr. Hayes and when the upper area of the section was extracted. Mr. Price stated that mine superintendent Jessee told him that after the state inspector left the mine, the remaining two blocks of coal would be mined. Mr. Price denied that he instructed Mr. Bryant to cut the blocks and leave two and three foot stumps. Mr. Price stated that he informed his crew that "we're going to start pillaring this morning. This is the block over here we cut" (Tr. 92).

Mr. Price stated that in the three-and-one-half years that he mined pillars in the mine, he always installed extra roof support around the pillars. He also stated that "I never left a pillar in that mine that my miner man was cutting on that I didn't stay right with him". He denied ever putting any of his men out from under roof support and stated that he has "threatened to fire people over it" (Tr. 92-94).

Mr. Price stated that the mine roof was composed of sandstone, and that "those little cracks" needed to be continually strapped. He conceded that the cracks "were from fingernails to some of them was a foot and a half, two feet wide". However, he indicated that each time a bolt was installed, a strap was also installed across the crack. He confirmed the presence of stress cracks in the roof at the pillar extraction locations in question, but stated that extra timbers were always installed and that "we always tried to protect my men" (Tr. 95). He stated that timbers were installed in the pillar extraction areas in question according to the roof plan (Tr. 96-97).

Mr. Price stated that in the three-and-one-half years he has pulled pillars in the mine, the citation issued by Mr. Hayes was

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the first one he ever received (Tr. 98). He stated that after the citation was issued, he reviewed the roof control plan with his men to the satisfaction of the inspectors, and the men were allowed to return to work (Tr. 99). He explained that it was difficult not to cut through when the miner is cutting an angle and that the miner operator cannot tell when the miner head will cut through a place (Tr. 101). When the miner ripper head continued to cut through the blocks, Mr. Price said he quit the mine "because the superintendent, he just wanted so much stuff-crazy stuff done. I wouldn't do it" (Tr. 101). He confirmed that after the citation was issued and terminated, the remaining blocks of coal were cut in essentially the same manner as they were when Inspector Hayes was there, and although some blocks "were not cut through as bad", some of them fell through when they were penetrated by the miner head (Tr. 102).

Mr. Price disagreed with the sketch of the cited area prepared by Inspector Hayes and stated that timbers were placed in several areas where the sketch shows none installed, and several of the entries on the sketch "had not been pushed up" (Tr. 103-104).

On cross-examination, Mr. Price stated that he was currently employed by the Husky Coal Company as a foreman and electrician at a salary of \$125 a day. He denied that he instructed Mr. Bryant and the miner operator to cut the corner of the block so there was only three or four feet left. He stated that "It's like I told Mr. Frazier. I told them to go cut the block. You know, I didn't tell them to steal every bit of coal that was in the block" (Tr. 104-105). Mr. Price further stated that Mr. Bryant "lied about me telling him to go over there and cut and leave two to three-foot blocks" (Tr. 105). He further stated that Mr. Bryant was an unsafe worker and that "I had to ride him from daylight to dark" and "rode charlie pretty hard on safety" for not setting timbers or exposing his feet and legs while operating the miner machine (Tr. 106).

Mr. Price denied telling Mr. Hayes that he told his men to cut the block the way it was cut. He stated that "I told them to go and cut the pillars". I said "Boys, we're going to start pillar extraction this morning. Take the miner over there and start on that pillar. That is what I told them" (Tr. 106).

Mr. Price confirmed that he was present when the pillars cited by Mr. Hayes were cut. He admitted that the pillars were cut together "not only this time, but other times. But maybe it was, just like I said, maybe not, as bad as this one" (Tr. 113). He further stated that "when the miner went in those pillars, you could not keep it from cutting one way or the other into the other blocks. And this is the first time that I was ever wrote anything on those pillars like that" (Tr. 113).

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Mr. Price conceded that he told Mr. Frazier that some of the blocks could have been cut only two feet wide "where you was looking into the end of them" (Tr. 114). Inspector Hayes did not disagree that cutting the block at an angle would leave the corner less than eight feet, but he did not believe that it would result in a five foot corner or a corner from two to four feet (Tr. 116).

#### Findings and Conclusions

##### Fact of Violation

The respondent Bobby Lee Price is charged with a "knowing" violation of mandatory safety standard 30 C.F.R. 75.220, for failing to follow the approved mine roof control plan with respect to the extraction of certain pillar areas described in detail in the citation issued by Inspector Hayes. The inspector cited the conditions after going to the mine and conducting an inspection in response to information given to MSHA by a state mine inspector with respect to certain pillar extraction that was taking place at the upper end of the section. Although the petitioner does not dispute Mr. Price's assertion that he was not at the mine when the state inspector stopped this activity and withdrew miners from the mine, the petitioner pointed out that the Crockett Coal Company and three of its "agents" (two foremen and the mine manager) were charged with violations of section 75.220, for mining the entries cited by the state inspectors in violation of the roof control plan, and that the corporate respondent (Crockett Coal Company), and its cited agents did not contest the violations and paid the proposed penalty assessments. Counsel further pointed out that in this case Mr. Price is only charged with a violation in connection with the mining of the pillar blocks cited by Inspector Hayes (Tr. 45, 58-59, 86-87).

The petitioner's counsel stated that the essence of the violation in this case is the fact that the cited coal pillar blocks were cut too small, leaving corners that were less than eight foot for roof support as required by the approved mine roof control plan (Tr. 52). Mr. Price has not rebutted the credible testimony of Inspector Hayes with respect to the existence of the cited violative conditions. Indeed, Mr. Price did not deny that the pillar blocks which were extracted during his supervisory work shift left corners less than the eight feet required by the roof control plan (Tr. 52). Further, Mr. Price acknowledged that he told Inspector Frazier that the pillar blocks had been cut in such a manner leaving stumps or corners less than eight feet as required by the plan, and only two feet in some places (Tr. 84-85). Under all of these circumstances, I conclude and find that the petitioner has established a violation of section 77.220, by a clear preponderance of all of the credible evidence and testimony adduced in this matter, and the citation IS AFFIRMED.

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The next question presented is whether or not the petitioner has proved that Mr. Price "knowingly" authorized, ordered or carried out the violation. Section 110(c) of the Act, 30 U.S.C. 820(c), provides in relevant part as follows

Whenever a corporate operator violates a mandatory health or safety standard . . . , any director, officer, or agent of such corporation who knowingly authorized, ordered, or carried out such violation, . . . shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (d) of this section.

The Commission has defined the term "knowingly" as used in the statutory predecessor to section 110(c), in *Kenny Richardson v. Secretary of Labor*, 3 FMSHRC 8 (January 1981), aff'd 669 F.2d 632 (6th Cir. 1982), cert denied, 461 U.S. 928 (1983), 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 . . . . We believe this interpretation is consistent with both the statutory language and the remedial intent 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. 3 FMSHRC 16.

In *Secretary of Labor (MSHA) v. Bethenergy Mines, Inc., et al.*, 14 FMSHRC 1232 (August 1992), the Commission reaffirmed its prior holding in *Kenny Richardson*, supra, and stated that "the proper legal inquiry for purposes of determining liability under section 110(c) of the Act is whether the corporate agent "knew or had reason to know" of a violative condition, and that the Secretary must prove only that the cited individual knowingly acted and not that he knowingly violated the law, 14 FMSHRC 1245.

Inspector Hayes testified that when he spoke with Mr. Price on the day of his inspection after issuing the citation, Mr. Price admitted that he had instructed his men to cut the pillar the way Mr. Hayes found it, and that he (Price) was aware of the roof control plan when this work was done. Inspector Hayes confirmed that he noted Mr. Price's admissions in an MSHA form that is used by an inspector to recommend a "possible

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knowing/willful violation" investigation (Exhibit P-6), and that he also noted in his notes that Mr. Price instructed his miner man to extract the pillar between the No. 6 and 7 entries (Tr. 30-31).

Continuous Miner Helper Charlie Bryant who was present during Mr. Hayes' inspection of January 14, 1991, confirmed a prior statement that he had made to special investigator Frazier that Mr. Price instructed him and the continuous miner helper to cut the pillar blocks and to leave a three to four-foot stump on the corner. Mr. Bryant testified that he was told that an eight-foot square corner was required but that the stump in question was cut the way he was instructed.

Special Investigator Frazier produced a copy of a signed statement by Mr. Price in which he admits that he was aware of the roof control plan and that the block that was cut on January 14, 1991, was cut "the way we had for years", that no emphasis had ever been placed on leaving eight-foot stumps, and that the cited stump "was probably only two feet in some place" (Exhibit P-7).

Mr. Price vehemently denied that he ever instructed Mr. Bryant and the miner operator to specifically leave two or three-foot blocks when mining the pillars in question. Mr. Price also denied telling Inspector Hayes that he instructed his men "to cut the block the way it was cut". However, Mr. Price acknowledged the accuracy of the statements that he made to Special Investigator Frazier. Mr. Price also confirmed that he assigned his crew the task of cutting the pillars in question on January 14, 1991, and that he was present when they were cut the way that Inspector Hayes found them. Mr. Price also admitted that he told Mr. Frazier that some of the blocks could have been cut only two feet wide, and he admitted that the cited coal pillars were cut together on January 14, 1991, as well as on previous occasions.

Mr. Price's principal defense in this case is his concern over the gravity findings made by MSHA's office of assessments that "the violation could have contributed to the cause of a roof fall accident" (Tr. 52). Mr. Price denied that he ever knowingly, on January 14, 1991, or at any other time in his mining career, exposed members of his crew to any hazardous roof falls. Mr. Price also denied that any of the miners on his crew worked inby roof support on January 14, 1991, as stated in MSHA's gravity findings (Tr. 54). Inspector Hayes confirmed that he made no such findings, and that his citation does not include any allegations of miners working inby roof support (Tr. 54-55).

I conclude and find that Mr. Price's concerns about MSHA's gravity findings in connection with the proposed penalty assessment are irrelevant to the issue of whether he "knowingly"

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violated the cited standard section 75.220. Further, after careful consideration of all of the testimony and evidence in this case, including the aforementioned admissions by Mr. Price, and the unrebutted testimony of the credible witnesses presented by the petitioner in support of its case, I conclude and find that Mr. Price knew that the pillars cited by Inspector Hayes were being cut in such a manner on January 14, 1991, as to leave less than the eight-foot corners required by the approved roof control plan. I further conclude and find that Mr. Price had knowledge of the roof control plan requirements for leaving eight-foot wide corners as the pillar blocks were being extracted, and that notwithstanding this knowledge on his part, Mr. Price permitted the cited pillars to be cut and extracted in a manner contrary to the approved plan. Under all of these circumstances, I conclude and find that the petitioner has established a "knowing" violation on the part of Mr. Price within the meaning of section 110(c) of the Act, and the Commission's precedent decisions.

#### Gravity

Inspector Hayes testified that the roof cracks and "hill seams" that were present in the cited area where Mr. Price and his crew were working constituted adverse roof conditions, and that coupled with the small corner blocks that were left during the extraction of the pillars, Mr. Hayes believed that there was a possibility of a major roof fall exposing the miners to fatal injuries as a result of the cited conditions. Mr. Hayes determined that serious and permanently disabling injuries were highly likely as a result of the cited conditions, and he concluded that the violation was "significant and substantial". Further, given the presence of miners and equipment in the cited area, and his concern about a potential roof fall, Mr. Hayes issued a section 107(a) imminent danger order in conjunction with the citation. The petitioner's counsel stated that the imminent danger order is not at issue in this case, but that it was relevant to any gravity determination (Tr. 33). I conclude and find that the violation was serious. I also conclude and find that the inspector's "S&S" finding was justified, and it is affirmed.

#### Negligence

I conclude and find that Mr. Price's knowing violation supports the inspector's determination that the violation resulted from a high degree of negligence.

#### History of Prior Violations

The petitioner's counsel confirmed that Mr. Price has not previously been charged with any other section 110(c) violations (Tr. 87).

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Good Faith Abatement

The record reflects that the violation was abated on January 15, 1991, a day after the citation was issued, and that all underground employees were retrained on the approved roof control plan before resuming work underground. Petitioner's counsel confirmed that the mine was subsequently abandoned in 1991.

#### Civil Penalty Assessment

Mr. Price confirmed that he is gainfully employed, and in the absence of any evidence to the contrary, I cannot conclude that the payment of the civil penalty that I have assessed for the violation will adversely jeopardize Mr. Price's financial situation.

The petitioner's counsel requested that the initial proposed civil penalty assessment of \$600 against Mr. Price be increased to \$1,000, because "this evidence shows that this was an extremely reckless thing on his part that could have endangered a lot of men" (Tr. 86). After further consideration of this request, IT IS DENIED.

On the basis of the aforementioned findings and conclusions, and taking into account the civil penalty assessment criteria found in section 110(i) of the Act, I conclude and find that the initial proposed civil penalty assessment of \$600 is reasonable and appropriate for the violation which has been affirmed.

#### ORDER

The respondent Bobby Lee Price IS ORDERED to pay a civil penalty assessment of six-hundred dollars (\$600) for the violation which has been affirmed in this matter. Payment is to be made to MSHA within thirty (30) days of the date of this decision and order, and upon receipt of payment, this matter is dismissed.

George A. Koutras  
Administrative Law Judge

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