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BUCK MOUNTAIN COAL V. SOL (MSHA)
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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

BUCK MOUNTAIN COAL COMPANY, : TEMPORARY RELIEF
Contestant :
v. : Docket No. PENN 93-442-R
: Citation No. 4069590; 7/16/93
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Buck Mt. Slope
ADMINISTRATION (MSHA), :
Respondent :

DECISION

Appearances: Mr. Richard D. Kocher, Sr., Pine Grove, PA for
Contestant;
H. P. Baker, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, PA,
for Respondent.

Before: Judge Fauver

This is an application for temporary relief from the
Secretary's Withdrawal Order No. 4069590, under 105(b) 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 following Findings of Fact
and Further Findings in the Discussion below:

FINDINGS OF FACT

1. On July 16, 1993, Federal Mine Inspector Wallace Taylor
and Supervisory Inspector Thomas Garcia inspected Contestant's
Buck Mountain Slope Mine.

2. Contestant's roof-control plan states that breast
crosscuts "will be supported with one row of single props . . .
placed on 5 foot centers lengthwise." Ex. G-1, p. 5. The term
"breast crosscut" is synonymous with the term "miner heading."

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3. Miner headings are crosscut connections between the breasts. Miners position themselves there for safety when blasting at the face. Also, materials are stored in the miner headings.

4. The roof-control plan also contains a diagram of the mine which depicts the miner headings and defines the "o" symbols that appear in the miner headings as "single props, 4" minimum diameter, installed on 5' centers."

5. The inspectors observed that no props were installed in the No. 2 miner heading. When they informed Richard Kocher, partner and mine superintendent, of this observation, Kocher told them that the No. 1 miner heading did not have props either. Inspector Taylor also observed three miners working at the face.

6. Inspector Taylor issued 104(d)(2) Order No. 4069590 for a violation of 30 C.F.R. 75.220(a)(1) on the ground that Contestant failed to follow its approved roof-control plan.

7. Under normal mining operations, blasting can loosen the immediate mine roof, and may cause a roof fall. Inspector Taylor observed areas where the immediate mine roof had fallen.

8. The need for supporting the roof in this mine is substantial because the 30 foot breasts place extra stress on the pillars, the natural roof support.

9. Props installed on 5 foot centers in the miner headings could prevent roof falls. They also help predict changes in roof conditions before the ribs show signs of changing roof conditions.

10. Prior to July 16, 1993, MSHA issued 104(d)(1) Citation No. 3082768 for a violation of 30 C.F.R. 75.220(a)(1) on the ground that Contestant failed to follow its approved roof-control plan, by failing to install props in the miner headings.

11. To terminate Citation No. 3082768, Contestant installed props in the miner headings, and held a safety meeting with the miners. At the meeting, Kocher discussed the roof-control plan including the specific requirement of placing props in the miner headings.

DISCUSSION, FURTHER
FINDINGS AND CONCLUSIONS

In an application for temporary relief, the Contestant has the burden of proving that (1) there is a substantial likelihood

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that the findings of the Commission on the merits of a contest of the Secretary's order or citation will be favorable, and (2) such relief will not adversely affect the health and safety of miners. 30 U.S.C. 815(b)(2); and 29 C.F.R. 2700.46(a).

Contestant contends that when miner headings are driven less than 6 feet wide they do not require props for roof support because the ribs give adequate roof support. It also contends that the installation of props in such miner headings creates a safety hazard in that the props would restrict the miners' rapid escape when the miner heading is used as an escapeway.

The evidence is sharply divided on the safety issues. Mr. Kocher testified in support of Contestant's contentions. Inspector Taylor and an MSHA roof control expert, George Klinger, disputed his opinions and testified that the props are necessary for safety and, if removed, present a reasonable likelihood of a fatal roof fall. I cannot infer, from this conflicted testimony, that there is a substantial likelihood that the finding of the Commission on the merits of the order will be favorable to Contestant, or that granting the requested temporary relief from the order will not adversely affect the safety of the miners.

Accordingly, I must deny the application for temporary relief. This will be without prejudice to Contestant's rights (1) to petition MSHA for a modification of its roof-control plan or of the application of roof control standards to its mine widths, and (2) to contest before the Commission citations or orders on the ground that MSHA's refusal to approve Contestant's proposed modification of Contestant's roof-control plan is arbitrary and without merit.

CONCLUSIONS OF LAW

1. The judge has jurisdiction.
2. Contestant has not carried its burden of proving a case for temporary relief under Section 105(b) of the Act.

ORDER

The application for temporary relief is DENIED, and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge

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Distribution:

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