

CCASE:
SOL (MSHA) V. ISLAND CREEK COAL
DDATE:
19940125
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 92-1034
Petitioner : A.C. No. 15-02706-03722-R
v. :
 : Hamilton No. 2 Mine
ISLAND CREEK COAL COMPANY, :
Respondent :

DECISION

Appearances: Anne T. Knauff, Esquire, Office of the Solicitor,
U.S. Department of Labor, Nashville, Tennessee,
for the Petitioner;
Marshall S. Peace, Esquire, Lexington, Kentucky,
for the Respondent

Before: Judge Melick

This case is before me upon the petition for assessment of 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 Island Creek Coal Company (Island Creek) with violations of mandatory standards. The general issue before me is whether Island Creek violated the cited standards and, if so, what is the appropriate civil penalty to be assessed. Additional specific issues are also addressed as noted.

The parties moved to settle Citation/Order Nos. 3418856, 3420270, 3548984, 3548985, 3549015, 3549010, 3548656 and 3548657, proposing a reduction in penalties from \$9,979 to \$8,326, deleting the "significant and substantial" findings from Citation Nos. 3548984, 3549015, and 3549019, vacating Order No. 3420253 and modifying Citation No. 3418856, Order No. 3548657, and Order No. 3548985 to citations under Section 104(a) of the Act. I have considered the representations and documentation submitted in this case and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. An order directing payment of these penalties will be incorporated in the order accompanying this decision.

The one citation remaining, Citation No. 3549007, alleges a "significant and substantial" violation of the mine operator's roof control plan under the mandatory standard at 30 C.F.R. 75.220 and charges as follows

The addendum to the roof control plan was not being followed as required by letter dated 6-18-90 in the main east Antioch Mains where a section of supply entry was driven 26 feet wide for a distance of 200 feet. The WF steel beams, 26 feet long spaced in between each truss bolt, seven (7) of these beams was [sic] not installed as required by the approval of the addendum.

It is not disputed that the "addendum" to the roof control plan set forth in the Secretary's letter dated June 18, 1990, became an enforceable part of such plan. The addendum reads as follows:

Your request dated June 5, 1990, for permission to widen the existing supply road from the approved 20 feet width, to a maximum of 26 feet wide for a distance of 200 feet on the No. 4 unit, in the Antioch Mains, for two Parallel sets in the same entry is approved, provided:

The 200 feet shall be truss bolted on 4 feet [sic] centers with 6 inch WF Steel Beams, 26 feet long, spaced in between each truss. The steel beams shall be supported with steel legs on each end and in the middle. Additional support such as steel beams and legs and or cribs shall be installed in the connecting crosscuts. Steel beams shall be secured to the mine roof on each end and the middle.

The testimony of experienced Inspector Harold Gamblin of the Mine Safety and Health Administration (MSHA) is not disputed. Gamblin testified that on January 8, 1991, he was performing a routine inspection of the subject mine when he observed that the referenced addendum to the roof control plan was not being followed. Gamblin stated that pursuant to the addendum, the mine operator was permitted to utilize a 26 foot-wide supply road, six feet wider than ordinarily permitted, only on condition that additional roof support was provided. That additional support required "I" beams placed every four feet between the truss bolts. Gamblin estimated that there should therefore have been 50 beams in place over the 200 foot-long supply road and noted that seven beams were missing. According to Gamblin, representatives of the mine operator told him that they were waiting for "clips" to install the horizontal beams at these seven locations.

Inspector Gamblin opined that the violation was "significant and substantial" because the roof in the area was weak and soft and was in an area where roof failures had already occurred. It was his opinion that it was very likely for there to be roof failures under these conditions. Gamblin concluded that if there

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was a roof fall, it would have been reasonably likely to have contributed to reasonably serious injuries because of frequent travel through the area, i.e., 10 to 12 people at a time passing throughout the day. Gamblin also noted that the normal entry width is 20 feet and that MSHA allowed the 26-foot-wide entry only on condition that the additional support set forth in the addendum to the roof control plan was in place. He also observed that vibrations caused by diesel equipment used in this mine caused serious vibrations that could also contribute to unstable roof conditions.

Island Creek, in its post-hearing brief, now admits that the cited conditions were in fact violations of its roof control plan and now disputes only the associated "significant and substantial" findings. A violation is properly designated as "significant and substantial" if, based on the particular facts surrounding that 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 (1981). In Mathies Coal Co., 6 FMSHRC 1, 3-4 (1984), the Commission explained:

In order to establish that a violation of a mandatory standard is significant and substantial under National Gypsum the Secretary 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 injury in question will be of a reasonably serious nature.

See also *Austin Power Co. v. Secretary*, 861 F.2d 99, 103-04 (5th Cir. 1988), *aff'g*, 9 FMSHRC 2015, 2021 (1987) (approving Mathies criteria).

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 (1984), and also that in the likelihood of injury be evaluated in terms of continued normal mining operations (U.S. Steel Mining Co., Inc., 6 FMSHRC 1573, 1574 (1984); see also, *Halfway, Inc.*, 8 FMSHRC 8, 12 (1986) and *Southern Ohio Coal Co.*, 13 FMSHRC 912, 916-17 (1991).

Within the above framework of law and the undisputed facts in this case it is clear that the violation was indeed "significant and substantial" and quite serious.

Inspector Gamblin further observed that the operator was negligent in causing the violation inasmuch as it was obvious

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that the beams were missing. Representatives of the operator were clearly also aware that the beams were missing in admitting that they were waiting for clips to install the beams. Finally, Gamblin observed that the seven beams had been missing for a long period of time. He estimated they had been missing for at least 30 days since mining had progressed inby the cited area about 2,000 feet. In light of this undisputed evidence it is indeed clear that the violation was result of high operator negligence.

In light of the above evidence, and considering all the factors under Section 110(i) of the Act, I find that a civil penalty of \$300 to be appropriate for the violation charged in Citation No. 3549007.

ORDER

Island Creek Coal Company is hereby directed to pay a civil penalty of \$300 for the violation charged in Citation No. 3549007 within 30 days of the date of this decision. As a result of the settlement agreement noted herein the Island Creek Coal Company is further directed to pay civil penalties of \$8,326 within 30 days of the date of this decision.

Gary Melick
Administrative Law Judge

Distribution:

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