

CCASE:
SOL (MSHA) V. MAYO RESOURCES
DDATE:
19940125
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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 93-160
Petitioner : A. C. No. 15-15670-03542
v. :
 : Mine: #1
MAYO RESOURCES INCORPORATED, :
Respondent :

DECISION

Appearances: Thomas A. Grooms, Esquire, Office of the
Solicitor, U.S. Department of Labor, Nashville,
Tennessee for Petitioner;
Mr. Larry Mills, Lovely, Kentucky for Respondent.

Before: Judge Fauver

This is an action for civil penalties under 110(a) 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, probative,
and reliable evidence establishes the following Findings of Fact
and Further Findings in the Discussion below:

FINDINGS OF FACT

1. Respondent operates an underground coal mine known as
Mine No. 1, which produces coal in or substantially affecting
interstate commerce.

2. In 1991 Respondent produced 2,600,713 tons of coal, of
which 48,713 tons were produced at Mine No. 1.

3. On July 16, 1992, Federal Mine Inspector Theodore
Herrera issued two of the three citations at issue. On July 28,
1992, he issued the third citation.

4. Citation No. 4029449 alleges a violation of 30 C.F.R.
75.400. Combustible materials, including float coal dust, i
accumulations from 6 to 10 inches deep were beneath the No. 1
belt for a distance of about 100 feet. The float coal dust was
dry and subject to ignition.

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5. Citation No. 4029500 alleges a violation of 30 C.F.R. 75.1725(a). The beltline had three stuck conveyor belt rollers. They had been stuck for a sufficient time to have flat places worn where the belt rubbed against them.

6. The stuck rollers involved in Citation No. 4029500 were covered with float coal dust, which was involved in Citation No. 2049499.

7. At the time, the belt was operating and transporting coal. The mine was producing coal on three shifts, 24 hours per day.

8. The size of the accumulations indicated that the float coal dust had accumulated for at least three working shifts. The wear on the stuck rollers indicated that they had been stuck for at least one shift and possibly a week.

9. The combination of combustible accumulations and stuck rollers rubbing against the belt in float coal dust created a serious threat of fire or explosion. Smoke caused by fire or explosion would probably be carried forward to the working faces where miners were working.

10. The third citation, No. 4030042, alleges a violation of 30 C.F.R. 75.517. A permanent splice in the trailing cable to a Lee Norse roof-bolting machine was not properly insulated, and was not protected, as required by the standard. The inner electrical leads were exposed creating an electrocution hazard. Inspector Herrera observed this condition while the roof-bolting machine was operating. The splice had been torn exposing the inner energized electrical leads. The exposed leads had no insulation so that they were completely exposed to the touch. The cable was subject to frequent handling by miners working in the vicinity of the roof-bolting machine, and thus created a highly dangerous condition.

11. Government's Exhibit No. 1, a computer printout of the operator's compliance history for 24 months before the citations, shows a very poor level of compliance. In the 2-year period, the operator received citations or orders with assessments of civil penalties for a total of \$27,039. Of this amount, the operator paid \$7,166, contested \$2,478 and ignored \$17,395 in final civil penalty orders (i.e. penalties not litigated). In addition to ignoring final penalty orders, the history shows a number of previous violations of the standards at issue in this case. These include violations of 75.400 for combustible accumulations along the belt lines, violations of 75.1725 for stuck rollers on the No. 1 belt line, and violations of 75.517 for cable hazards on a Lee Norse roof-bolting machine.

DISCUSSION, FURTHER FINDINGS AND CONCLUSIONS

Citations Nos. 4029499 and 4029500

The combination of these citations increases the gravity of the two violative conditions: accumulations of loose coal, coal dust and float coal dust in the presence of stuck belt conveyor rollers that created a ready ignition or heat source.

Accumulations of loose coal, coal dust and float coal dust are one of the most serious threats to the safety of miners and one which Congress sought to eliminate in passing the Mine Act. As the Commission stated in Black Diamond Coal Mining, 7 FMSHRC 1117, 1120 (1985)

We have previously noted Congress' recognition that ignitions and explosions are major causes of death and injury to miners: "Congress included in the Act mandatory standards aimed at eliminating ignition and fuel sources for explosions and fires. (Section 75.400) is one of those standards." Old Ben Coal Co., 1 FMSHRC 1954, 1957 (December 1979) The goal of reducing the hazard of fire or explosions in a mine by eliminating fuel sources is effected by prohibiting the accumulation of materials that could be the originating sources of explosions or fires and by also prohibiting the accumulation of those materials that could feed explosions or fires originating else where in a mine.

The violations involved in these citations were obvious and highly dangerous. Failure to prevent or correct the hazards before the inspector observed them demonstrates aggravated conduct beyond ordinary negligence.

The violations were also reasonably likely to result in serious injuries, and were therefore "significant and substantial" violations within the meaning of the Act. Mathies Coal Co., 6 FMSHRC 1, 3-4 (1984); Energy West Mining Co., 15 FMSHRC 1836, 1839 (1993).

Citation No. 4030042

The violation proved under this citation was obvious and highly dangerous. The damaged cable, which was exposed to the touch, presented an immediate threat of death or serious injury to the operator of the Lee Norse roof bolter and to the miners who had occasion to handle the cable. The violation was "significant and substantial" (Mathies, supra).

Operator's Size and Compliance History

The operator is a fairly large coal producer, (over two million tons in 1991). It has a poor compliance history, showing a significant number of delinquent civil penalties (\$17,395) in the 2-year period preceding the violations in this case, and a significant number of violations of the same standards involved in this case. Indeed, some of the prior violations involve the same beltline and equipment.

Considering all of the criteria in 110(i) for assessing civil penalties, I find that the following penalties are appropriate:

| | |
|----------------------|----------|
| Citation No. 4029499 | \$ 3,500 |
| Citation No. 4029500 | 3,500 |
| Citation No. 4030042 | 5,000 |
| | \$12,000 |

CONCLUSIONS OF LAW

1. The judge has jurisdiction.
2. Respondent violated the safety standards as alleged in Citation Nos. 4029499, 4029500 and 4030042.

ORDER

WHEREFORE IT IS ORDERED that:

1. The above citations are AFFIRMED.
2. Within 30 days of the date of this Decision, Respondent shall pay civil penalties in the amount of \$12,000.

William Fauver
Administrative Law Judge

Distribution:

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