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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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CONSOLIDATION COAL COMPANY, Contestant	:	CONTEST PROCEEDING
	:	Docket No. WEVA 94-235-R
v.	:	Citation No. 3101220; 4/19/94
	:	
SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Respondent	:	Mine: Robinson Run No. 95

DECISION

Appearances: Elizabeth Chamberlain, Esq., Consol, Inc., Pittsburgh, Pennsylvania, for Contestant; Charles M. Jackson, Esq., Office of the Solicitor, U. S. Department of Labor, Arlington, Virginia, for Respondent.

Before: Judge Amchan

Issue Presented

Does the Secretary's regulation at 30 C.F.R. 75.342(b)(2) require that the warning light on a methane monitor be within the line of sight of a person who can de-energize a longwall mining system at all times, or can the regulation be satisfied by visual signals conveyed when the system is automatically de-energized at the level at which the warning light is activated?

For the reasons set forth below, I conclude that warning signals employed by Contestant at its Robinson Run # 95 mine on April 19, 1994, complied with the standard cited and I, therefore, vacate citation number 3101220.

The April 19, 1994 Inspection

On April 19, 1994, Virgil Brown conducted an inspection of the 2-D longwall section at Consolidation's Robinson Run # 95 mine in Harrison County, West Virginia, on behalf of the Secretary of Labor (Tr. 19, Exh C-2). During this inspection he travelled to the headgate of the longwall where the control panel or control box for the longwall system is located (Tr. 23-24, Exh. G-2, C-6). He observed the longwall headgate operator, Bill Bowen, who was alone performing his duties (Tr. 54).

Mr. Bowen was observed shoveling spilled coal at the tailpiece of the conveyor belt which takes the coal out to the surface (Tr. 27, 28, 50). Brown walked to Mr. Bowen's position and determined that the headgate operator could not see the warning lights on the system's methane monitors, which were about 30 feet away (Tr. 27, 36, 52, Exh. G-2). It is uncontroverted that the headgate operator at Robinson Run will, at times, be out of the line of sight of the methane monitor's warning lights in the normal course of his duties (Tr. 49-55, 158-159, 203-204).

Inspector Brown issued Contestant citation number 3101220 due to the fact that the headgate operator or another person, who could de-energize the longwall, would not always be in a position where they could see the warning lights on the methane monitor. This citation alleged that Consolidation violated the standard at 30 C.F.R. 75.342(b)(2), one of MSHA's ventilation standards that became effective in November 1992. Section 75.342 provides:

> (b)(1) When the methane concentration at any methane monitor reaches 1.0 percent the monitor shall give a warning signal.
>
> (2) The warning signal device of the methane monitor shall be visible to a person who can de-energize the equipment on which the monitor is mounted (emphasis added).

April 25, 1994, was set as the date by which the violation had to be terminated. Consolidation contested the citation and requested an expedited hearing before the Commission. A hearing was held in Morgantown, West Virginia, on May 13, 1994, after the termination date had been extended.

The methane warning system on the 2-D longwall at Robinson Run

The general scheme of the Secretary's regulations is that a methane monitor must give a visual signal to a person who can de-energize mechanized equipment used to extract or mine coal when methane levels reach 1%, 30 C.F.R. 75.342. That person must then de-energize the equipment and take steps to reduce the methane concentration pursuant to section 75.323(b).

Section 75.342(c) requires that the methane monitor automatically de-energize the machine on which it is installed, at 2% methane, or if the monitor is not operating properly. The issue in this case would not likely arise in a section in which a continuous mining machine is being used. The methane monitor for a continuous miner is generally mounted on the machine and should, therefore, always be within the machine operator's sight (Tr. 55-56).

Longwall sections present a different situation because the headgate operator may not need to stand in front of the control panel every minute that the shear is mining coal (Tr. 55-56). While at other mines Consolidation does have a warning light that can be seen by the headgate operator wherever he may go while performing his duties, this is not the case on the 2-D longwall at Robinson Run (Tr. 57, 102-103, 153, 203-204).

Consolidation contends that it has complied with the MSHA ventilation standards at Robinson Run by essentially skipping the step in the regulatory scheme whereby a human being de-energizes the longwall at 1% methane. At the 2-D longwall, Consol has set its methane monitors so that at 1% methane they will automatically de-energize all equipment electrically connected to the longwall except for the methane monitors and face telephone system (Tr. 176-177).

Consolidation argues that it has complied with both the letter and the spirit of section 75.342(b)(2). It contends that it has provided a "warning signal device" that is visible to the headgate operator at all times. According to Contestant, the lighting on the longwall face, the lighting on the longwall shields, the face conveyor(Footnote 1) and the drum on the shearing machine are part of this "warning signal device" because the lights go out and the equipment stops when methane reaches 1% (Tr. 149-150).

There is no disagreement that the headgate operator will be visually apprised of the fact that all the aforementioned events have occurred. The Secretary argues, however, that when the lighting goes out, etc., the operator will not necessarily know that this occurred because methane levels reached 1%. The Secretary also argues that because the operator may not realize that the methane monitor caused the shutdown of the lights and the equipment, he may re-energize the longwall equipment prematurely.

Contestant has conclusively established that there is no possibility that the headgate operator may re-energize the longwall on the mistaken assumption that the equipment shut down for some reason other than elevated methane levels. When the lights go out and the longwall stops operating, the headgate operator must return to the master control box to restart the power (Tr. 153-154, 174-176).

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1The face conveyor is a metal chain with crosspieces which pushes the coal mined by the longwall shear to the crusher. It is to be distinguished from the conveyor belt which moves the coal to the surface (Tr. 33-35, 150, 181, Exh. C-6).

When the operator arrives at the control box after a methane shutdown, he will be confronted by computer display that will advise him in plain english that there has been a "methane monitor fault." (Tr. 153-154, Exhibit C-5(a)). In order to re-energize the longwall, the operator must push the reset button on the methane monitor, as well as a button on the master controller (Tr. 153-156, 188-189, Exhibit C-5(d), C-7(b)). If the monitor caused the power on the longwall to go out, the yellow warning light on the monitor will be flashing, the trip light on the monitor will be solid red, and the "power on" light of the monitor will be green (Tr. 185, Exhibit C-5(c), C-7(b)). Additionally, there is a digital display on the monitor which will provide a reading of the methane concentration (Tr. 185).

If the methane level dropped when the longwall equipment ceased operating, the digital display may indicate that methane levels are below 1% (Tr. 206). However, if the methane monitor caused the longwall to shut down, the computer display will still read "methane monitor fault," the red trip light on the methane monitor will still be on, as will the yellow warning light, and the green "power on" light (Tr. 206-207).

A major concern of Inspector Brown's was that the power to the longwall can go out for reasons unrelated to methane, and if the headgate operator mistakenly believes the power outage is due to other causes, he may prematurely re-energize the equipment (Tr. 81-82, 94, 107-108). First of all, if methane levels are 1% or above, the operator will not be able to re-energize the longwall (Tr. 171). Even if methane levels drop when the equipment stops, there are many ways to differentiate a longwall shutdown due to methane from one due to a general power outage.

These differences are clearly illustrated in Contestant's exhibit C-6, a-c. The major difference is that, when the headgate operator returns to the control box in the general power-loss situation, he will find the control box dark (Tr. 179-181). The computer display will be blank, and all the lights on the methane monitor will be off. There will be no digital display showing the methane concentration detected (Tr. 179-180). Also, the main conveyor to the outside, which is not electrically connected to the longwall, will stop, while in the case of a methane shutdown, it is likely to continue operating (Tr. 181).

In sum, Contestant contends, and I so find, that if the methane monitor shuts down the longwall, there is no way the operator can mistakenly believe that the power went off for some other reason. Although he may not initially know that the longwall shut down due to excessive methane, as soon as he gets to the headgate control box, it will be readily apparent to him whether the methane monitor tripped or the power went out.

Furthermore, the headgate operator must return to control box and hit the restart button on the monitor to re-energize the longwall.

Contestant complied with section 75.342(b)

In light of the above, I conclude that Contestant's mechanism for informing the headgate operator of the fact that methane levels had reached 1% provides equivalent protection to a warning light that is visible at all times. If I were confronted with such a situation under the Occupational Safety and Health Act, it would not be necessary to determine whether Consol complied with the standard literally. I could find that it violated the regulation in a de minimis manner, which would not entail an obligation to abate the cited condition, See, General Carbon Co. v. OSHRC, 860 F.2d 479 (D. C. Cir. 1988).

Under the Mine Safety and Health Act, however, there is no analogous mechanism for the Commission to find a violation but not require abatement. The statutory mechanism for handling such situations is for the operator to file a petition for modification under section 101(c) of the Act. Indeed, Inspector Brown indicated that he would have been satisfied with such a petition, if the facts were as they have been established on this record (Tr. 108).

Contestant has declined to file a petition for modification and insists that its methane monitoring system meets the letter of section 75.342(b)(2). Thus, the undersigned is forced to decide whether the term "warning signal device", as used in the regulation, includes a mechanism by which the longwall lights go out, equipment stops, and the operator--by going to the headgate control box--learns that the methane monitor has tripped.

In construing the language of section 75.342(b), I am not inclined to engage in a semantical exercise to any extent more than is absolutely necessary. More important considerations are applying the standard in a manner that is consistent with the underlying purposes of the statute and insuring that my interpretation does not compromise miner safety in situations that I have not contemplated.

I am loathe to require Contestant to spend money, time, and energy abating a condition if, as I am convinced in the instant case, abatement will not contribute to miner safety. Indeed, one must assume that whatever money and effort could be spent in abating this condition could be better used to improve safety in areas in which real hazards exist.

Therefore, I find that, given the circumstances of this case, the measures taken by Contestant constitute a visible "warning signal device" within the meaning of the 30 C.F.R.

75.342(b)(2). These circumstances include a system tha automatically shuts down the longwall at 1%, instead of relying on a miner to de-energize the equipment. They also include a visible signal to the headgate operator and other miners authorized to de-energize the longwall, by means of a partial loss of power, that methane may have reached 1%. Further they include the fact that the headgate operator, or other miner, must return to the headgate control box to re-energize the longwall, where he will necessarily find out whether the power loss is a partial one due to a methane monitor trip or a total power loss due to other causes.

Under the above circumstances, I conclude that "warning signal device" is not limited to the lights of the methane monitor. Additionally, I do not deem the dictionary definition of "device", which is "something devised or contrived", as precluding the result I have reached. I, therefore, vacate citation number 3101220.

ORDER

Citation number 3101220 is hereby vacated.

Arthur J. Amchan
Administrative Law Judge
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