

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL CO.
DDATE:
19941020
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
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FALLS CHURCH, VIRGINIA 22041

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 94-176
Petitioner	:	A.C. No. 46-01453-04113
v.	:	
	:	Docket No. WEVA 94-194
CONSOLIDATION COAL COMPANY,	:	A.C. No. 46-01453-04114
Respondent	:	
	:	Docket No. WEVA 94-225
	:	A.C. No. 46-01453-04119
	:	
	:	Humphrey No. 7 Mine
	:	
	:	Docket No. WEVA 94-195
	:	A.C. No. 46-01455-04013
	:	
	:	Osage No. 3 Mine

DECISIONS

Appearances: Robert S. Wilson, Esq., Elizabeth Lopes, Esq.,
Office of the Solicitor, U.S. Department of Labor,
Arlington, Virginia, for the Petitioner;
Elizabeth S. Chamberlin, Esq., Consolidation Coal
Company, Pittsburgh, Pennsylvania, for the
Respondent.

Before: Judge Koutras

Statement of the Proceedings

These proceedings concern civil penalty proposals filed by the petitioner against the respondent pursuant to section 110(a) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 820(c), seeking civil penalty assessments for five (5), alleged violations of certain mandatory safety standards found in Parts 75 and 77, Title 30, Code of Federal Regulations. Hearings were held in Morgantown, West Virginia, and the parties appeared and participated fully therein. The parties informed me that they proposed to settle these matters, and arguments in support of their proposals were made on the record.

Issues

The issues presented in these proceedings include the fact of violation, whether one of the violations was "significant and substantial", whether the violations were the result of the respondent's "unwarrantable failure" to comply with the cited safety standards, and the appropriate civil penalty to be made for the violations.

Applicable Statutory and Regulatory Provisions

1. The Federal Mine Safety and Health Act of 1977; 30 U.S.C. 301 et seq.
2. Section 110(a) and 110(i) of the Act.
3. Commission Rules, 29 C.F.R. 2700.1 et seq.

Discussion

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Section 104(d)(2) non-"S&S" Order No. 3305717, September 8, 1993, cites a violation of 30 C.F.R. 75.360(f), and the cited condition or practice states as follows:

There is not enough initials, date, and time in the 6 nw construction area to show that the entire area has been examined. There is one set at I.D.J. at the track and one at the Battery Changer. All work is being done inby this area. The miners working in this area are Tim Tuttle and Dick Keryneski. The preshift examination was done by Frank Sloevensky between 5:00 a.m. and 7:50 a.m. on 9-8-93.

Section 104(d)(2) non-"S&S" Order No. 3305720, September 9, 1993, cites a violation of 30 C.F.R. 77.502, and the cited condition or practice states as follows:

The last examination on the outside shop and supply house was done on 7-12-93. All the equipment except the compressors and welders are still energized. The welders and compressors are not tagged out of service.

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Section 104(d)(2) non-"S&S" Order No. 3305555, September 8, 1993, cites a violation of 30 C.F.R. 75.360(g), and the cited condition or practice states as follows:

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According to the preshift examiner's book for the track haulage a hazardous condition has existed from 0 block to 8 east. This condition was first recorded on 8/17/93, by the day shift and is still recorded in the preshift examiner's book on 9-8-93 and no immediate action has been taken by the mine foreman to correct this condition. The condition recorded in the preshift examiner's book is spillage in the walkway.

These records are signed daily by the mine foreman and certified foremen are entering the condition in the preshift examiner's book.

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Section 104(d)(2) "S&S" citation No. 3118845, June 9, 1993, cites a violation of 30 C.F.R. 77.502, and the cited condition or practice states as follows:

Electric equipment is not being frequently examined and properly maintained by a qualified person at Osage Shop area. Several electrical violations have been issued this day for hazards that have existed for some time and not corrected, as well as items not properly maintained. Citation 3118838, 6-9-93, exposed energized parts. Citation 3118839 frayed electrical card that has existed for several weeks. Citation No. 318839, 6-9-93, frayed electrical cord that has existed for several weeks. Citation Nos. 318840 and 318841 on 6-9-93, two hot plates without frame grounds. Although not being used have not been inspected in several months. Citation No. 3118842, 6-9-93, no frame ground on the pressure switch for the compressor that has existed for several months. Citation 3118844, switch cover plate separated. These conditions, cumulatively, present hazards that constitute a reasonably likelihood of a lost time electrical injury.

The most recent electrical inspection was on 6-3-93. There are four violations that, according to workers, have existed for several weeks, and the monthly electrical examiner, acting as an agent of the operator, should have found and corrected. All of these violations existed in one shop area that is approximately 50 ft. x 50 ft, four of which, according to workers existed prior to 6-3-93, and therefor constitute an inadequate electrical examination. Additionally, Citation 3118847, 6-9-93, is being issued for electrical hazards on a welder, exposed energized parts not guarded, and citation 3118848, 6-9-93, is being issued for exposed energized parts on a cable where isolation had broken down due to overcurrent.

Section 104(d)(2) non-"S&S" Order No. 3305766, September 21, 1993, cites a violation of 30 C.F.R. 75.360(g), and the cited condition or practice states as follows:

The preshift of the 7 North empty and load track indicates that a hazardous condition exists and action has not been taken in a timely manner to correct the condition. Starting 7-21-93, spillage was reported and it has been in the record book each shift, with the exception of 8-25-93 and 8-26-93 to date. This condition was dropped these two days for no reason. The last work recorded in this area was 8-18-93, on the preshift conducted between 9:00 p.m. and 11:30 p.m. The record book was countersigned by the mine foreman.

Findings and Conclusions

Petitioner's counsel presented arguments on the record in support of the proposed settlement of the violations. Counsel stated that the Humphrey No. 7 mine was on strike at the time violations were issued, and due to the absence of any hazards to any miners, all the violations noted at that mine "were not deemed to be "significant and substantial", (S&S).

Petitioner's counsel agreed that all of the cited conditions were timely abated in good faith by the respondent, and that the respondent's history of prior assessments, as reflected in the pleadings, do not warrant additional increases in the penalty assessments made in these cases.

Petitioner's counsel asserted that the facts and evidence as now known to him will not support any of the "unwarrantable failure" determinations made by the inspectors who issued the violations, and that the evidence does not establish that the violations resulted from any "aggravated conduct" on the part of the respondent. Under the circumstances, counsel stated that MSHA has agreed to reclassify and modify all of the section 104(d)(2) orders and citation to section 104(a) citations. In addition, MSHA agreed to modify all of the "high" negligence findings to "moderate" negligence.

As a result of MSHA's reevaluation of these matters, and the settlements agreed to by the parties, petitioner's counsel stated that the initial proposed civil penalty assessments, which were "specially assessed" as a result of the issuance of the section 104(d)(2) orders and citation, have been reduced and assessed according to MSHA's Part 100 regulations, and the newly proposed settlement assessments reflect the modified and amended

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section 104(a) citations, with moderate negligence findings, as well as the six statutory civil penalty criteria found in section 110(i) of the Act. The initial assessments and proposed settlement amounts are as follows:

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Order No.	Date	30 C.F.R. Section	Assessment	Settlement
3305717	9/8/93	75.360(f)	\$1,500	\$220
3305720	9/9/93	77.502	\$1,500	\$220

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Order No.	Date	30 C.F.R. Section	Assessment	Settlement
3305555	9/8/93	75.360(g)	\$2,000	\$220

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Citation No.	Date	30 C.F.R. Section	Assessment	Settlement
3118845	6/9/93	77.502	\$4,000	\$595

Docket No. WEVA 94-225

Order No.	Date	30 C.F.R. Section	Assessment	Settlement
3305766	9/21/93	75.360(g)	\$1,500	\$220

After careful review of all of the pleadings and arguments presented by the parties in these proceedings, including the six statutory penalty assessment criteria found in section 110(i) of the Act, I rendered bench decisions approving the settlement dispositions pursuant to Commission Rule 31, 29 C.F.R. 2700.31. My bench decisions are herein reaffirmed and I conclude and find that they are reasonable and in the public interest.

ORDER

In view of the foregoing, IT IS ORDERED as follows:

1. Section 104(d)(2) non-"S&S" Order Nos. 3305717, 3305720, 3305555, and 3305766 ARE MODIFIED to Section 104(a) non-"S&S" citations, with moderate negligence findings, and as modified, they are affirmed.

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2. Section 104(d)(2) "S&S" Citation No. 3118845, IS MODIFIED to a section 104(a) "S&S" citation with a moderate negligence finding, and as modified, it is affirmed.

The respondent IS FURTHER ORDERED to pay civil penalites in the settlement amounts shown above in satisfaction of the violations in question. Payment is to be made to MSHA within thirty (30) days of the date of these decisions and order, and upon receipt of payment, these matters are dismissed.

George A. Koutras
Administrative Law Judge

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