

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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May 25, 1995

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. KENT 93-369
Petitioner	:	A.C. No. 15-14074-03634
v.	:	
	:	Martwick UG Mine
PEABODY COAL COMPANY,	:	
Respondent	:	

**DECISION AFTER REMAND**

Before: Judge Amchan

Procedural History

On April 26, 1995, the Commission vacated my decision, which held that two citations issued to Respondent were significant and substantial ("S&S"). It remanded this case for application of Commission precedent, as set forth in Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984)<sup>1</sup>.

Citation No. 3417313: the external grounding device on the cathead

On December 14, 1992, MSHA representative Darold Gamblin inspected Respondent's underground coal mine. Upon reaching the 3 South Panel entries he encountered an electrical transformer supplying power to the equipment in the entries (Joint Exh-1). Plugged into the transformer was a power cable coupler, or cathead, that was connected to a cable running to a belt feeder transfer point (Tr. 11-14).

The cathead consists of two large metal parts, one of which is plugged into the other. There is a female receptacle mounted on the transformer and a male part to which the cable is attached. The external grounding device of the cathead

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<sup>1</sup>The parties have advised the undersigned that they will rely on the record and briefs filed prior to the issuance of the Commission's decision.

consists of two wires, one attached to each metal part. This grounding device on the cathead observed by Gamblin was not functional because these wires were not connected (Tr. 25, Exh. 4). Gamblin therefore issued Respondent Citation No. 3417313 alleging an "S&S" violation of 30 C.F.R. ' 75.701. This standard provides that:

Metallic frames, casings, and other enclosures of electric equipment that can become "alive" through failure of insulation or by contact with energized parts shall be grounded by methods approved by an authorized representative of the Secretary.

The cathead also has an internal grounding device which normally prevents an employee from being shocked or electrocuted if the cable insulation were to break (Tr. 14-15). There is no evidence that the internal grounding device was defective when Gamblin issued the instant citation. Both Gamblin and Alan Perks, Respondent's chief maintenance engineer, characterized the external ground as a "back-up" device (Tr. 72-74, 83).

As Respondent concedes that the standard was violated, the only issues before me are whether the violation was S&S and the assessment of an appropriate civil penalty. The Commission test for "S&S," as set forth in Mathies Coal Co., supra, is as follows:

In order to establish that a violation of a mandatory safety standard is significant and substantial under National Gypsum the Secretary of Labor 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 hazard contributed to will result in an injury; and (4) a reasonable likelihood that the injury in question will be of a reasonably serious nature.

The only evidence introduced by the Secretary with regard to the third step of the Mathies test is the purely conclusory opinion of Inspector Gamblin that it is reasonably likely that the cited condition would lead to injury if the mining process continued (Tr. 17-18, 26). I find this insufficient to establish that the cited violation was "S&S."

Moreover, I conclude from the testimony of Alan Perks, Respondent's chief maintenance engineer, that it is not reasonably likely that failure to connect the two wires of the external ground will result in injury. This is so for two reasons. First, the normal practice is to turn off the circuit breaker on the transformer before disconnecting the cathead (Tr. 88). Secondly, even if a miner disconnects the cathead first, the internal grounding mechanism is likely to

shut off the power if the cathead becomes energized (Tr. 83).

While it is possible for a miner to be electrocuted due to failure to connect the external ground wires, several things would have to go wrong for this to happen. First, a miner would have to disconnect the cathead before shutting off the circuit breaker. Secondly, there would have to be a short in the electrical cable, and third, the internal grounding mechanism would have to be defective. None of these conditions were shown to have existed at the time of the instant citation. Therefore, I am not persuaded that it is reasonably likely that they would have all occurred at Respondent's mine in the continued course of normal mining operations. Therefore I affirm the citation as a non-S&S violation and assess a \$50 civil penalty.

Citation No. 3417315: The Unmarked Cathead

During his inspection of December 14, 1992, Gamblin noticed two catheads affixing cables from continuous mining machines to a transformer. One cathead was marked to indicate the machine to which its cable was attached, the other was not so marked (Tr. 36, 42). Inspector Gamblin issued Respondent a citation alleging an "S&S" violation of 30 C.F.R. ' 75.601. This standard provides:

... Disconnecting devices used to disconnect power from trailing cables shall be plainly marked and identified and such devices shall be equipped or designed in such a manner that it can be determined by visual observation that the power is disconnected.

Gamblin believes it is reasonably likely that a miner would work on a continuous mining machine which he or she mistakenly thought was de-energized due to the lack of identification markings on the one cathead (Tr. 40, 50, 56, 60-63). Respondent contends that injury was unlikely for several reasons.

First of all, a miner could determine which cathead went to which continuous mining machine by process of elimination--since one cathead was properly marked (Tr. 52). Secondly, one of the catheads observed by Gamblin was significantly cleaner than the other. Respondent had two continuous miners in the section because it was in the process of replacing one with the other, which had been recently rebuilt (Tr. 89). The cathead belonging to the rebuilt machine was much cleaner than the other cathead (Tr. 106-07). Respondent argues that it would be obvious that the cleaner cathead belonged to the rebuilt miner.

Further, Respondent argues, the normal practice for an employee when disconnecting a cathead is to follow the continuous miner's cable back to the transformer to insure that he or she disconnects the right one (Tr. 90). Moreover, Peabody's company policy is that an employee performing work on a continuous mining machine must disconnect and lock out the power to the machine himself or herself (Tr. 109).

As with the prior citation, the only issue before me is whether the violation was S&S. The Commission, in the instant case, indicated that United States Steel Mining Co., Inc., 6 FMSHRC 1573, 1574 (July 1984) stands for the proposition that while S&S determinations are not limited to conditions existing at the time of the citation, they should not take into consideration conditions at other mines or over extended periods of time.

In the instant case, the older continuous miner would only be in the section with the rebuilt miner for two or three days until Peabody was satisfied that the rebuilt machine was working properly (Tr. 92, 103). Given this fact, and the other factors mentioned by Respondent, I conclude that an injury was not reasonably likely to occur due to the lack of markings on the one cathead. I therefore affirm the citation as a non-S&S violation and assess a \$50 civil penalty.

**ORDER**

Citation Nos. 3417313 and 3417315 are affirmed as non-S&S violations. Considering the statutory factors enumerated in section 110(i) of the Act, I assess a \$50 civil penalty for each of the violations. These penalties shall be paid within 30 days of this decision.

Arthur J. Amchan  
Administrative Law Judge

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