

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
2 SKYLINE, 10th FLOOR
5203 LEESBURG PIKE
FALLS CHURCH, VIRGINIA 22041

May 2, 1995

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No. KENT 94-89
Petitioner : A.C. No. 15-16928-03525
v. :
: No. 1 Mine
B & A COAL COMPANY, :
INCORPORATED, :
Respondent :

DECISION

Appearances: Brian W. Dougherty, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, and Gerald W. McMasters, Mine Safety and Health Administration, Pikeville, Kentucky, for the Petitioner.
Abram Adkins, pro se, for the Respondent.

Before: Judge Weisberger

Statement of the Case

This case is before me based upon a Petition for Assessment of Civil Penalty filed by the Secretary of Labor (Petitioner) alleging a violation by B & A Coal Company of 30 C.F.R. ' 75.523-3. A hearing on this matter was held in Paintsville, Kentucky, on March 22, 1995.

Findings of Fact and Discussion

On August 3, 1992, Douglas Looney an MSHA Inspector, inspected a drift opening mine, operated by B & A Coal Company ("Operator"). He inspected three rubber-tired self-propelled battery operated Mescher tractors. The tractors were used to transport coal from the working section to the surface dump point, a distance of 1,500 feet. The terrain was relatively level with "some dips" (Tr. 50). These vehicles were equipped with parking brakes that engaged when a panic bar was applied. Also they were capable of being operated manually. Looney disconnected the batteries on these vehicles and observed that "the brake pads didn't come out against the brake disk" (sic) (Tr. 67).

Looney issued a section 104(a) citation for each of these vehicles alleging, in each case, a violation of 30 C.F.R.

' 75.523-3. Section 75.523-3, supra provides that, pertaining to rubber-tire self-propelled electric haulage equipment used in the active workings of underground mines that " . . . (b) automatic emergency-parking brakes shall . . . (2) engage automatically within 5.0 seconds when the equipment is deenergized . . . ".

The Operator did not rebut, contradict, or impeach the testimony of Looney regarding his observations and actions. Abram Adkins, an agent of the Operator, agreed that when the vehicles are deenergized the parking brakes "wouldn't set up" (Tr. 77). As a defense, the Operator argues, in essence, that nothing was available from the manufacturer to allow the brake to engage upon being deenergized. Adkins testified that he put "everything" on the tractors that was "available", and the Pikeville MSHA office "approve it" (sic) (Tr. 78. 79), Adkins stated as follows: "I've run a tractor for 30 year (sic) and I've never had a man hurt" (Tr. 87).

The terms of Section 75.523-3, supra, are clear, unequivocal, and unconditional. Based upon the testimony of Looney, I conclude that the equipment at issue did not engage automatically within 5.0 seconds when the equipment was deenergized. I thus conclude that the Operator did violate Section 75.523-3, supra.

Adkins conceded that he was aware that the brakes on the vehicles in questions would not engage when the equipment was deenergized. It was his testimony, however, that in essence, he put everything available on the tractors, and that the Pikeville MSHA Office approved it. Petitioner did not impeach or contradict this testimony. I find on the basis of this testimony that the Operator's negligence has been mitigated to some degree. I find that a penalty of \$50 is appropriate for each of the cited conditions.

ORDER

It is ORDERED that, within 30 days of this decision, the Operator shall pay a civil penalty of \$150.

Avram Weisberger
Administrative Law Judge

Distribution:

Brian W. Dougherty, Esq., Office of the Solicitor,
U.S. Department of Labor, 2002 Richard Jones Road, Suite B-201,
Nashville, TN 37215 (Certified Mail)

Gerald W. McMasters, Mine Safety and Health Administration,
Ballston Tower #3, Room 414, 4015 Wilson Blvd., Arlington,
VA 22203 (Certified Mail)

Mr. Abram Adkins, 1252 Greasy Creek Road, Shelbiana, KY
(Certified Mail)

/ml