

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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FALLS CHURCH, VIRGINIA 22041  
December 7, 2000

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2000-52-M
Petitioner	:	A.C. No. 21-00249-05679-A
v.	:	
	:	Steel Pellet Mine
LARRY M. SCHMELZER, employed	:	
by National Steel Pellet Company,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2000-53-M
Petitioner	:	A.C. No. 21-00249-05680-A
v.	:	
	:	Steel Pellet Mine
DONALD E. HEALY, employed	:	
by National Steel Pellet Company,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2000-54-M
Petitioner	:	A.C. No. 21-00249-05681-A
v.	:	
	:	Steel Pellet Mine
DAVID T. BATH, employed	:	
by National Steel Pellet Company,	:	
Respondent	:	
	:	
SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, (MSHA),	:	Docket No. LAKE 2000-55-M
Petitioner	:	A.C. No. 21-00249-05682-A
v.	:	
	:	Steel Pellet Mine
ARTHUR C. BALDWIN, employed	:	
by National Steel Pellet Company,	:	
Respondent	:	

## DECISION

Appearances: Robert A. Cohen, Esq., Jennifer Honor, Esq., Office of the Solicitor,  
U.S. Department of Labor, Arlington, Virginia, for the Petitioner;  
R. Henry Moore, Esq., Buchanan Ingersoll, Pittsburgh,  
Pennsylvania,  
for the Respondents.

Before: Judge Feldman

These consolidated proceedings, brought by the Secretary under section 110(c) of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 820(c), concern whether civil penalties should be assessed against each of four supervisory personnel of National Steel Pellet Company because they “knowingly authorized, ordered, or carried out” violations of sections 56.6311(b) and (c) of Part 56 of the Secretary’s mandatory safety standards governing the handling and disposal of misfires. 30 C.F.R. § 56.6311(b) and (c). A hearing in these matters was conducted from October 31 through November 2, 2000, in Duluth, Minnesota. At the beginning of the third day of trial, the parties informed me that they had reached a settlement agreement. This decision formalizes approval of the terms of the parties’ agreement.

The underlying facts that gave rise to these proceedings essentially are undisputed. These proceedings concern a non-fatal blasting accident that occurred in the early morning on March 4, 1998, at National Steel Pellet Company’s (National’s) open pit taconite mine located near Keewatin in Itasca County, Minnesota. The accident occurred when the teeth of a bucket on a Caterpillar Model 5230 hydraulic front shovel, operated by Lois Dunn from the operator’s cab located approximately 18 feet above ground level, apparently detonated a significant quantity of ANFO (ammonium nitrate and fuel oil mixture) that remained after a December 15, 1997, shot of Bench No. 1510-85. The Caterpillar Model 5230 hydraulic front shovel is a very large piece of earth moving equipment that weighs approximately 700,000 pounds.

The dimensions of Bench No. 1510-85 were approximately 1,200 feet long by 150 feet wide by 40 feet high. National’s blasting records reflect the December 15, 1997, blast was accomplished by loading a total of 521,970 pounds of ANFO mixture into 199 drill holes spaced between 28 to 30 feet apart. The drill holes were 16 inches in diameter and approximately 40 feet in depth. The drill holes were positioned in four rows that extended the full length of the bench. Each hole contained two primers and approximately 2,500 pounds of explosives. The loaded holes were connected with plastic down-line tubing that was designed to effectuate a sequential detonation.

Bench No. 1510-82 was located adjacent to Bench No. 1510-85. Bench No. 1510-82 was blasted on November 5, 1997. While Bench No. 1510-82 was being removed, Bench 1510-85 was being loaded in preparation for the December 15, 1997 shot. During the course of removing the blasted material from Bench No. 1510-82, a shovel operator mistakenly dug into the outer perimeter of Bench No. 1510-85, causing the plastic down-line tubing to become dislodged

from the explosive material that had been placed in approximately six vertical drill holes near the overburden. The plastic tubing could not be retrieved from the steep slope of the embankment. In order to preserve the sequential design of the shot, the disconnected holes were rewired by bypassing the explosive material in the six holes. Thus, National knowingly removed these six holes from the detonation sequence at Bench No. 1510-85.

National reportedly believed the explosive materials loaded in these disconnected holes would be dissipated by the force of the blast. National was wrong. It was estimated that the amount of ANFO accidentally detonated on March 4, 1998, by Dunn's hydraulic shovel was comparable to the amount of ANFO used to destroy the Federal Building in Oklahoma City, Oklahoma.

As a result of an accident investigation conducted by the Mine Safety and Health Administration (MSHA), National was cited for violations of sections 56.6311(b) and (c) that govern the proper procedures for protecting personnel from the hazards caused by misfires. National did not contest the cited violations.

In addition, as a result of MSHA's investigation, Larry M. Schmelzer, National's Senior Mining Engineer, Day Pit Manager David T. Bath, and, Area Manager Arthur C. Baldwin, were each charged with knowingly authorizing, ordering, or carrying out violations of sections 56.6311(b) and (c). The Secretary sought to impose civil penalties of \$2,000.00 on each of these management personnel, consisting of \$1,000.00 for each of the two cited violations. In addition, National's Division Manager, Donald E. Healey, was charged with knowingly authorizing, ordering, or carrying out a violation of section 56.6311(b) for which the Secretary sought to impose a civil penalty of \$1,000.00.

Specifically, sections (b) and (c) of the cited mandatory safety standard provide:

**§ 56.6311 Handling of misfires.**

(b) Only work necessary to remove a misfire and protect the safety of miners engaged in the removal shall be permitted in the affected area until the misfire is disposed of in a safe manner.

(c) When a misfire cannot be disposed of safely, each approach to the area affected by the misfire shall be posted with a warning sign at a conspicuous location to prohibit entry, and the condition shall be reported immediately to mine management.

The Commission discussed the criteria for determining if there is personal liability under section 110(c) of the Mine Act in *Lefarge Construction Materials, and Theodore Dress*, 20 FMSHRC 1140 (October 1998). The Commission stated:

The proper inquiry for determining liability under section 110(c) is whether the corporate agent knew or had reason to know of a violative condition. *Kenny Richardson*, 3 FMSHRC 8, 16 (Jan. 1981), *aff'd on other grounds*, 689 F.2d (6<sup>th</sup> Cir. 1982), *cert. denied*, 461 U.S. 928 (1983); *accord Freeman United Coal Mining Co. v. FMSHRC*, 108 F.3d 358, 362-64 (D.C. Cir. 1997). To establish section 110(c) liability, the Secretary must prove only that an individual knowingly acted, not that the individual knowingly violated the law. *Warren Steen Constr. Inc.*, 14 FMSHRC 1125, 1131 (July 1992) (citing *United States v. In'l Minerals & Chem. Corp.*, 14 FMSHRC 1125, 1131 (July 1992) (citing *United States v. Int'l Minerals & Chem. Corp.*, 402 U.S. 558 (1971))). An individual acts knowingly where he is "in a position to protect employee safety and health [and] fails to act on the basis of information that gives him knowledge or reason to know of the existence of a violative condition." *Kenny Richardson*, 3 FMSHRC at 16. Section 110(c) liability is predicated on aggravated conduct constituting more than ordinary negligence. *BethEnergy Mines*, 14 FMSHRC at 1245.

20 FMSHRC at 1148.

Determining whether an agent's conduct constitutes the requisite aggravated conduct to impose personal liability under section 110(c) requires consideration of the degree of risk posed to miners by the cited violations. It is axiomatic that, "[t]he risk reasonably to be perceived defines the duty to be owed." *Palsgraf v. Long Island R.R.*, 248 N.Y. 339 (1928). Thus, when violations expose miners to a high degree of danger, a heightened standard of care is required of management personnel. 20 FMSHRC at 1147. A good faith belief that a condition is not unsafe is not a defense to 110(c) liability if such belief is unreasonable. *Id.* at 1150.

Section 56.6000 of the Secretary's regulations set forth the definitions of the terms that are used in the Secretary's regulations governing the safe use of explosives. 30 C.F.R. § 56.6000. Section 56.6000 defines the term "misfire" as:

The complete or partial failure of explosive material to detonate as planned. *The term is also used to describe the explosive material itself that has failed to detonate.*

(Emphasis added).

During the first two days of the hearing, the respondents denied liability based on their assertion that a "planned detonation" is a condition precedent to the applicability of sections 56.6311(b) and (c) concerning misfires. The respondents note that the ANFO, and the related blasting caps and primers, were intentionally disconnected and bypassed during the sequential December 15, 1997, blast. Thus, the respondents argue the subject explosives were not misfires because there was no "failure of explosive material to detonate as planned " as required by section 56.6000 because detonation of these disconnected loaded holes was not attempted.

At trial, the Secretary maintained that misfires commonly occur when explosives, for whatever reason, become detached from the connecting detonating cord. Thus, the Secretary asserts that explosives are "misfires" regardless of whether the explosives were intentionally, or unintentionally, disconnected from the blasting cord.

The parties' settlement agreement precludes the adjudicatory resolution of the applicability of sections 56.6311(b) and (c) to the March 4, 1998, accidental blast. However, I note, parenthetically, that a safety standard must be construed in accordance with its intended purpose. *Consolidation Coal Company*, 15 FMSHRC 1555, 1557 (August 1993). Thus, when interpreting a regulatory standard, the ordinary meaning of words must prevail unless such meaning thwarts the purpose of the regulatory standard or otherwise leads to an absurd result. *Emery Mining Corporation*, 9 FMSHRC 1997, 2001 (December 1997).

At the beginning of the third day of trial, the parties proffered a verbal settlement agreement that was approved on the record. The settlement terms were formalized in a written joint motion to approve settlement filed on November 15, 2000. Pursuant to the terms of the agreement, Larry M. Schmelzer and Arthur C. Baldwin have each agreed to a reduction in total civil penalty, from \$2,000.00 to \$1,000.00, consisting of \$500.00 for each of their knowing violations of the mandatory regulatory safety standards in subsections (b) and (c) of section 56.6311. The parties' settlement terms include the dismissal of the civil penalty cases against Donald E. Healy and David T. Bath because the evidence is inadequate to demonstrate Healey or Bath knowingly violated either of the cited mandatory safety standards.

### **ORDER**

I have considered the representations and documentation submitted in this case, and I conclude that the proffered settlement is appropriate under the criteria set forth in Section 110(i) of the Act. **WHEREFORE**, the motion for approval of settlement **IS GRANTED**, and **IT IS ORDERED** that Larry M. Schmelzer and Arthur C. Baldwin each pay, within 30 days of the date of this Decision, as the Secretary shall direct, a total civil penalty of \$1,000.00 in satisfaction of the two citations in issue. Upon timely receipt of payment, Docket Nos. LAKE 2000-52-M and LAKE 2000-55-M **ARE DISMISSED**.

**IT IS FURTHER ORDERED**, consistent with the parties' agreement, that the civil

penalty proceedings in Docket Nos. LAKE 2000-53-M and LAKE 2000-54-M brought by the Secretary against Donald E. Healy and David T. Bath **ARE DISMISSED**.

Jerold Feldman  
Administrative Law Judge

Distribution:

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