

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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February 15, 1996

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. PENN 95-411
Petitioner	:	A. C. No. 36-07558-03543
v.	:	
	:	No. 11 Vein Slope
ROTHERMEL COAL COMPANY ,	:	
Respondent	:	

DECISION

Before: Judge Weisberger

Appearances: John J. Podgurski, U.S. Department of Labor, Mine Safety and Health Administration, Arlington, Virginia, ;
Linda Henry, Esq., U.S. Department of Labor, Office of the Solicitor, Philadelphia, Pennsylvania, for the Petitioner;
Randy Rothermel, Owner, Rothermel Coal Company, Klingerstown, Pennsylvania, for the Respondent.

Statement of the Case

At issue in this civil penalty proceeding are three citations issued by the Secretary of Labor (Petitioner) allegation violations by Rothermel Coal Company (Respondent) of mandatory safety regulations set forth in Title 30 in the Code of Federal Regulations. Pursuant to notice, the case was heard in Harrisburg, Pennsylvania on December 14, 1995. Harold Glandon and Mark Mott testified for the Petitioner, and Randy Rothermel, testified for the Respondent.

Findings of Fact and Discussion

Citation No. 41517689.

On April 20, 1995, Harold Glandon, an MSHA inspector, inspected the No. 11 Vein Slope Mine, an underground coal mine operated by Respondent. A 440 volt cable supplied electricity to an energized power box that controlled the main surface fan. The cable was secured within approximately 6 inches from where it entered the box, and a piece of conduit was wrapped around the cable where it entered the box. However, there were no restraining clips to prevent the cable from moving at the point where it entered the box. Glandon opined that inasmuch as the cable could have moved, as it was not rigidly attached to the box, the cable could have become worn at the point of contact with the box. He issued citation alleging a violation of 30 C.F.R. § 77.505.

Section 77.505 supra provides, as pertinent, as follows:

"Cables shall enter metal frames of ... electric compartments only through proper fittings."

Randy Rothermel testified for Rothermel Coal Company and indicated that on February 1995 a fire had occurred on the property burning all switch boxes. New switch boxes were then installed and Rothermel contacted MSHA to arrange for technical assistance concerning the installation of the new switch boxes. According to Rothermel, a Mr. Hagy, the electrical inspector for MSHA working out of the Wilkes-Barre office, told him that his boss, Larry Brown, had indicated that no violations would be written "on electricity" if technical assistance would be asked for (Tr. 37).

Glandon's testimony was not rebutted, contradicted, or impeached by Respondent. I thus find, based upon his testimony, that inasmuch as the cable that entered the box at issue was not restrained at the point of entry, it could have moved causing it rub against the entry to the box. This condition could have led to loss of the cable's insulation. I find that the cable did not enter "through proper fittings". I conclude that Respondent did violate Section 77.505 supra.

Rothermel's testimony that he had been informed by MSHA officials that no electrical violations would be issued if he were to call for technical assistance, does not negate the fact, as testified to by Glandon, that a violation of Section 77.505 supra had occurred. However, I do find Rothermel testimony to be

trustworthy, and I conclude that Respondent's negligence herein was low. I find that a penalty of \$50 is appropriate for this violation.

Citation Nos. 4151770 and 4151771.

On March 14, 1994, Respondent was advised in writing by W. R. Compton, the MSHA district manager, that the mine ventilation map for the subject mine was received on January 27, 1994, and that the next map was due for submission to the District manager on March 14, 1995. On about February 1, 1995, the building containing Respondent's bulletin board, office, and hoist serving the underground mine, burned down. Production at the mine ceased until the first or second week in March 1995, when use of the hoist was resumed. Rothermel subsequently obtained a survey and personally filed the mine map with the Wilkes-Barre MSHA office on April 26, 1995. On April 26, 1995, Rothermel also placed a copy of the map in his truck which was kept on the premises and so informed his one employee. Gladen indicated that when he was on the premises on April 27, 1995, a map had not been filed by March 14, and there was no updated map on the mine's bulletin board. He issued 2 citations, one alleging a violation of 30 C.F.R. § 75.372(a)(1) which, as pertinent, provides that an operator shall submit to the district manager 3 copies of a mine map "at intervals not exceeding 12 months". He also issued a citation alleging a violation of 30 C.F.R. § 75.1203, which as pertinent, provides that the mine map ". . . shall be available for inspection by the Secretary or his authorized representative."

The uncontroverted evidence indicates that the mine map in question was first filed on April 26, 1995, an interval which exceeded 12 months from the last filing. I thus find that Respondent did violate Section 75.372(a)(1), supra. However, due to the difficulties encountered by Respondent as a consequence of the fire and lack of access to the underground area, I conclude that the Respondent's negligence was extremely low. I find that a penalty of \$20 is appropriate.

I find Rothermel's testimony credible, having observed his deamnor, that the map at issue was in his truck on the premises on April 27. Hence I find that it was "available" for inspection by Gladen or other miners. I thus find that it has not been established that Respondent violated Section 75.1203 supra. Hence citation No. 4151770 shall be dismissed.

ORDER

It is ORDERED that Respondent shall, within 30 days of this decision, pay a penalty of \$70. It is further ORDERED that citation No. 4151770 be DISMISSED.

Avram Weisberger
Administrative Law Judge

Distribution:

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