

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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FALLS CHURCH, VIRGINIA 22041

February 1, 2000

ROSEBUD MINING COMPANY,	:	CONTEST PROCEEDINGS
Contestant	:	
v.	:	Docket No. PENN 2000-21-R
	:	Citation No. 7042925; 10/5/99
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. PENN 2000-22-R
ADMINISTRATION (MSHA),	:	Citation No. 7042926; 10/5/99
Respondent	:	
	:	Josephine No. 3
	:	Mine ID 36-08719

DECISION

Appearances: Joseph A. Yuhas, Esq., Northern Cambria, Pennsylvania,
for the Contestant;
Pam E. DiFillippo, Esq., Merna Butkovitz, Esq., Office of the Solicitor,
U.S. Department of Labor, Philadelphia, Pennsylvania, for the Petitioner.

Before: Judge Feldman

Before me for consideration is a notice of contest with respect to Citation Nos. 7042925 and 7042926 filed by Rosebud Mining Company (Rosebud) against the Secretary of Labor (the Secretary) and the Mine Safety and Health Administration (MSHA) pursuant to section 105 of the Federal Mine Safety and Health Act of 1977 (the Mine Act), 30 U.S.C. § 815. Rosebud challenges the propriety of the subject citations that allege violations of the mandatory safety standard in section 75.1710-1(a), 30 C.F.R. § 75.1710-1(a).¹

The citations were issued because the tram station canopy and the roof bolting station canopy installed on the Long-Airdox roof bolting machines, serial numbers 62-873 and 62-874, model LRB-15-AR, operating in low seam coal in the first north butt 002-0 working section, allegedly were not protecting certain operators from falls of the roof/ribs when the operators were at the operating controls. The Secretary characterized the cited conditions as significant and substantial (S&S) in nature.

¹ Section 75.1710-1(a) provides, in pertinent part, that “canopies . . . [shall be] installed in such a manner that when the operator is at the operating controls of [self-propelled face] equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls.”

The operators of the cited Long-Airdox roof bolting machines remain under supported roof at all times, even when under the cited canopies. As a general proposition, the canopies in question were adequate to protect roof bolt operators of average build. However, portions of the bodies of stouter roof bolt operators extended beyond the perimeters of the canopies. Consequently, the degree of negligence attributable to Rosebud for the cited violative conditions was considered to be low because the alleged violations were not obvious unless a physically larger roof bolter operator was operating the machine.

The Secretary concedes that her mandatory safety standards do not prohibit miners from traversing, without the protection of any canopies, the vicinity of the supported roof areas where the cited roof bolting machines were operating. In fact these areas are traversed on a daily basis during pre-shift and on-shift examinations.

Rosebud's contest is based on its assertion that the Long-Airdox model LRB-15-AR roof bolting machines have been in operation for more than 15 years without incident. Rosebud is reluctant to install extensions on the canopies because it believes larger canopies extending beyond the frame of the roof bolting machines will hamper the machines' maneuverability in low seam coal mining.

A hearing in these contest proceedings was conducted in Pittsburgh, Pennsylvania, on December 16, 1999. Upon completion of the Secretary's direct case, a settlement conference was conducted with the parties' counsel. After conferring with their clients, counsel advised that they had reached a settlement agreement. The terms of their agreement was presented and approved on the record. (Tr. 227-50). This decision formalizes the settlement terms.

Rosebud has agreed to withdraw its notices of contests for Citation Nos. 7042925 and 7042926. In addition, on or before March 16, 2000, Rosebud will install extended tram station canopies and roof bolting station canopies on the cited Long-Airdox roof bolting machines. Specifically, the tram station canopy will be extended by approximately 10 inches, and the roof bolting station canopy will be extended by approximately 9 inches. In addition, the drill controls on both machines will be moved forward approximately 10 inches to afford the operator with more overhead protection from the canopy.

In return, MSHA has agreed to extend the abatement period for the subject citations until March 16, 2000. In addition, the Secretary has agreed not to impose any civil penalty for these citations. Finally, MSHA reserves the right to evaluate these modifications to ensure that they provide adequate protection.

ORDER

In view of the above, the contestant's withdrawal of its notices of contest for Citation Nos. 7042925 and 7042926 **IS GRANTED** and the terms of the settlement agreement specified above **ARE APPROVED**. Accordingly, the contest proceedings in Docket Nos. PENN 2000-21-R and PENN 2000-22-R **ARE DISMISSED**.

Jerold Feldman
Administrative Law Judge

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