

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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February 5, 1996

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) : Docket No. SE 93-119
Petitioner : A.C. No. 40-01977-03619
v. :
 : Mine No. 3-2
U.S. COAL, INCORPORATED, :
Respondent :

DECISION ON REMAND

This is an action for civil penalties under § 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 **et seq.**

After a hearing I entered a decision on March 29, 1994, holding that Respondent violated the regulations cited in the two citations involved. I also held that the violations were significant and substantial and that gross negligence of Respondent's electrician was imputable to Respondent. I assessed civil penalties of \$4,000 for each violation.

In review of my decision, on October 30, 1995, the Commission held that the electrician was not an agent of the operator and his negligence was therefore not imputable to the operator. It reversed my determination that the electrician's gross negligence was imputable to the operator, and remanded the case to me for assessment of appropriate civil penalties.

This decision will reassess civil penalties without imputation of negligence.

The electrician was called to repair an electrical malfunction in a continuous mining machine. He opened the electrical panel cover and began work with a screwdriver without de-energizing the power circuits and without locking out and tagging disconnecting devices for the 480-volt circuit he was working on.

While trying to repair the energized circuit, the electrician received a severe electrical shock. Other miners saw him shaking, and cut the power off. He continued to shake so badly that it took five miners to hold him down and transport him

to the surface. At the hospital he was treated for electrical shock and burns to his hand.

Because of his injuries, the electrician was absent from work for two to three months. When he returned, he showed signs of memory loss and impaired mental condition that were not present before the electrical shock. Because of his deteriorated mental condition, which included an inability to understand, remember and follow work rules and safety standards, the company terminated his employment.

The electrician violated the two cited safety standards. Section 75.509 of 30 C.F.R. requires that all power circuits and electrical equipment be de-energized before doing electrical work. Section 75.511 provides that no electrical work shall be performed on circuits or equipment without locking out the circuits and tagging the disconnecting devices. The violations, as found previously, were significant and substantial.

Under the Mine Act, the operator is liable without fault for the electrician's violations. Since the Commission has ruled that the electrician's negligence is not to imputable to the operator, the civil penalties will be reassessed on the basis of the other five statutory criteria, i.e., omitting the factor of fault or negligence.¹

Respondent is a relatively small operator. There is no issue with respect to its financial condition or its compliance history. Those factors are therefore neither a plus or a minus. Respondent demonstrated good faith in attempting to achieve rapid compliance after notification of the two violations.² This is a

¹ The statutory standards for assessing civil penalties for violations are set forth in § 110(i) of the Act, as follows:

"The Commission shall have authority to assess all civil penalties provided in this chapter. In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of violation. * * *."

² Inspector McDaniel testified that the practices cited were corrected by the company holding a safety meeting, at which Inspector McDaniel again cautioned management and the

plus.

The remaining factor is the gravity of the violations. The violations were very serious and could have resulted in death. As found in my original decision, the electrician not only endangered himself, but put other miners at risk. The high degree of gravity warrants a substantial civil penalty.

On balance, I find that civil penalties of \$2,000 for each violation are appropriate. This is a reduction of 50 percent from my original assessment of penalties.

ORDER

Respondent shall pay civil penalties of **\$4,000** within 30 days of the date of this decision.

William Fauver
Administrative Law Judge

electricians as to the rules for de-energizing circuits and locking and tagging them out before doing electrical work.

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