

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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August 29, 2001

BRIDGER COAL COMPANY.,	:	CONTEST PROCEEDING
Contestant	:	
	:	
v.	:	Docket No. WEST 2001-334-R
	:	Order No. 7636506
	:	
SECRETARY OF LABOR, MINE	:	
SAFETY AND HEALTH, MSHA	:	
Respondent	:	Jim Bridger Mine

DECISION GRANTING CONTESTANT'S MOTION FOR SUMMARY DECISION

Before: Judge Weisberger

At issue before me, in this contest proceeding, is a motion to dismiss filed by the Contestant, Bridger Coal Company, ("Bridger").

Summary of the Facts¹

Howard McCoy, Jr. has been employed by Bridger at its Jim Bridger Mine ("the Mine") continuously since January 1981. When hired, McCoy was already an experienced miner and was given "Newly Employed Experienced Miner" training pursuant to 30 C.F.R. Section 48.26. McCoy is currently classified as a Mine Service Operator and has been so continuously since November 1999. As a Mine Service Operator, McCoy's duties primarily have involved moving equipment around the Mine property. McCoy also helps out on occasion in the performance of additional jobs, as needed and as directed.

From time to time McCoy has assisted, as directed and under immediate supervision, in the operation of bridge cranes, such as the overhead shop crane and those in the draglines, by pressing the "up" or "down" button.

A bridge crane is a motorized indoor unit that runs on rails mounted near the ceiling and/or walls as the bridge crane operator positions it ("east" or "west" and "north" or "south") to lift loads too heavy to be safely lifted manually, by means of a hook that is raised or lowered from above with the push of a button ("up" or "down") on the control device (either a remote control or a control that hangs from the crane by a cable).

A task training program in bridge crane operation involves all aspects of using the bridge

¹The facts that follow are adopted from Contestant's motion, as these specific facts have not been contested by the Secretary.

crane, including when and how to use the bridge crane, proper rigging of loads, planning the lift, operating the controls for directional positioning (north, south, east and west), load limitations, use of connecting devices, and lifting slings or chains. Pursuant to Bridger's MSHA-approved Part 48 Training Program, bridge crane task training is normally provided only to miners whose duties require use of the bridge crane, including all Heavy Equipment Mechanics, Welders, Electricians, Machinists, and HVAC Mechanics (there is no position of "bridge crane operator").

Other employees, whose duties may take them into one of the shops or the draglines on occasion, regardless of their classification or training, are called upon, from time to time, to press the button which raises or lowers the bridge crane (a practice known as "bumping"), under the direction and immediate supervision of a task-trained, experienced mechanic or other person experienced in bridge crane operation. Bridger has never considered it necessary to give task training to miners in bridge crane operation if they were only going to be bumping the crane.

On September 19, 2000, two of Bridger's experienced heavy equipment mechanics, Kevin Fletcher and Don Bakula, were assigned the job of changing the tracks on a bulldozer in the shop, removing the old track and installing a new one. To assist them, the mechanics asked McCoy to run the dozer, as part of the track changing process that Fletcher, Bakula, and McCoy had done together on previous occasions. Fletcher and Bakula asked McCoy, who was running the dozer, to raise it off the ground by using its blade and ripper (by lowering them against the floor, the body of the dozer was elevated). During the track-changing process on September 19, a chain linking the old and new tracks broke. In order to replace the broken chain, Fletcher used the overhead crane. Fletcher moved the overhead 15 ton crane into position at the right side of the bulldozer to lift the bogies off the track. He attached a chain sling and hook arrangement to two center bogies and hooked it to the overhead crane. The sling arrangement consisted of four chains and four hooks, and when used together, was rated at a 33,800 pound capacity. Fletcher instructed McCoy to raise the bogies to a near-horizontal position with the overhead crane.

In order to raise the bogies to this position, McCoy (who had left the dozer and was standing on the shop floor nearby) pressed the crane's control button momentarily (just as he had done on prior occasions), then stopped. McCoy then climbed back aboard the dozer to continue running it as needed by Fletcher and Bakula. Subsequently, one of the chains hooked to the bogie slipped off, fatally injuring Fletcher, and resulting in a pinched arm injury to Bakula.

On March 19, 2001, MSHA issued a 104(g)(1) Order alleging a violation of 30 C.F.R. Section 48.27(a). On April 23, 2001, MSHA modified the Order to instead allege a violation of Section 48.27(c), and to change it to non-S&S. The modification also states that "Mr. McCoy's operation of the crane was limited to 'bumping' to remove the slack in the rigging cables. The task took less than one minute and upon completion, he returned to his position on the dozer. There was no unsafe operations or acts committed by McCoy during his operation of the crane."

On June 25, 2001, Contestant Bridger filed a motion for summary decision, and the Secretary's response in opposition to this motion was filed on July 10, 2001. On July 19, 2001,

Contestant filed a reply.

Discussion

_____At issue in this contest proceeding is the validity of Order No. 7636506 alleging, as modified, a violation of 30 C.F.R. Section 48.27(c) which provides that “[m]iners assigned a new task not covered in paragraph (a), ² of this section shall be instructed in the safety and health aspects and safe work procedures of the task, prior to performing such tasks.”

In its motion, Bridger sets forth three independent grounds for its motion as follows: (1) that bumping is not a separate task for which training is required; (2) that a miner does not have to be task trained before performing a task under the direct direction and supervision of an experienced person; and (3) that McCoy was not required to have task training as he had performed this task within the preceding twelve months.

In order for Bridger to prevail under 29 C.F.R. Section 2700.67(b) it must establish (1) that there is no genuine issue as to any material fact; and (2) that it is entitled to summary decision as a matter of law. Based on a review of the entire record in this proceeding, I find that Bridger has met this burden for the reasons that follow.

The record establishes that McCoy had not received any training in the safe work procedures of bumping prior to his having operated the overhead crane’s control button on September 19. However, in order to prevail in establishing a violation under Section 48.27(c) supra, the Secretary must establish that McCoy was “assigned a new task”. Neither counsel has cited any controlling case law on the issue of whether bumping constitutes a task. In resolving this issue, reference is made to 30 C.F.R. Section 48.22 which sets forth the definitions of various terms used in subpart B, which includes Section 48.27(c) supra, and which relate to the training of miners. In this connection, Section 48.22(f) supra, provides that the term task “means a work assignment that includes duties of the job that occur on a regular basis and which requires physical abilities and job knowledge.” In essence, Bridger argues that the activity performed by McCoy, on September 19, did not constitute a new task. Bridger alleges that (1) McCoy was a mine service operator before he engaged in that activity and he remained a mine service operator after that without any reassignment to new tasks, and (2) that he occasionally bumped the bridge crane when requested to do so. The Secretary, in her opposition, does not raise any factual issue with regard to these facts asserted by Bridger. The Secretary’s opposition is based solely upon assertions characterizing the nature of bumping as having significant safety implications, and that it is a “task” as it requires physical abilities and job knowledge.

In order to prevail the Secretary must establish that McCoy, in bumping, was “assigned a new task”, (Section 48.27(c), supra). According to the clear unequivocal language of Section

²The tasks covered in paragraph (a) of Section 48.27 refer to mobile equipment operators, drilling machine operators, haulage and conveyor systems operators, and ground control machine operators.

48.22(f) a work assignment is considered a task only if the assignment to perform that task includes duties that not only require physical abilities and job knowledge and that “occur on a regular basis” (Emphasis added). Bridger asserts, in essence, that there is a lack of evidence for the Secretary regarding the existence of this material fact, which is necessary for the Secretary to establish in order to prevail herein. It is Bridger’s specific factual assertion that the assignment to bump by pressing a button was assigned to McCoy “occasionally”, and thus not on a “regular basis”. The Secretary has not asserted either in its brief or in affidavits filed along with its brief, that McCoy performed bumping on “a regular basis”.

I find, based on the record before me, that there is no issue as to a material fact, i.e., that McCoy’s³ assignment to bump did not occur on a regular basis. Hence, based on the clear language of Section 48.22(f), I find that the assignment of McCoy to bump on September 19 did not constitute a task. Accordingly, since Bridger’s training obligation under Section 48.27(c) is required only when miners are assigned a new task, and McCoy’s assignment did not fall within this category as it did not meet the definition in Section 48.22(f) supra, Bridger was not required to provide him with training under Section 48.27(c). Thus, considering the record before me, Bridger is entitled to a decision finding that it did not violate Section 48.27(c) supra. Accordingly Bridger’s motion to dismiss is granted.⁴

ORDER

It is **Ordered** that Bridger’s motion to dismiss is granted, and it is **further Ordered** that Order No. 7636506 be vacated, and this case be dismissed.

Avram Weisberger
Administrative Law Judge

³The Secretary does not assert that other miners were assigned this task on a “regular basis”.

⁴In light of this decision, which disposes of Bridger’s motion, it is not necessary to discuss the alternate grounds raised by Bridger.

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