

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
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November 18, 1998

SECRETARY OF LABOR	:	CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEST 96-235
Petitioner	:	A. C. No. 42-01280-03644
v.	:	
	:	Docket No. WEST 96-338
WHITE OAK MINING	:	A. C. No. 42-01280-03654
AND CONSTRUCTION CO., INC.,	:	
Respondent	:	White Oak #2 Mine

**DECISION ON REMAND**

Before: Judge Hodgdon

This case is before me on remand from the Commission. *White Oak Mining & Construction Co., Inc.*, Docket Nos. WEST 96-235 and WEST 96-338 (October 30, 1998).<sup>1</sup> The Commission vacated the determination that White Oak did not violate section 48.7(a), 30 C.F.R. § 48.7(a), in task training Keith Smith as a continuous miner operator and remanded the case for further analysis of whether the training given Smith constituted the type of training that a reasonably prudent person would have provided in order to meet the protection intended by the standard's requirements.<sup>2</sup> *Id.* at 6. For the reasons set forth below, I find that it did.

On March 24, 1995, Blue Samples, a 20-year old, inexperienced miner, who had worked only 15 shifts at the mine, was hit and killed by the tail boom of a continuous-mining machine being operated by Smith. At the time, Samples was working as Smith's miner helper. As the result of an investigation into the accident, the Mine Safety and Health Administration (MSHA) concluded that neither Samples nor Smith had been properly task trained. The original decision found that Samples had not been adequately trained, but that Smith had. *White Oak Mining & Construction Co., Inc.*, 19 FMSHRC 1414 (August 1997).

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<sup>1</sup> Forthcoming as *White Oak Mining & Construction Co., Inc.*, 20 FMSHRC 1130 (October 1998).

<sup>2</sup> Section 48.7 requires that miners assigned to new work tasks as mobile equipment operators shall not perform those tasks until they have been trained in the health and safety aspects and safe operating procedures for the equipment, have had supervised practice during non-production or supervised operation during production and have demonstrated safe operating procedures for the equipment to the operator or the operator's agent.

Order No. 3415831 alleges that Keith Smith was not adequately task trained as a continuous miner operator because his training did not include the information that remote control operations of continuous miners create special safety considerations with respect to tramming the machine as set out in *Joy Service Bulletin No. FG-176 (9/24/91)*. Other than tramming the continuous miner, the order makes no mention of what health and safety information should have been included in the training, but was not. Furthermore, in her post hearing brief, the Secretary did not state what health and safety information was required by section 48.7(a), but seemed to rely entirely on the fact that the training only took 15-30 minutes and that it did not involve use of the *Joy Service Bulletin*, as evidence of the violation.

There is no Commission precedent concerning what health and safety information and supervised practice or supervised operation during production are required by section 48.7(a). The only evidence offered by the Secretary on such requirements was the testimony of Donald E. Gibson, Electrical, Educational and Training Supervisor for MSHA District 9. To the extent his testimony was germane, it was, for the most part, generic and not tailored to specific facts of this case. For instance, when asked what health and safety aspects should be included in the task training of an experienced miner who had not operated a continuous miner in the previous 12 months, he replied:

Health first. Health would be -- and in conjunction with health we're going to take into consideration the ventilation plan because those run hand in hand and in our office when we evaluate the ventilation plan for any coal mine, we do that hand in hand. We look at the spray configuration on the machine, we look at if it's a scrubber, we look at if it's a spray fan system, we look at the water pressure, we look at the amount of water in gallons per minute, we look at the flow rate, again, as gallons per minute, orientation of the sprays when cutting left side, right side. All that is for the prevention of pneumoconiosis and also silicosis, so those are health aspects.

Another aspect of the health issue would be possibly hearing protection, the operator is required to do noise survey, so is there something causing abnormal or more than what is required noise levels to be addressed in a hearing conservation plan?

(Tr. 384-85.) As can be seen, no indication is given of what training concerning the ventilation plan was required in this case, nor are the deficiencies of the training given Smith pointed out.

In fact, little training was provided in this area because Smith had worked with Shane Hansen, the person training him, for three months as a miner helper and Hansen was aware that Smith was already familiar with the ventilation plan, and the roof control plan as well. Section 48.7(a) provides that task training is not required for miners who have performed the new work

tasks and who have demonstrated safe operating procedures for such new work tasks within 12 months preceding assignment.@ Consequently, I find that Smith's training met the requirements of the section 48.7(a) in these two health and safety areas.

Gibson stated that Smith should have been trained in safe operating procedures for the continuous miner. Once again he did not relate what specifically should have been covered, or how Smith's training may have been deficient. However, based on the evidence, I find that Smith was task trained in operation of the remote control, tramming the miner and the extent to which the miner could swing, how to split the miner's tracks when turning, how to turn in crosscuts, safe positions for miner's helpers to stand and the avoidance of pinch points at the head and at the boom, specific methods of maneuvering the machine to cut coal, cutting coal downhill, the cutting cycle, cleaning the scrubber, handling the cable, examining the cable for damage, activation of the fire suppression system, scaling the roof and ribs, how to take gas checks every 20 minutes, examination of the continuous miner, including the lights, bits, sprays, scrubber, cable and fire hose and examination of the working area, including ventilation, before commencing work. Accordingly, I conclude that Smith was adequately task trained in the safety aspects of operating the continuous miner.

With regard to supervised practice or operation, Hansen testified as follows:

Q. During this time you were task training Mr. Smith did you ever supervise him while he practiced operating the equipment?

A. Yeah.

Q. And was that during production or non-production?

A. Well, he just took just a few minutes to play with the controls and get used to everything and then we trammed it into the face and that was probably in production.

Q. Okay. And then he started cutting coal?

A. Yeah. And then I was probably there with him most of the day.

(Tr. 510-11.) The Secretary did not present any evidence to rebut this testimony. Therefore, I find that Smith's training did include supervised operation during production.

I conclude that the task training provided to Smith amounted to the type of training that a reasonably prudent person would have provided in order to meet the protection intended by the requirements of section 48.7(a). At the time that Smith was trained on the continuous miner he had almost 20 years mining experience. He had previously operated the miner when employed at this same mine by Valley Camp some 15 months prior to his training. Furthermore, he had served

as a miner helper to Hansen on the same miner he was trained on for 3 months since coming to work for White Oak. As even Gibson admitted, A[h]ad he been properly trained as the miner helper . . . the only difference [between miner helper training and miner operator training] is it may be the operation of the machine because maybe they didn't train the helper to operate the machine.@ (Tr. 394.) Needless to say, there is no evidence that Smith was not properly trained as a miner helper.

The Secretary, relying mainly on the length of the training and the fact that the *Joy Service Bulletin* was not used in the training, has failed to show that the training was not adequate. While it is true that the service bulletin was not used in the training, it appears that the materials in the bulletin with respect to tramming the miner and avoiding pinch points were covered. Everything in White Oaks training plan, which had been approved by MSHA, was covered in the training given to Smith, except changing bits and servicing the continuous miner. These two items are also included in miner helper training, which Smith had already received.

The Secretary did not present any evidence concerning how the requirements of section 48.7(a) should have been met in this instance, nor did she demonstrate what was missing from Smith's training that was required by the regulation. In fact, it is apparent that no one from MSHA even bothered to interview Shane Hansen, Smith's trainer, concerning what the training included. Accordingly, I conclude that White Oak did not violate section 47.8(a) when it task trained Keith Smith as a miner operator.

### **ORDER**

In view of the above, Order No. 3415831 is **VACATED**.

T. Todd Hodgdon  
Administrative Law Judge

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