

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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May 3, 2000

SECRETARY OF LABOR,	:	CIVIL PENALTY PROCEEDING
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	Docket No. WEVA 98-111
Petitioner	:	A. C. No. 46-01318-04348
v.	:	
	:	Robinson Run No. 95
CONSOLIDATION COAL COMPANY,	:	
Respondent	:	Mine:

DECISION ON REMAND

Before: Judge Bulluck

This civil penalty proceeding involves a violation of 30 C.F.R. § 75.214, a mandatory safety standard for underground coal mines, requiring that, “(a) A supply of supplementary roof support materials and the tools and equipment necessary to install the materials shall be available at a readily accessible location on each working section or within four crosscuts of each working section,” and “(b) The quantity of support materials and tools and equipment maintained available in accordance with this section shall be sufficient to support the roof if adverse roof conditions are encountered, or in the event of an accident involving a fall.” By decision issued June 9, 1999, I concluded that the Secretary had proven a “significant and substantial” violation, not the result of Consolidation Coal Company’s (“Consol”) unwarrantable failure to comply with the standard, modified the 104(d)(2) order to a 104(a) citation, and assessed a \$2,000.00 penalty. 21 FMSHRC 612 (June 1999) (ALJ). The Secretary appealed my unwarrantable failure determination.

The Commission concluded that the violation was the result of Consol’s unwarrantable failure, reversed my determination, and remanded the proceeding for my assessment of an appropriate penalty. *Consolidation Coal Company*, 22 FMSHRC 328 (March 2000).

FACTUAL BACKGROUND

In its decision, the Commission summarized the facts as follows:

Consol owns and operates Robinson Run No. 95, an underground coal mine in West Virginia. On January 15, 1998, MSHA inspector Charles Thomas

was conducting a Triple-A inspection at the mine. While in the 12-D section of the mine to check on safety equipment, Thomas noticed the absence of any centrally located supplementary roof support, including posts, caps, wedges, and a saw. As a result, Thomas spoke with Consol day foreman Kevin Carter. Thomas asked Carter about the location of the supplementary roof support and number of roof posts. According to Carter, Thomas told him to “count your posts.” Carter told Thomas that he would “take care of it.” As Thomas left the mine, accompanied by miner safety representative Dave McCullough, Thomas also spoke with Consol safety director Robert Church and told him that attention was needed to address supplementary roof support in the 12-D section.

Subsequently, during his shift on January 15, Carter counted the posts and caps along the supply track and found that there were only 11. Carter then spoke with mine foreman Tom Harrison and requested additional posts and other roof support materials. Around 3:00 or 4:00 that afternoon, Harrison ordered the posts from the supply yard, which is located about 10 miles from the 12-D section.

MSHA inspector Thomas returned to the mine to continue his Triple-A inspection on January 17 during the midnight shift, 2 days and four shifts after he left the mine on January 15. Consol foreman Frank Slovinsky was substituting for the regular foreman of section 12-D. Thomas asked Slovinsky where the emergency roof supports were located. Slovinsky responded that they should be in the tool car. When the posts could not be located there, the two searched along the supply track outby four crosscuts of the section. They eventually located 11 posts and some cap pieces and wedges, but never found a saw.

Inspector Thomas then issued Order No. 4888994 charging Consol with a violation of 30 C.F.R. § 75.214 for failing to maintain a supply of supplementary roof support material at a readily accessible location within four crosscuts of the 12-D section.

* * * * *

Consol’s roof control plan for the Robinson Run mine further specified that “[t]he quantity of supplementary roof support material required by [section] 75.214(b) shall consist of a minimum of twenty (20) posts of proper length with sufficient cap pieces and wedges.”

The inspector designated the violation as significant and substantial (S&S) and alleged that it was the result of Consol’s unwarrantable failure. The violation was abated between 3:30 and 5:00 a.m. the following morning when miners were able to locate additional posts along the supply and main tracks, and stored 20 posts, along with wedges, cap pieces, and a saw, in the No. 11 crosscut.

Id. at 328 (citations and footnote omitted).

PENALTY

In accordance with the Commission's decision, I reassess the six penalty criteria set forth in section 110(i) of the Act, 30 U.S.C. § 820(j), in light of the elevated degree of negligence ascribed to Consol. Consol is a large operator, with an overall history of violations that is not an aggravating factor in assessing an appropriate penalty, and the \$5,000.00 penalty proposed by the Secretary will not affect its ability to continue in business. The gravity of the violation is serious since, as previously stated in the original decision, time is of the essence in providing safe passage for rescue of miners who have been injured by unforeseen adverse roof conditions. In light of the Commission's conclusion that "[f]ailing to follow up on the inspector's admonition in such a way as to insure that the request for required roof control supplies did not get lost in the company's own bureaucracy is inexcusable," I ascribe high negligence to Consol. *Id.* at 333. I also take into account the Commission's finding that "Consol officials made some effort to address the violation," albeit inadequate, and consider that effort to be a mitigating factor. *Id.* at 332.

Accordingly, having considered Consol's large size, insignificant history of violations, seriousness of the violation, high degree of negligence, good faith abatement and measures that it took for compliance as a mitigating factor, I find that a penalty of \$4,000.00 is appropriate.

ORDER

Accordingly, it is **ORDERED** that 104(d)(2) Order No. 4888994 is **AFFIRMED**, as issued, and that Consol pay a penalty of \$4,000.00 within 30 days of the date of this remand decision.

Jacqueline R. Bulluck
Administrative Law Judge

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