CCASE:
US STEEL V. MSHA
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
September 17, 1979
UNITED STATES STEEL
CORPORATION, Docket Nos. PITT 76-160-P
PITT 76-162-P
v.
IBMA No. 77-33
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)
DECISION
This appeal was pending before the Interior Department Board of Mine Operations Appeals as of March 8, 1978. Accordingly, it is before the Commission for decision. 30 U.S.C. $961 (1978). The administrative law judge found two violations of 30 CFR $75.1714-2(a) 1/ and assessed a penalty of $100 for each violation. U.S. Steel appealed the finding of violations and the amount of the penalties. We affirm the judge's decision.
On April 7, 1975, a MESA inspector issued a notice of violation of $75.1714-2(a) after observing an employee of U.S. Steel neither wearing nor carrying a self-rescue device in an underground section of Maple Creek No. 2 Mine. On May 9, 1975, a MESA inspector issued a notice of violation of $75.1714-2(a) after observing two men neither wearing nor carrying self rescue devices while performing electrical work at the slope bottom of U.S. Steel's Robena No. 1 Mine.
U.S. Steel argues that 30 CFR $75.1714-2(a) places no obligation on the operator with respect to the wearing or carrying of self-rescue devices. The company asserts that it complied with the standard by establishing a program designed to assure that self-rescue devices are available to all employees, by training all employees in the use of the devices, and by enforcing its program with due diligence.
U.S. Steel

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1/ 30 CFR $75.1714-2(a) provides:
(a) Except as provided in paragraphs (b) and (c) of this section, self-rescue devices meeting the requirements f $75.1714 shall be worn or carried on the person of each miner.

also argues that the penalties are excessive in view of its good

history, prompt abatement and lack of negligence.

It is well established that under the Federal Coal Mine Health and Safety Act of 1969 2/ an operator is liable for violations of mandatory health or safety standards without regard to fault. Valley Camp Coal Co., 1 IBMA 196 (1972); Webster County Coal Corp., 7 IBMA 264 (1977); Republic Steel Corp., 1 FMSHRC 5, 9-10 (1979). Thus, in the present case the issue is not whether the operator acted negligently, but whether it in fact complied with the mandatory language of 30 CFR $75.1714-2(a). Rushton Mining Co., 8 IBMA 255, 259 260 (1978). The cited standard requires that self-rescue devices "be worn or carried on the person of each miner." The administrative law judge found, and U.S. Steel does not dispute, that its employees were not wearing or carrying self-rescue devices. Therefore, we affirm the judge's finding of a violation. 3/ U.S. Steel's safety program and its efforts to enforce it are irrelevant to the finding of a violation. Rather, these factors are appropriately considered in the assessment of a penalty. 4/

The judge's decision reflects that he considered the criteria set forth in section 109(a)(1) of the 1969 Act in assessing a penalty of $100 for each violation. The penalties are appropriate and will not be disturbed.

2/ 30 U.S.C. $801 et seq. (1976) (amended 1977).

3/ U.S. Steel's argument relying on North American Coal Corp., 3 IBMA 93 (1974), is not persuasive. The rationale of the Board's decision in North American has been limited to the language of the particular standard involved in that case, 30 CFR $75.1720. Webster County Coal Corp., supra. See also Rushton Mining Co., supra. The present case presents no occasion to determine whether we agree with the Board's interpretation of 30 CFR $75.1720.

4/ Section 109(a)(1) of the 1969 Act provided:

> The operator of a coal mine in which a violation occurs of a mandatory health or safety standard or who violates any other provision of this Act, except the provisions of title 4, shall be assessed a civil penalty by the Secretary under paragraph (3) of this subsection which penalty shall not be more than $10,000 for each such violation. Each occurrence of a violation of a mandatory health or safety standard may constitute a separate offense. In determining the amount of the penalty, the Secretary 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 operator

charged in attempting to achieve rapid compliance after notification of a violation. (Emphasis added.)
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Accordingly, the judge's decision is affirmed.