CCASE: BECKLEY COAL V. MSHA DDATE: 19791115 TTEXT:

FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION WASHINGTON, D.C. November 15, 1979

BECKLEY COAL COMPANY

v. Docket No. HOPE 77-92 IBMA No. 77-52 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.A. \$961 (1979). The administrative law judge found a violation of 30 CFR 75.307-1 which requires in pertinent part that an examination for methane be made at the face of each working place "immediately prior" to the entry of electrical equipment into the working place. He assessed a penalty of \$300. We affirm the judge's decision.

On February 4, 1976, a MESA inspector issued a notice of violation of 30 CFR \$75.307-1. He had observed a roof bolting machine move into a working place, and had not seen anyone conduct a methane test prior to the machine's entry. The inspector made a methane examination at the face about five minutes before the roof bolting machine was moved into the working place. The section foreman also made a methane examination at the face before telling the roof bolter operator to proceed to the working place. The parties disputed the exact time of the section foreman's test.

Beckley argues that the MESA inspector's methane examination fulfilled the requirement of the regulation. We disagree. The statute imposes a duty upon the operator to comply. 1/

Beckley also argues that the foreman's examination was made "immediately prior" to moving the roof bolter into the working place. The judge disagreed and found that it "was made at some point in time prior to the immediate movement of the roof bolter inby the crosscut, that is, prior to the time that it took the roof bolter to move out of the [old] working place and into the [new] working face", and therefore did not meet the "immediately prior" requirement of the regulation. J.D. at 23. As the judge held, "I find that lapse of time and the time interval does not meet the 'immediately' test of the regulation and constitutes a violation." Id. We agree.

1/ 30 U.S.C. \$801(g)(2)(1976)(amended U.S.C.A. 1979). See also 30 U.S.C. \$817(c)(amended U.S.C.A. 1979).

~1795

Finally, Beckley argues that the notice of violation does not adequately describe a violation, and that consequently it was prejudiced in preparing its defense. We also reject this argument. The notice contained the standard allegedly violated along with a written description of the condition leading to its issuance. 2/ In light of this Beckley was fully apprised of the allegations against it.

Accordingly, the judge's decision is affirmed.

James Richardson, roof bolter operator, supervised by Tom Cochran was observed tramming the roof bolting machine into the no. 47 crosscut ... before making an examination for methane ...

^{2/} The notice of violation stated in relevant part: