

CCASE:
MSHA V. ACE DRILLING COAL
DDATE:
19800424
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
April 24, 1980

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION(MSHA)

v. Docket No. PITT 75-1-P

ACE DRILLING COAL COMPANY, INC. IBMA 76-60

DECISION

This is a civil penalty proceeding arising under the Federal Coal Mine Health and Safety Act of 1969. 30 U.S.C. 801 et seq. (1976 & Supp. I 1977). The administrative law judge found that Ace Drilling Coal Company, Inc., violated 30 CFR 77.410 and 30 CFR 77.1605(d) by failing to maintain a working backup alarm and a working horn on its front-end loader. 1/ He assessed the operator civil penalties of \$7,500 and \$2,500, respectively. The operator appealed. 2/

The case arose out of a fatal accident which occurred at the operator's No. 2 strip mine. The company's foreman was killed when a front-end loader backed over him. Following an investigation of the accident, Mining Enforcement and Safety Administration inspector found that the front-end loader lacked both an operable backup alarm and a horn, in violation of the subject regulations. On appeal, the company argues that it did not commit the violations.

The operator admits the backup alarm was inoperable, but argues that it should be relieved of liability because the deceased foreman knew the alarm was not working and nevertheless ordered the loader to commence operation. It asserts the foreman, not the company, committed the violation. We reject this argument. In determining liability for

1/Section 77.410 provides:

Mobile equipment, such s trucks, forklifts, front-end loaders, tractors and graders, shall be equipped with an adequate automatic warning device which shall give an audible alarm when such equipment is put in reverse.

Section 77.1&05(d) provides in pertinent part:

Mobile equipment shall be provided with audible warning devices

* * *.

2/ The appeal was pending before the Board of Mine Operations Appeals as of March 8, 1978. Accordingly, it is before the Commission for disposition. Section 301 of the Federal Mine Safety and Health Amendments Act of 1977, 30 U.S.C. 961 (1978).

conduct regulated by the Act, the actions of the foreman cannot be separated from those of the operator. The foreman acts for the operator. Cf. Pocohontas Coal Co., 590 F.2d 95 (4th Cir. 1979). The company also argues it should not be held liable because it could not have foreseen the foreman's irresponsible action and thus could not have prevented the violation. We likewise reject this argument. As stated above, the acts of the foreman are acts of the operator. In addition, the 1969 Coal Act did not condition liability upon fault. See United States Steel Corp., 1 FMSHRC 1306, 1307 (1979); Peabody Coal Co., 1 FMSHRC 1494, 1495 (1979).

With respect to the violation of 30 CFR 77.1605(d), the operator admits the horn did not work at the time the inspector issued the notice of violation. However, it asserts that there was no proof the horn was inoperable prior to the accident, and therefore that the judge incorrectly found the violation. The operator misses the mark. The issue is whether the violation existed at the time it was cited by the inspector. It is not necessary, as Ace seems to contend, that a condition contribute to an accident before the standard is violated. The Act does not condition the existence of a violation upon the occurrence of an event it is designed to prevent.

Finally, the company argues that the penalties assessed were excessive. We have carefully reviewed the record and find that the penalties assessed by the judge reflect proper consideration of the statutory criteria set forth in the Act. They will not be disturbed.

Accordingly, the decision of the judge is affirmed.

~792

Distribution

John W. Taylor, Esq.
Myers, Taylor & Peduzzi
213 South Center St.
Ebensburg, PA 15931

Thomas A. Mascolino, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Va. 22203

Administrative Law Judge William Fauver
FMSHRC
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, VA 22041