CCASE:
MSHA V. PARAMONT MINING
DDATE:
19800926
TTEXT:

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
September 26, 1980

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

v. Docket No. VA 79-51

PARAMONT MINING COMPANY

DECISION

This civil penalty proceeding concerns the interpretation of 30 C.F.R. 75.313 (1979) 1/. The question is whether the administrative law judge erred in holding the Secretary must prove that coal was being mined, cut or loaded in order to establish a violation of that mandatory safety standard. We hold that he did.

Paramont Mining Company was cited for a violation of 30 C.F.R. 75.313. The Secretary petitioned for assessment of a civil penalty At the hearing the inspector who issued the withdrawal order testified that when he reached the working section of the mine, he saw the continuous mining machine backing out from inby the last open crosscut. He inspected the machine and found that its methane monitor was bridged out (i.e., there was an electric detour around the methane monitor so that the machine could function when the monitor was not operating). This testimony was undisputed.

1/ That standard, which restates section 303(1) of the Federal Mine Safety and Health Act of 1977, provides in relevant part:

> The Secretary or his authorized representative shall require, as an additional device for detecting concentrations of methane, that a methane monitor, ... be installed, when available, on any electric face cutting equipment, continuous miner, longwall face equipment, and loading machine, ... When

installed on any such equipment, such monitor shall be kept operative and properly maintained and frequently tested as prescribed by the Secretary. The sensing device of such monitor shall be installed as close to the working face as practicable. Such monitor shall be set to deenergize automatically such equipment when such monitor is not operating properly and to give a warning automatically when the concentration of methane reaches a maximum percentage determined by an authorized representative of the Secretary which shall not be more than 1.0 volume per centum of methane.

The administrative law judge held, however, that the Secretary must prove not only that the continuous miner was not equipped with an operative methane monitor, but also that coal was actually being produced, i.e., cut, mined, or loaded, while the monitor was bridged out, in order to establish a violation of 75.313. He found that the Secretary failed to prove the latter element.

We reverse. Production of coal is not a necessary element of a violation of this safety standard. The language of the standard is clear. It requires that monitors "be kept operative and ... be set to deenergize automatically such equipment when such monitor is not operating properly...." The facts show that six days after its monitor had failed, this continuous miner was energized and moving near the face with an inoperative methane monitor. We hold that this is sufficient to establish a prima facie violation of 30 C.F.R. 75.313, and that Paramont has not rebutted the Secretary's case b proving, for example, that the equipment was being moved elsewhere to be repaired.

The decision of the administrative law judge is reversed and the case is remanded for further proceedings consistent with this opinion.

~2478
Distribution

Galen C. Thomas, Esq.
c/o Barber Oil Corporation
245 Park Avenue
New York, New York 10017

Cynthia L. Attwood, Esq.
Judith N. Macaluso, Esq.
Office of the Solicitor
U.S. Department of Labor
4015 Wilson Blvd.
Arlington, Va. 22203

Chief Administrative Law Judge
James A. Broderick
FMSHRC
1730 K Street, N.W.
Washington, D.C. 20006