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MSHA V. CLEVELAND CLIFFS IRON
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 9, 1981

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)
Docket Nos. VINC 79-68-M
v. VINC 79-240-PM

CLEVELAND CLIFFS IRON CO., INC.

DECISION

This proceeding involves the interpretation of the metal and nonmetallic safety standard, 30 CFR 55.9-22. In his decision, the administrative law judge concluded that Cleveland Cliffs Iron Co., Inc. (CCI) had violated the standard and assessed a penalty of 880. For the reasons stated below, we affirm the judge's decision.

The facts in this case are undisputed. On August 23, 1978, an MSHA inspector issued a citation alleging a violation of 30 CFR 55.9-22. That standard provides

55.9 Loading, hauling, dumping

* * *

55.9-22 Mandatory

Berms or guards shall be provided on the outer bank of elevated roadways.

The citation stated that the operator had failed to provide berms for 1500 feet on the western side of a road to a lift station, and for 35 feet on one side of another road leading to a pit pump station. After a reinspection, the citation was modified to include an additional area of 200 feet on the eastern side of the lift station road. When the operator failed to abate the condition cited, a section 104(b) closure order was issued.

CCI filed a notice contesting the withdrawal order, and thereafter the Secretary filed a petition for assessment of a penalty for the alleged violation. The two proceedings were consolidated for hearing and decision. In his decision the judge concluded that the berm standard applies only to roadways used for loading, hauling and dumping. He noted that 30 CFR 55.9, which reads, "Loading, hauling, dumping." is a heading for the entire section. Thus he held that it defines the purpose and scope of the section, and limits the applicability of the standards contained within the subsections. He concluded, however, that the standard was applicable to the elevated roadways in question because

"the routine, systematic usage of the roadways shown by this record constitutes hauling." The judge then concluded that the standard requires berms for both banks of the elevated roadways in question. He reasoned that because the standard is intended to prevent injuries to drivers whose vehicles go over embankments, "[i]t would be anomalous if the standard were limited to one side of the road when the hazard is on the other side or on both sides." He refused to accept a construction based solely on the singular term "outer bank," explaining his usage by reference to the direction of travel: "The outer bank may be interpreted as the bank on the right side of the driver. Therefore, on roads carrying traffic both ways, both banks are the 'outer bank.'" Consequently, the judge held that a violation occurred, affirmed the withdrawal order, and assessed an 880 penalty.

CCI then filed a petition for discretionary review, which we granted. CCI, the Secretary and the United Steelworkers of America filed briefs with the Commission, and we heard oral argument. For the reasons that follow, we affirm the judge.

Two issues are before us:

(1) Did the judge err in concluding that CCI's use of the cited roads constituted "hauling" within the meaning of 30 CFR 55.9? 1/

(2) Did the judge err in refusing to limit application of 30 CFR 55.9-22 to a single outer bank of an elevated haulage roadway

The judge found that although the roadways were not used for hauling ore and mine products, they were used regularly, usually three times a day and occasionally more often, for access to the pump stations and to transport replacement pumps to and from the stations. At times pick-up trucks and 1-ton flatbed trucks were driven on the roads. The drivers were usually alone, but occasionally men were transported. The judge concluded: "Thus, men, equipment and tools are transported along these roads on a regular though limited basis."

In the absence of a definition of "hauling" in the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et se . (Supp. III 1979), or in the mandatory safety standards, the judge turned to a commonly accepted technical dictionary. He found the technical definition of "hauling" inapplicable because it was limited to activities in underground mining, 2/ and the standards in question clearly are not intended

1/ In support of the judge's result in this case, the Secretary

alternatively argued that the berm standard applies even if the road was not used for loading, hauling or dumping, contending that the section heading does not limit the scope of the 55.9 standards.

Because we conclude that the judge was correct in finding that the road here was used for hauling, we need not reach the Secretary's alternative argument in this case.

2/ "Hauling" is defined as the "drawing or conveying of the product of the mine from the working places to the bottom of the hoisting shaft or slope." A Dictionary of Mining, Mineral and Related Terms (Bureau of Mines, Department of Interior, 1968) at 531.

to be so limited. He found pertinent, however, the technical definition of "haulage", i.e., "the drawing or conveying in cars or otherwise, or movement of men, supplies, ore and waste both underground and on the surface." Dictionary of Mining at 531. This definition, he believed, "seem[ed] to include the activities on the road in question." We find no error. It is undisputed that the roads were used to haul men and replacement parts. We believe the term "hauling" should be broadly construed, and includes conveying men, ore, supplies or materials along elevated roadways where the roadways are used in the normal mining routine. We agree with the judge that the roads to the lift and pump stations were used in that way.

We now turn to the question of whether the judge erred by not limiting application of the standard to a single outer bank of each elevated roadway. The standard states that "berms or guards shall be provided on the outer bank of elevated roadways." The judge found--and CCI does not dispute--that the roadways were elevated, in that one side of the road to the lift station was 35 to 40 feet above the adjacent terrain, sloping at a 45-degree angle. The other side was 5 to 8 feet above the adjacent terrain. The road to the pit pump station dropped 10 to 12 feet to a ledge on one side and 12 feet to a water-filled area on the other side. CCI contends, however, that the standard should be narrowly limited to elevated roadways having but a single exposed bank. The company argues that the drafters of the standard intended to limit its application to "typical" pit haulage roads having only one bank, as evidenced by the use of the singular form.

We are not persuaded by this argument. As noted by the judge, if protection were extended only to those elevated roads with one open bank, while elevated roadways with two open banks were not required to be bermed or guarded, miner safety would certainly be adversely affected. We note that the language of the standard does not clearly and unequivocally mandate that only elevated roads with one exposed bank be bermed or guarded. Absent clear language to the contrary, we are not prepared to adopt a construction of this standard, leading to an anomalous result that is inconsistent with promoting miner safety. We agree with the judge, therefore, that the standard applies to all elevated banks. Our interpretation of the term is supported by the rules of construction at 1 U.S.C. 1, which provides that words

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imparting the singular may include the plural. See *Barr v. U.S.*, 324 U.S. 83, 91 (1945) and 1 U.S.C.A. 1, Note 1 (1976 ed.). We find nothing in the context of the statute nor the language of the standard to preclude application of this rule. Our result is also consistent with the rule that remedial legislation and its implementing regulations "re to be construed liberally. *Consolidation Coal Co.*, 1 FMSHRC 1300, 1309 (1979).

Accordingly, the judge's decision is affirmed.

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