CCASE:
CLIMAX MOLYBDENUM V. MSHA
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
February 16, 1982
CLIMAX MOLYBDENUM COMPANY

v. Docket Nos. DENV 78-553-M
DENV 78-554-M
SECRETARY OF LABOR, WEST 79-340-M
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

and

CLIMAX MOLYBDENUM WORKERS,
LOCAL NO. 2-24410, OIL,
CHEMICAL AND ATOMIC WORKERS
INTERNATIONAL UNION

DECISION

This case involves the interpretation of 30 C.F.R. $ 57.12-82, a mandatory standard under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. $ 801 et seq. (Supp III 1979). For the reasons that follow, and for those expressed in our decision in Homestake Mining Co., 4 FMSHRC_____(CENT 79-27-M et al, Feb. 16, 1982), issued today, we reverse the judge's decision and hold that the Secretary of Labor failed to prove a violation of the cited standard. 1/

The relevant facts were stipulated. An inspector issued citations after observing power cables, which were hung in haulage drifts, in contact with air or water lines. The cables carry voltages of 110 to 440 volts and were in satisfactory condition. The cables never carry voltages greater than the manufacturer's insulation rating. The identical type of cable involved is also used as trailing cable and is approved by MSHA for that use under 30 C.F.R. $ 18.36. As a general rule at the Climax Mine, air and water lines are on the opposite side of drifts from power cables. It is, however, sometimes necessary to locate air or water lines, or power cables, across a drift to transmit air, water or power to a specific location. Air lines, water lines, and power cables frequently cross at the intersections of drifts.

The judge noted that the term "powerlines" in section 57.12-82 "is not susceptible to a precise definition" and concluded that it encompasses "all constituent parts of the cables." 2 FMSHRC 3695.

1/ The judge's decision is reported at 2 FMSHRC 3681 (1980).
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As a result the judge concluded that section 57.12-82 requires insulation in addition to that provided by the manufacturer between the outer jacket of power cables and air, water, or telephone lines. The judge reasoned that, because the standard refers to the entire power cable, which itself contains insulation, it must require added insulation. The judge also cited the "harsh environment" in underground metal and non-metal mines in reaching his conclusion.
Section 57.12-82 requires:
Powerlines shall be well separated or insulated from waterlines, telephone lines, and air lines.
As we noted in Homestake, the cables involved in these cases contain conductors that transmit electricity, and thus can be considered powerlines; therefore, this standard applies to them. A powerline is not "insulated" unless it is insulated "in a manner suitable for the conditions to which it is subjected." 2/ The judge concluded that these cables, as they come from the manufacturer, are not insulated in a manner suitable for the conditions at the Climax Mine. He noted the possibility of damage to cables from fly rock, rubbing by haulage equipment, and dragging over sharp rock or metal edges. 2 FMSHRC 3699. Although consideration of the specific conditions to which the cables are subjected is appropriate, indeed necessary, we do not believe that the mere speculative possibility that they could sustain some externally caused damage is sufficient to render the cables "uninsulated". 3/
In order to prove a violation of section 57.12-82 the Secretary must show that the "powerlines" are not insulated from pipelines. In this case, he failed to prove that. The parties stipulated that these cables were in satisfactory condition. They are approved for use on the mine floor as trailing cables. In addition, the judge made several findings indicating that the cables are "substantially overdesigned". 4/ He found that the insulation in the cables has a dielectric resistance

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2/ 30 C.F.R. $ 57.2 provides in part:
"Insulated" means separated from other conducting surfaces by a dielectric substance permanently offering a high resistance to the passage of current and to disruptive discharge through the substance. When any substance is said to be insulated, it is understood to be insulated in a manner suitable for the conditions to which it is subjected. Otherwise, it is, within the purpose of this definition, uninsulated.
3/ We note that added insulation would also be subject to damage from

these factors.
4/ The judge stated, The testimony of Dr. Fred Leffler, Associate Professor of Electrical Engineering at the Colorado School of Mines, supports Climax's contentions that the cables ... are substantially overdesigned in terms of their dielectric properties." 2 FMSHRC 3698.
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of between 7,500 volts and 23,750 volts, depending on the composition of the particular cable. 2 FMSHRC 3698. (The cables carry 110 to 440 volts.) He also noted that the cables' neoprene jacketing not only "protect[s] the insulation from outside forces such as oils, acids, alkalies, water or moisture, flame and abrasion", but also "has an insulating capability". Id. The judge's conclusion that these cables, which we emphasize were in satisfactory condition, are not sufficiently insulated whenever they contact air, water or telephone lines is not supported by the evidence.
Accordingly, the decision of the administrative law judge is reversed and the penalties he assessed are vacated.
A.E. Lawson,
Commissioner
5/ Chairman Collyer did not participate in the consideration or disposition of this case because of her prior representation of the Climax Molybdenum Company at a time when these cases were being tried and argued on appeal.
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