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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, DC
October 31, 1983

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

v. Docket No. LAKE 80-216
SOUTHWESTERN ILLINOIS COAL
CORPORATION

DECISION

In this civil penalty case arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1976 & Supp. V 1981), we are called upon to interpret the phrase "shall be required to wear ... safety belts and lines" in the surface coal protective clothing standard, 30 C.F.R. 77.1710(g). 1/ The Department of Interior's Board of Mine Operations

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1/ Section 77.1710 provides:

> Protective clothing; requirements.
>
> Each employee working in a surface coal mine or in the surface work areas of an underground coal mine shall be required to wear protective clothing and devices as indicated below:
>
> (a) Protective clothing or equipment and face-shields or goggles shall be worn when welding, cutting, or working with molten metal or when other hazards to the eyes exist.
>
> (b) Suitable protective clothing to cover the entire body when handling corrosive or toxic substances or other materials which might cause injury to the skin.
>
> (c) Protective gloves when handling materials or performing work which might cause injury to the hands; however, gloves shall not be worn where they would create a greater hazard by becoming entangled

in the moving parts of equipment.

(d) A suitable hard hat or hard cap when in or around a mine or plant where falling objects may create a hazard. If a hard hat or hard cap is painted, nonmetallic based paint shall be used.

(e) Suitable protective footwear.

(f) Snug-fitting clothing when working around moving machinery or equipment.

(g) Safety belts and lines where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.

(h) Lifejackets or belts where there is danger from falling into water.

(i) Seatbelts in a vehicle where there is a danger of overturning and where roll protection is provided.

(Emphasis added.)

Appeals held that the identical phrase in the underground coal protective clothing standard imposed on operators the duty to "establish a safety system designed to assure that employees wear [the clothing or equipment] on appropriate occasions" and to "enforce such system with due diligence." North American Coal Corp., 3 IBMA 93, 107 (1974). In his decision below, the Commission administrative law judge found North American analogously persuasive, concluded that the operator had satisfied the North American criteria, and vacated the citation. 3 FMSHRC 871 (April 1981)(ALJ). We approve the judge's adoption of the North American construction, but reverse his finding that the operator satisfied the North American criteria. We conclude that the facts show a violation, and remand for assessment of penalty.

On November 5, 1979, an inspector from the Department of Labor's Mine Safety and Health Administration (MSHA) issued a citation to Southwestern Illinois Coal Corporation alleging a violation of section 77.1710(g) at Southwestern's Captain Strip Mine in Illinois. The inspector issued the citation when he observed a miner working alone without a safety belt and line on a large stripping shovel where the inspector believed there was a danger of falling.

The miner, assigned to work as the shovel groundman, was repairing a broken grease line on the end of one of the shovel's steering arms. He was kneeling at the place where the arm was joined at right angles to the shovel's steering cylinder. (The steering arm and cylinder functioned together to turn one of the tracked crawlers on which the shovel traveled.) The miner's immediate work location was approximately two feet wide and 12 to 15 feet off the ground. 3 FMSHRC at 873, 875, 878; Tr. 16-17, 72-75, 87, 89-90; Pet. Exh. No. 2. There were no guardrails or similar protective devices on the steering arm or cylinder. As the inspector approached, the miner walked down the steering arm to the crawler tracks and off the machine. The inspector spoke with the miner about the use of a safety belt and a line, and the miner offered no explanation as to why he had not been using them.

At the time of the citation, the shovel was not being used for stripping, although its power was on. The shovel had an automatic leveling mechanism that periodically moved the machine, including the steering arm, to level positions. Safety belts were kept on the shovel. According to Southwestern's safety director at the Captain Mine, these belts were intended for "the men to use if they are going to get in an area [on the shovel] where they think there is a danger of falling." Tr. 77.

A few days after the MSHA citation, the safety director issued the miner a safety violation for working in an "elevated work position without wearing a safety belt" in violation of federal, state, and company rules. The violation was charged to the miner pursuant to Southwestern's program of progressive discipline for violations of safety rules. This program was contained in Southwestern's safety booklet issued to all employees.

The booklet included specific rules requiring the wearing of safety belts and lines. 2/

At the hearing, the inspector testified that he believed there was a danger of falling, within the meaning of section 77.1710(g), in the area where the miner was working without a belt. The inspector based this conclusion on his observations that the work area was elevated, small, and unguarded, that grease was likely to accumulate there, and that the machine could move while the miner was working. Southwestern's overall director of safety and training testified that the decision whether to wear a belt in a particular situation was largely up to the miner himself. He agreed that, if the facts were as the inspector testified there was a danger of falling where the miner was working and he should have been wearing a belt.

The judge adopted and applied North American supra. He thus interpreted the phrase "shall be required to wear to mean only that operators must require belts to be worn not that operators must insure absolutely that they are worn. On this basis, the judge concluded that Southwestern passed the North American test. He relied on the facts that a safety belt was available on the shovel, that Southwestern had promulgated safety rules requiring miners to wear the belts, and that the company enforced its rules by disciplining violators. In light of these determinations, the judge vacated the citation.

We first construe the phrase "shall be required to wear." In North American, the Board interpreted the identical phrase in the underground coal protective clothing standard, 30 C.F.R. 75.1720(a). 3/ Although a failure to wear safety goggles was the specific issue in that case, the more significant focus of the North American decision was on the general meaning of "shall be required to wear." The Board concluded that these words meant only that operators must (1) establish a safety system requiring the wearing of the clothing or equipment and (2) enforce

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2/ The safety booklet contained two rules concerning safety belts and lines:

> Safety belts and lanyards shall be worn if necessary.
>
> Safety belts and lines shall be worn at all times where there is a danger of falling. If belts or lines present a greater hazard or are impractical, notify your supervisor so that alternative precautions are taken.

Res. Exh. No. 1, Section VII, Rules 8 & 9, p. 8.

From the time of the safety booklet's publication in 1978 to the hearing, Southwestern issued approximately 50 safety violations, three of which (including the one issued to the miner) involved safety belt infractions. The majority of the 50 violations were first warnings.

3/ Like the surface standard at issue in this case, section 75.1720 begins by providing that "each miner ... shall be required to wear the following protective clothing and devices" (emphasis added), and then lists the covered items in a number of subsections.

the system diligently. 3 IBMA at 107. The intended effect of this construction was that if a failure to wear the protective clothing and equipment was "entirely the result of the employee's disobedience or negligence rather than a lack of requirement by the operator to wear them, then a violation has not occurred" (emphasis added). Id. 4/ We agree with the judge that the North American construction is the natural reading of the words in issue.

The regulation does not state that the operator must guarantee that belts and safety lines are actually worn, but rather says only that each employee shall be required to wear them. The plain meaning of "require" is to ask for, call for, or demand that something be done. See Webster's Third New International Dictionary (Unabridged) 1929 (1971). Accordingly, when an operator requires its employees to wear belts when needed, and enforces that requirement, it has discharged its obligation under the regulation. We respectfully disagree with our dissenting colleagues that "shall be required to wear" means "shall be worn." The two phrases are not the same, and we do not find persuasive a reading that converts a duty to require into a duty to guarantee. Certainly, the purpose of the standard is to protect miners, but the standard as written provides for that protection by directing that operators require the belts to be worn.

The Secretary of Labor argues through counsel that the regulation should be read as if the words "shall be worn" are contained in the regulation. If the Secretary wanted that phrase to obtain we are constrained to ask why he did not make the appropriate changes nine years ago when North American was issued. To tell us now that "shall be required" is the same as, or stronger than, "shall be worn" is an assertion that cannot be squared with the Secretary's understanding of North American. Further, the words "shall be worn" are used in other regulations promulgated by the Secretary. 5/ In effect, the Secretary is asking us to amend the regulation, but amendment is his province, not ours. The Commission is an independent adjudicatory agency that provides trial and appellate review under the Mine Act.

Our holding is restricted to the language of this standard, and does not create an employee disobedience or negligence exception to the liability without fault structure of the Mine Act. Our concern is only with the duty of care imposed by this one regulation and, as indicated above, we hold that the duty is one of requirement diligently enforced, not guarantee.

4/ After the issuance of North American, some discerned in the decision a recognition of a general employee disobedience and

negligence exception to the liability without fault structure of the 1969 Coal Act. The Board itself repudiated that reading of the decision and any such exception to the liability scheme of the 1969 Coal Act (Webster County Coal Corp., 7 IBMA 264, 267-68 (1977)), and we have done the same. Nacco Mining Co., 3 FMSHRC 848, 849 & n. 3 (April 1981).

5/ The metal and nonmetal personal protection standards dealing with safety belts and lines use the phrase, "shall be worn." 30 C.F.R. 55.15-5, 56.15-5 and 57.15-

We also conclude, however, that the judge erred in finding that Southwestern satisfied the North American criteria. Although Southwestern had safety rules requiring the wearing of belts and provided some general training on the subject, the record does not show sufficiently specific and diligent enforcement of that requirement.

As noted in the summary of facts above, Southwestern's general director of safety and training testified that the decision whether to wear a belt was largely up to the miner himself. At oral argument before the Commission, Southwestern's counsel reinforced this point by stating that the use of a safety belt in any given situation at the mine was "optional" with the employee. The general safety director also testified that there were no signs at the mine reminding employees to wear belts, and conceded that no safety analysis had been conducted or directives issued to identify specific working situations where belts should be worn. We do not suggest that the operator necessarily had to engage in any one of these steps to satisfy its responsibilities under the standard, but we find a virtual absence of any specific guidelines and supervision on the subject of actual fall dangers.

In sum, the evidence reveals that the wearing of belts was delegated to the discretion of each employee, with only general guidance at best. As a matter of law and evidence, this falls short of demonstrating due diligence in enforcement. It is important to note in contrast, in the North American case, that the operator had a more specific program aimed at avoiding the particular hazard through prominent signs and constant verbal warnings and reinforcement of safety considerations. 3 IBMA at 107-08.

Regarding the incident that led to the citation, there is no dispute that the miner was working unsupervised on an elevated platform without a belt and line. The evidence also clearly shows that there was a danger of falling. 6/ The decision not to wear the belt was made by the miner, but

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6/ The miner's work platform was only about two feet wide and 12 to 15 feet off the ground. This was an area where grease lines and fittings were located, and as the inspector testified it was likely that grease would accumulate there causing a slippery surface. The shovel's power was on, and it also had an automatic leveling device that could move the steering arm on which the miner was working. Thus, the machine could have moved during his work. Applying the analogous test we recently adopted in Great Western Electric Co.,

5 FMSHRC 840, 841-42 (May 1983), to assess fall dangers under a metal and nonmetal personal protection standard (30 C.F.R. 57.15-5), we conclude that an informed, reasonably prudent person would have recognized a danger of falling under these circumstances. The mine's safety director initially testified that he had measured the work area to be about four feet wide; however, he subsequently conceded that he incorrectly made his measurements further back on the steering arm. He also testified, without explanation, that he did not believe there was a danger of falling where the miner was working. The facts summarized above do not support this opinion.

it represented an exercise of the wide discretion expressly permitted him under Southwestern's decentralized, non-specific safety belt program. Accordingly, the failure to wear the belt in this instance was attributable to the operator's failure to enforce diligently its belt requirements, and constituted a violation of the standard.

For the foregoing reasons, we approve the judge's adoption of the North American interpretation of section 77.1710(g), but conclude that Southwestern nevertheless violated the standard so construed. We remand for determination of an appropriate penalty.

Frank F. Jestrab specially concurring in result:

I agree with the majority of the Commission that the judge should be reversed.

I understand the learned majority of the Commission to base their decision on the so-called North American defense set forth by the Board of Mine Operations Appeals wherein it was held that an "identical" phrase "shall be required to wear" required the employer to establish a safety system "requiring the wearing of clothing or equipment and enforce such system diligently." My colleagues further state that "shall be required to wear" and "shall be worn" are not the same and they "do not find persuasive a reading that converts a duty to require into a duty to guarantee." From this I apprehend that we would all agree, as we have in the past, that if the pivotal phrase was "shall be worn," North American would not apply and the operator's safety program and its efforts to enforce it would be irrelevant to the finding of a violation. U.S. Steel Corporation, 1 FMSHRC 1306, 1307 (1979).

With all deference and respect to the majority, I am not satisfied that there is any distinction in the duty imposed on the operator under the Mine Act by the phrase "shall be required to wear..." and the simple "shall be worn." However, I do not reach the question of the meaning of "shall be required to wear" in this case because as I read the regulation it is not the applicable verb phrase for the subsection which was cited for the violation. Whether the duty imposed is a duty to enforce a program (shall be required to wear) or a duty imposing liability without fault (shall be worn), we agree that the operator has not satisfied his duty in this case and that the decision of the administrative law judge should be reversed. I concur in that result, but I base my decision on narrower grounds.

It seems to me that our first assignment is to interpret the regulation at 77.1710 1/. The initial clause of subsection (g), which

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1/ 77.1710 Protective clothing; requirements.

Each employee working in a surface coal mine or in the surface work areas of an underground coal mine shall be required to wear protective clothing and devices as indicated below:

(a) Protective clothing or equipment and faceshields or goggles shall be worn when welding, cutting, or working with molten metal or when other

hazards to the eyes exist.

(b) Suitable protective clothing to cover the entire body when handling corrosive or toxic substances or other materials which might cause injury to the skin.

(c) Protective gloves when handling materials or performing work which might cause injury to the hands; however, gloves shall not be worn where they would create a greater hazard by becoming entangled in the moving parts of equipment.

(Footnote continued)

was cited here, contains no independent verb. The appropriate verb, which must be supplied by reference is, in my view, the last preceding verb in the series, which is found not in the preamble to the regulation as the majority suggests, but rather in subsection (a). The verb phrase in subsection (a) is shall be worn. 2/ Further, a proper verb form must agree with other verbs in the same subsection and in the second clause in subsection (g), it is provided that a person shall tend the lifeline. It does not say "shall be required" to tend. If I am correct, and I believe that I am, then North American has no relevance to this case and the operator's duty here is a duty imposing liability without fault. 3/ U.S. Steel Corporation, supra, and Mid-Continent Coal and Coke Co., supra at n. 2.

Second, it is well established that the Mine Act imposes liability without fault upon operators. Southern Ohio Coal Co., 4 FMSHRC 1459 (1982), A. H. Smith Stone Company, 5 FMSHRC 13 (1983). The authority which Congress delegated to the Secretary of Labor carries with it the responsibility to promulgate regulations which mirror the concept of

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fn. 1/ continued

> (d) A suitable hard hat or hard cap when in or around a mine or plant where falling objects may create a hazard. If a hard hat or hard cap is painted, non-metallic based paint shall be used.
> (e) Suitable protective footwear.
> (f) Snug-fitting clothing when working around moving machinery or equipment.
> (g) Safety belts and lines [shall be worn] where there is danger of falling; a second person shall tend the lifeline when bins, tanks, or other dangerous areas are entered.
> (h) Lifejackets or belts where there is danger of falling into water.
> (i) Seatbelts in a vehicle where there is a danger of overturning and where roll protection is provided. (Emphasis mine. Phrase in brackets also mine, supplied by relation back to subsection (a) to illustrate how I read (g).)

2/ Upon previous examination of subsection (a) of 30 C.F.R. 77.1710 the Commission interpreted the phrase "shall be worn" according to its literal meaning, Mid-Continent Coal and Coke Co., 3 FMSHRC 2502, 2506 (1981). See U.S. Steel Corporation, supra.

3/ For the record, the regulation at issue here is not the same as the regulation cited in North American. That regulation is 30 C.F.R. 75.1720, of which subsection (a) was cited. Note that there is no verb in subsection (a) and to supply one it is necessary to relate back to the last, preceding verb which is "shall be required to wear", appearing in

(Footnote continued)

liability without fault--that is, regulations with which compliance is mandatory. It seems clear to me that the regulation at issue does just that; the wearing of personal protective equipment is mandated and if it is not worn, the operator is liable. We have no power to create exceptions to liability without fault which have not been placed in the Act by Congress. U.S. v. Atchison T. & S.F.Ry Co., 156 F.2d 457 (9th Cir. 1946).

In this case the operator's employees were observed without the protective equipment required by 30 C.F.R. 77.1710(g)--safety belts and lines--where there was a danger of falling. For the reasons set forth above, I believe this constitutes a violation of that regulation and I concur with the result reached by my colleagues in the majority that the administrative law judge should be reversed and a violation found.

Frank F. Jestrab, Commissioner

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fn. 3/ continued

the preamble. Nowhere in the regulation does the|verb phrase "shall be worn" appear:

> 75.1720 Protective clothing; requirements.
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> On and after the effective date of this 75.1720 each miner regularly employed in the active workings of an underground coal mine shall be required to wear the following protective clothing and devices:
>
> (a) Protective clothing or equipment and face-shields or goggles when welding, cutting, or working with molten metal or when other hazards to the eyes exist from flying particles.
>
> (b) Suitable protective clothing to cover those parts of the body exposed to injury when handling corrosive or toxic substances or other materials which might cause injury to the skin.
>
> (c) Protective gloves when handling materials or performing work which might cause injury to the hands; however, gloves shall not be worn where they would create a greater hazard by becoming entangled in the moving parts of equipment.
>
> (d) A suitable hard hat or hard cap. If a hard hat or hard cap is painted, nonmetallic based paint shall be used.

(e) Suitable protective footwear.
(Emphasis Mine)

Commissioner Lawson concurring and dissenting:

I join with my colleagues in finding a violation and that the judge below must be reversed. I disagree with their interpretation of the phrase "shall be required to wear," as set forth in 30 C.F.R. 77.1710(g). That interpretation is not only contrary to the common usage of "require," but creates an internal contradiction within section 30 C.F.R. 77.1710 itself, forestalling the application of uniform safety practices and protection in the mining industry. Indeed, their definition is significantly--and selectively--less inclusive than that found in Black's Law Dictionary (5th ed.) (p. 1172), which defines "require," inter alia. to mean "compel ... command," certainly not precatory terms.

Subsections (a) and (c) of this standard delineate which protective clothing "shall be worn," or "shall not be worn." There is no indication that creation of a third category of protective clothing, which "shall be worn if directed to do so by the operator," is or was intended. It is evident that the only purpose of 77.1710(g) is to insure or guarantee that safety belts must be worn "where there is danger of falling." The miner is not protected when there is a danger of falling unless he is actually wearing a safety belt; the wearing of that belt is therefore what the standard requires.

This interpretation is confirmed by the language of regulation 30 C.F. R. 77.403a(g), to cite but one example. The Secretary has construed "shall be required to wear" to mean "shall be worn" in 30 C.F.R. 77.403a(g). That standard provides that:

> Seat belts required by 77.1710(i) shall be worn by the operator of mobile equipment required to be equipped by ROPS (roll over protection structures) by 77.403(a). (Emphasis supplied.)

The core sense of "require" is to mandate, not exhort--that which is required, shall be done. See Mississippi River Fuel Corp. v. Slayton et al. 359 F.2d 106, 119 (8th Cir. 1966): "Required" implies something mandatory, not something permitted by agreement."

As the Secretary persuasively points out, the phrase, "shall be required," emphasizes that it is the duty of the operator to insure the wearing of safety belts and lines, and that breaching that duty is a violation of the Act. This construction carries out the purpose of the Act by expressing the standard's sole purpose: to protect miners from the danger of falls. Although it appears unnecessary of

repetition, regardless of the existence of even a diligently enforced company rule, a miner is not protected from the danger of falling unless he is actually wearing a safety belt. There is no meaningful, nor even semantically persuasive distinction, between "shall be required to wear" and "shall be worn."

Moreover, to find that "required" means only "direct" would effectively vitiate not only this standard, but a multitude of other regulations. The word "require" or "required" is used no less than thirty-nine times in part 77 of 30 C.F.R. alone. 1/ If "required" means only to "direct," as contended by the majority, then the commands of Part 77, as well as several other sections of 30 C.F.R., would be rendered nugatory, rather than compelling that a named protection or action is to be taken to assure miners' health and safety.

Pursuing the majority's reasoning would result in ridiculous constructions. See for example, 30 C.F.R. 75.313, which states that "the Secretary shall require such monitor to deenergize automatically...." Substituting "direct" for "require," as does the majority here, would necessitate direction being given to an inanimate object--an absurd result. The word "require" or "required" is a mandate to the operator to guarantee that a methane monitor will deenergize automatically, as in section 75.313, and that safety belts shall be worn, as set forth in section 77.1710. 2/

Adopting the majority's test would thus be an invitation to an operator, despite the fact that its miners are being subjected to safety and health hazards, to avoid responsibility merely by demonstrating that it has established a safety and health program under which miners are told to wear safety belts. Uniform safety practices and protection throughout the mining industry, 3/ absent clearly defined exceptions, are the obvious goal of the Act and these regulations.

This interpretation is congruent with those final--and absolute--responsibilities placed upon the operator by the Act to prevent safety and health hazards to miners, including forestalling employees from engaging in unsafe and unhealthful activities. 30 U.S.C. 801(e) and 30 U.S.C. $ 811(a)(7).

1/ A complete review of all of the six hundred eighty-eight pages of 30 C.F.R. (Part 0-199) has not been made.

2/ Section 77.1710 is titled: "Protective Clothing, Requirements." (Emphasis supplied) Certainly this title does not suggest "directions" to miners. To the contrary, it means requirements imposed on the operator.

3/ I agree with my colleague Commissioner Jestrab, for the reasons he stated, that the authority which Congress delegated to the Secretary

of Labor carries with it the responsibility to promulgate regulations which mirror the concept of liability without fault. Neither the Secretary nor this Commission has any authority to interject exceptions. Slip op. at 8-9. As is well established, if a miner, despite an operator's best efforts, negligently or disobediently fails to wear a belt, the operator's efforts toward enforcement, or lack of negligence can be considered in assessment of a penalty. Nacco Mining Co., 3 FMSHRC 848, 850 (1981).

The Secretary's safety belt standards for other than coal mining operations all use the phrase "shall be worn." 4/ There is no indication, nor any reason to suppose, the Secretary intended a dichotomous scheme of protection from dangerous falls for coal miners and other miners. It is difficult, to understate the case considerably, to meaningfully distinguish between a fall in a coal mine, and one occurring in a noncoal mine. To the contrary, uniform regulation of such common safety problems best serves the interests of the miner and the industry.

Finally, the majority's construction of applicable precedent is also deficient. The dicta relied upon from North American represents the views only of the Board of Mine Operations Appeals (BMOA), (a non-independent body subordinate to the Secretary of the Interior) then charged with the contradictory responsibilities of maximizing coal production, and enforcing mine safety. Legis. Hist. 998, 1011, 1154-55. Moreover, even the BMOA, in Webster County Coal Corp., 7 IBMA 264, 267-68 (1977) retreated from, if indeed it did not invalidate, its prior.North American dicta. Nor has the Secretary of Labor, since passage of the Mine Act, taken other than a consistent position, as advanced by him in this case.

More relevantly, and more recently, this Commission held--unanimously-- that "to the extent that these dicta suggest an exception to the liability without fault structure of the 1969 Coal Act, they are out of line with, and do not survive, the well established precedents cited above." Nacco Mining Co., supra. 849, n.3. See also Pocahontas Coal Co. v. Andrus, 590 F.2d 95 (4th Cir. 1979); El Paso Rock Quarries, 3 FMSHRC 35, 38-39 (1981); Ace Drilling Coal Co., Inc., 2 FMSHRC 790 (1980); aff'd mem., (3rd Cir. No. 80-1750, Jan. 23, 1981); Peabody Coal Co., 1 FMSHRC 1494, 1495 (1979); United States Steel Corp., 1 FMSHRC 1306, 1307 (1979); Ruston Mining Co., 8 IBMA 255, 259-60 (1978), and Valley Camp Coal Co., 1 IBMA 196 (1972).

In summary, there is no exception to the present liability without fault mandate of the Mine Act, nor it would appear did any survive, even as dicta, the passing of the Board of Mine Operations Appeals. The economic incentive provided by this keystone of the 1977 Act would obviously be undercut, if, as the majority now proposes, the law is to be changed, and only if the operator is negligent in monitoring his "safety program", is liability to be imposed. As has been often noted, both under this Act and elsewhere, this Commission must be "guided by the familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its

purposes." Tcherepnin v. Knight 389 U.S. 332, 336 (1967). The Mine Act and the safety standards promulgated under the Act clearly constitute remedial legislation. As the United States Court of Appeals for the Third Circuit stated:

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4/ 30 C.F.R. 55.15-5 (metal open pit), 56-15-5 (sand and gravel), and 57.15-5 (metal underground), provide that "Safety belts and lines shall be worn when men work where there is a danger of falling."

> The statute we are called upon to interpret is the out-growth of a long history of major disasters in * * * mines * * *. [I]n construing safety or remedial legislation narrow or limited construction is to be eschewed. Rather, in this field liberal construction in light of the prime purpose of the legislation is to be employed. [Citations omitted.]

St. Mary's Sewer Pipe Company v. Director of the United States Bureau of Mines, 262 F.2d 378, 381 (3rd Cir. 1959).

I agree with the majority that the evidence clearly shows that the miner was not wearing a safety belt, and that there was a danger of falling. Accordingly, for the reasons stated above, I conclude that Southwestern violated 30 C.F.R. 1710(g) and would remand for determination of an appropriate penalty.

A. E. Lawson, Commissioner