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ALLIED CHEMICAL V. SOL (MSHA)
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FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
WASHINGTON, D.C. 20006
AUGUST 28, 1984

ALLIED CHEMICAL CORPORATION

v.

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA) Docket No. WEST 79-165-M

DECISION

This civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982), presents issues involving longwall mining operations. A Commission administrative law judge found that the cited condition, missing bolts in longwall roof support units, constituted a violation of 30 C.F.R. 57.9-2. .1/ We granted the petition for discretionary review file by the operator, Allied Chemical Corporation ("Allied"). We conclude that substantial evidence supports the judge's decision and, accordingly, we affirm.

At its Alchem Trona Mine, located near Green River, Wyoming, Allied employs a longwall mining unit. Mining is conducted in longwall panel entries some 400 feet in width and considerably greater in length. The Allied longwall mining machine consists of a cutting device known as a shearer, a face conveyor on which the shearer rides, and a line of large roof support units called chocks. The chocks are located behind the face conveyor. Each chock is composed of an overhead canopy placed directly against the mine roof, a hydraulic rim at the base of the unit, and hydraulic legs (or jacks) between the base and canopy. The legs, approximately six inches in diameter, support the canopy and are used to raise or lower the canopy. The canopy is hinged in the middle, with a large back portion and two parallel front arms. One leg supports each of the front arms of the canopy and four legs support the back portion of the canopy.

1/ Section 57.9-2 provides:

> Mandatory. Equipment defects affecting safety shall be corrected before the equipment is used.

During the extraction process, the shearer makes continuous lateral passes across the mining face to cut the trona ore. The ore is deposited in the face conveyor below the shearer and transported by the conveyor belt away from the face. As the shearer makes cuts at the face, the chocks are moved forward by the hydraulic rams to support the newly created roof. A 400-foot face requires some 125 chocks for roof support. When all the chock units are side-by-side, parallel to the face, they form a continuous chock line. As mining progresses and the chock line is snaked forward, the roof is allowed to collapse behind the chocks.

The bolts that are the subject of this proceeding are made of soft steel and are three-quarters of an inch in diameter and approximately eight inches long. One bolt is inserted through each chock leg. The attachment point is near the top of the leg just below a two to three-inch cup in the canopy in which the leg is positioned. The bolt is not intended to provide direct roof support. Because of the stresses generated in the operation of the chock equipment, the bolt will shear off at some point during its use. However, the bolt serves two important functions: preventing the legs from twisting beyond their design limits, especially when the ram moves the chock forward, and holding the legs in proper position in the canopy cups when the legs are raised or lowered. Hydraulic lines are attached to each leg near the point where the bolt is placed. As discussed below, if the leg twists due to a missing bolt, the hydraulic lines could be torn off or ruptured. Such twisting could also damage or destroy the hydraulic packing inside the leg.

The events leading to the citation at issue began on January 26, 1979, when inspectors from the Department of Labor's Mine Safety and Health Administration ("MSHA") conducted a methane spot inspection of the Allied mine pursuant to section 103(i) of the Mine Act. 30 U.S.C. 813(i). The inspectors determined that the panel in which th longwall miner was located contained amounts of methane in excess of applicable standards and issued an order withdrawing miners from the longwall mining area. On January 29, 1979, MSHA inspectors conducted an abatement inspection of the longwall area. During the course of this inspection, the inspectors walked down the chock line and noticed two bolts missing from legs on chocks No. 105 and 106. One of the inspectors issued a citation alleging a violation of section 57.9-2. The citation stated that the absence of the bolts "would create a hazard to persons working under these chocks." On the accompanying "Inspector's Statement," the inspector asserted that the missing bolts would adversely affect the chocks' roof-supporting capabilities. During the same inspection, the inspectors also issued three other

citations alleging electrical violations in connection with a flag switch box located on a conveyor frame.

The record reflects no disagreement that the condition of the chocks and their leg bolts observed in the mine by the inspectors on January 29 had not changed since January 26 when the withdrawal order was issued. During the three-day interim the only miners permitted in the affected area were fire bosses performing ventilation abatement tasks. At the time the withdrawal order was issued on January 26, the longwall unit had been de-energized and the shearer was not operating. The chocks were, however, supporting the roof.

Following an evidentiary hearing and the submission of post-trial depositions, the Commission's administrative law judge issued his decision concluding that Allied had violated section 57.9-2. 4 FMSHRC 503 (March 1982)(ALJ). Before the judge, Allied contended that section 57.9-2 did not apply to roof support equipment like the chocks because the standards in section 57.9 are grouped under the heading "loading, hauling, dumping"--subjects that do not pertain to roof support. The judge rejected this argument, relying on canons of construction, the general purpose and structure of the Part 57 regulations, and the plain language of the standard itself. 4 FMSHRC at 507-08. Applying the elements of the standard to the evidence, the judge found that the missing bolts were "equipment defects affecting safety," and that, within the meaning of the standard, the defects had not been corrected before the equipment was used. 4 FMSHRC at 505-06, 508. Finally, the judge rejected Allied's defense that the chocks were being repaired at the time the withdrawal order was issued on January 26. 4 FMSHRC at 506. 2/

In urging reversal, Allied repeats the arguments it raised below: that the cited standard does not apply to its longwall roof support equipment, that the various elements of the standard necessary to a finding of violation are not satisfied by the evidence, and that the bolts were in the process of being replaced when the withdrawal order was issued on January 26. These arguments are rejected.

We turn first to the coverage of the standard. Allied asserts that the heading of 30 C.F.R. 57.9--'loading, hauling, dumping" -- bars application of section 57.9-2 in the longwall roof support context. However, it is evident from the structure and the content of Part 57, Safety and Health Standards--Metal and Nonmetal Underground Mines, that the headings used in that Part are designed for organizational convenience to supply short-hand characterizations of the general subject matter involved in the standards. The only stated limitations on the scope of the standards contained in Part 57 are distinctions between those standards applicable to underground operations, those applicable to surface operations of underground mines, and those applicable to both areas of operation. The plain words of section 57.9-2 broadly refer to the correction of "equipment defects" without any limitations as to the types of equipment covered. While headings may sometimes provide an intrinsic aid to construction, they do not control over the plain words of a legislative text. In cases of conflict, precedence must be

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2/ The judge vacated the three electrical citations based on his finding that an Allied electrician was repairing the cited switch box

when the withdrawal order was issued. The Secretary of Labor has not sought review of this aspect of the judge's decision.

given to the words in the body of a provision over those in the caption. See,for example, Brotherhood of Railroad Trainmen v. Baltimore & Ohio RR, 331 U.S. 519, 528-29 (1947); U.S. v. Roemer, 514 F.2d 1377, 1380 (2d Cir. 1975); 2A C.D. Sands, Sutherland Statutory Construction 47.14 (pp. 93=97)(4th ed. 1973).

Moreover, we are not persuaded that any conflict exists between the heading of section 57.9 and the body of section 57.9-2 as applied to the distinctive longwall operations involved in this case. The cited longwall unit is a single integrated equipment system. The chocks are an integral and essential component of the longwall unit, which is primarily used to cut ore and to load and transport it away from the face. These latter functions are within the scope of thee heading$ of Section 57.9, and they cannot be performed without the roof support integrally provided by the chocks. For the foregoing reasons, we conclude that section 57.9-2 was properly applied to the chock components of the Allied longwall unit.

The major issues regarding the judge's findings that Allied violated section 57.9=2 mirror the elements of the standard:
(1) whether the missing bolts constituted an "equipment defect";
(2) if so, whether this defect was one "affecting safety"; and
(3) whether the operator failed to correct the defect before the equipment was used.

Allied does not directly press an "equipment defect" argument on review, although some of its contentions imply that no defect was present. In both ordinary and mining industry usage, a defect" is a fault, a deficiency, or a condition impairing the usefulness of an object or a part. Webster's Third New International Dictionary (Unabridged) 591 (1971); U.S. Department of Interior, Bureau of Mines, A Dictionary of Mining, Mineral, and Related Terms 307 (1968). Substantial evidence supports the judge's finding that the utility of a chock is impaired by the absence of a leg bolt. The chock's function as a means of roof support depends in part upon the successful operation of the legs that support and raise and lower the canopy. Each leg includes a bolt at the top to hold and guide the leg in the canopy cup. The record is replete with evidence that without the bolt the leg may twist excessively, resulting in damage to the hydraulic hoses attached to the leg or to the hydraulic packing inside the leg. A missing bolt may also be a causal factor in a leg coming completely out of a canopy cup. In either case, the chock would not perform its roof support function as effectively and, ultimately, the bolt would have to be replaced. Thus, the absence of a bolt is an "equipment defect" within the meaning of section

57.9-2. 3/

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3/ In reaching this result, we do not approve the judge's statement that an equipment defect automatically arises "when equipment is not maintained in the manner in which it is received from the manufacturer." 4 FMSHRC at 506. Although a manufacturer's design specifications may be relevant in analysis of alleged violations under this standard, we are not inclined to adopt any form of per se rule in this regard.

The judge further found that the absence of the two bolts in this case affected safety. We agree. Although the effect on safety of two missing leg bolts in a hydraulic chock line of some 125 units could be viewed as inconsequential and beyond the standard's purview, we are not prepared to dispute the judge's findings as to the adverse impact on safety occasioned by the two missing bolts.

The starting point for analysis is the broad language of the standard, "affecting safety." That phrase is neither modified nor limited. Although this case does not require us to describe the minimal effect on safety cognizable under the standard, it is clear that the standard has a wide reach. The safety effect of an uncorrected equipment defect need not be major or immediate to come within that reach.

Substantial evidence supports the judge's finding that the missing bolts affected safety. 4/ There is no dispute on this record that without the bolts legs could twist excessively, severing the attached hydraulic hoses or damaging the internal hydraulic packing. The inspectors involved in issuance of the citation credibly testified that any such failure in the integrity of the hydraulic support system could cause a loss of hydraulic pressure in the affected legs and a consequent and unintended drop of the canopy or one of its hinged portions. The area along the chock line under the front canopy arms was a travelway used by miners. A drop of any portion of the extremely heavy canopy could pose a hazard to miners in the area. An unintended lowering of the canopy would also lessen the continuity of the available roof support and could increase the risk of roof falls.

Allied argues that in the event of damage to hydraulic lines or packing, hydraulic pressure in the affected legs normally would be maintained by safety stop valves in the equipment. We are not persuaded. As the judge found (4 FMSHRC at 505), if the stop valves were activated, the affected chocks would have to be "bled off" and the canopies lowered. In turn, the lowering of the canopies could adversely affect the safety of the roof support.

As noted below (n.4), it is not clear which legs on chocks No. 105 and 106 were lacking bolts. Allied argues that, as to the rear portion of each canopy, all four legs and the stop valve system would have to fail before any lowering in the rear of the canopy occurred. While we agree that the immediacy of the effect is greater if one of the single

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4/ We note that the record does not clearly indicate which legs on chocks No. 105 and 106 were lacking bolts. Because there was testimony that the front arms of the chocks in question were tipped down at the time of the citation (Tr. 119), it appears that one of the front legs of each chock was involved. However, as discussed in the text, our decision would be the same regardless of which legs were involved.

legs supporting a front arm fails, any missing bolt is potentially serious. If even one bolt is missing, the possibility of a hydraulic failure occurring in the affected chock unit is increased. Allied correctly points out that because of the stresses under which the chock equipment operates these soft steel bolts are designed, and are expected, to shear off. However, this design feature does not relieve.Allied of the duty continually to maintain the chocks with a full complement of inserted bolts. Furthermore, a missing bolt may also cause the leg of a chock to fail to reset in the canopy cup during movement of the chock or canopy. Should this happen, the canopy would be compromised and roof support could be adversely affected. In this case, the judge credited the testimony of the MSHA inspector that the citation was issued, in part, because one of the legs was out of the canopy cup at the time. 4 FMSHRC at 505.

The judge also rejected Allied's argument that a violation did not occur because there was no evidence that the bolts were missing before the chock line was put in use, the chock line was pre-shift inspected, and the bolts were supposed to be replaced every eight hours. In evaluating Allied's contentions, the unique features of the longwall roof support system must be taken into account. As Allied recognizes, the chocks are in use continuously from the time they are raised to support the roof. Petition for Discretionary Review 17. Even if the longwall miner is de-energized and the shearer is not operating, the hydraulic chocks still support the roof. The record indicates that the chocks were supporting the roof on January 26 when the withdrawal order was issued.

In Ideal Basic Industries, Cement Division. 3 FMSHRC 843 (April 1981), we held that use of a piece of equipment containing a defective component capable of being operated and which, if operated, could affect safety, constituted a violation of 30 C.F.R. $ 56.9-2, the identical safety standard for sand and gravel mining operations. 3 FMSHRC at 844-45. In Solar Fuel Company, 3 FMSHRC 1384 (June 1981), we held that electrical equipment in impermissible condition and habitually used or intended for use inby the last open crosscut could be cited for violation of 30 C.F.R. 75.503, even if the equipment was located outby the last open crosscut at the time of citation. 3 FMSHRC at 1385-86. In both decisions, we interpreted the standards in light of their broad purposes. The result was to assure greater safety in equipment use.

A similar application of the standard cited in this case is warranted. Defects affecting safety in equipment continuously in operation, including those occurring during the course of operation,

must be corrected before the equipment is used any further. The contrary approach urged by Allied could result in such defects not being repaired for substantial periods of time, thus needlessly increasing safety risks.

Finally, Allied asserts that on January 26, chocks No. 105 and 106 were under repair, thereby establishing a complete defense against any finding of violation. The judge found that proof was lacking to demonstrate that, when the withdrawal order issued on January 26, the missing bolts were being replaced. Allied produced no evidence that miners were actually repairing the condition. The Allied longwall supervisor testified that "he could not remember" the name of the panel mechanic he claimed to have assigned January 26 to inspect the chocks. Tr. 193. The judge credited the inspector's testimony that no tools were present and no one claimed maintenance was being done in the area of chocks No. 105 and 106 on January 26. On review, Allied has not persuaded us that the judge erred in his credibility resolution or in his ultimate findings on this issue. Moreover, we concur with the judge's observation that assigning a miner to do work is not equivalent to having completed the work.

Thus, we conclude that the missing bolts constituted an "equipment defect affecting safety" that was not corrected before use of the equipment. On the foregoing bases, we affirm the judge's decision. 5/

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5/ Commissioner Nelson did not participate in the consideration or disposition of this case.

Collyer, Chairman, dissenting:

I must dissent from my colleagues' erroneous stretching of a regulation specifically designed for one purpose to cover a completely separate circumstance. While there may have been a citable violation on the facts of this case, a question which the record here is insufficient to answer, any violation was not of the standard cited by the Secretary and relied upon by the majority.

As acknowledged by the majority, the chocks of Allied's longwall mining system "function as a means of roof support." Dec. at 4. The fact that each of two separate chocks was missing one bolt from one unidentified leg allegedly created a roof control hazard. But the citation issued by the inspector and upheld by the majority alleges a violation of a standard relating to loading, hauling and dumping, not to roof support. I cannot understand how this condition fits within the scope of the selected standard and would hold that the Secretary failed to prove a violation.

The inspector cited a violation of 30 C.F.R. 57.9-2. Subpart 9 of Part 57 applies on its face to "Loading, hauling, dumping." While I agree with the general concept behind the majority's opinion that too much can be made of a statutory or regulatory heading, that principle is stretched too far here. If applied as the majority chooses, the cited standard becomes redundant with other standards in Part 57 and could well introduce a general-duty concept to Mine Act enforcement. Such a result is inimical to the intent of the Act, the regulatory scheme of Part 57, and the legislative history.

It must first be noted that the Mine Act is a statute that provides for liability without fault, commonly called strict liability. Allied Products Co. v. FMSHRC, 666 F.2d 890, 893-894 (5th Cir. 1982). Ignorance of a violative condition does not relieve an operator of liability although it may reduce an assessed penalty. Therefore, the entire scheme of 30 C.F R in general, and of Part 57 in particular, must be read in a manner that provides clear notice of which standards are applicable to various mining situations.

The overall organization of the regulations attempts to do just this. Different Parts of 30 C.F.R. contain safety and health standards applying to metal and nonmetal open pit mines (Part 55); to sand, gravel and crushed stone operations (Part 56); to metal and nonmetal underground mines (Part 57); and to coal mines (Parts 70-90) Within each Part, different Subparts apply to different activities at those mines: Part 57 applies to metal and nonmetal underground mines

and is divided into various Subparts for standards generally applicable to ground control, explosives, drilling, electricity, and illumination,

among others. 30 C.F.R. 57.3, 57.6, 57.7, 57.12, 57.17. Within each Subpart, the individual standards are further divided into sections containing those standards applicable to both surface and underground areas of underground mines, those applicable only to surface areas and those applicable only to underground areas.

Nor was this organization accidental. Part 57 was promulgated by the Secretary of the Interior on July 31, 1969. 34 Fed. Reg. 12517. The preamble to that promulgation notes that one of the changes made in the final standards from the earlier proposal was the combination of certain related subparts. It also explains that Parts 55, 56 and 57 will have parallel organization, stating (emphasis supplied):

Sections which deal with a given subject will have identical decimal numbers in the three sets of regulations which deal with open pit mines, sand, gravel, and crushed stone operations, and underground mines. Thus, the standards on drilling in the three sets of regulations will appear in Sections 55.7, 56.7 and 57.7, respectively; and standards on materials handling and storage will appear in Sections 55.16, 56.16, and 57.16.

By the same token, it seems to me obvious that the ground control standards found in subparts 55.3, 56.3, and 57.3 are those to which a metal-nonmetal or sand and gravel operator should be able to look to determine whether its roof and ground control system complies with relevant federal requirements.

In fact, 30 C.F.R. 57.3-22 states (emphasis supplied):

> Miners shall examine and test the base, face, and rib of their working places at the beginning of each shift and frequently thereafter. Supervisors shall examine the ground conditions during daily visits to insure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

If it is MSHA's position that the missing bolts rendered the chocks inadequate to support the roof at Allied's trona mine, it could have issued a citation under this standard saying so. It makes no sense to try to bootstrap an alleged roof control deficiency into the cited loading, hauling, and dumping standard.

Furthermore, if Section 57.9-2 is given the broad interpretation that the majority uses, it would be redundant with a number of analogous standards in other subparts of Part 57. For example, 30 C.F.R 57 7-2, under the heading "Drilling," is identical to the standard cited in this case: "Equipment defects affecting safety shall be corrected before the equipment: is used." If either standard were intended to be applicable to all equipment in underground metal and nonmetal mines, there would be no need for two identical standards. A number of additional standards in Part 57, although not containing wording identical to that in Section 57.9-2, provide similar prohibitions against the use of defective equipment. See, e.g., 30 C.F.R. 57.3-8, 57.10-3, 57.12-30, 57.14 26, 57.19-120. Under the majority's interpretation of Section 57.9-2, the need for these standards would be obviated.

For similar reasons, I also cannot agree with the majority's conclusion that the roof support chocks may be considered loading, hauling and dumping equipment within the scope of section 57.9. The basis for this holding is that "[t]he chocks are an integral and essential component of the longwall unit, which is primarily used to cut ore and to load and transport it away from the face." Dec. at 4. However, the primary purpose of any mining system is "to cut ore and load and transport it away from the face." In underground mines, roof support is essential to this process and roof control is therefore an integral part of any underground mining cycle. The fact that there is some physical, rather than only functional, connection between the various components of a longwall system cannot be used to transform a roof support chock into a piece of haulage equipment.

Of equal importance, the broad application of 57.9-2 adopted by the majority also converts that standard into a general duty standard, contrary to the express intent of Congress in enacting the Mine Act. House and Senate Conferees explicitly removed a general duty clause contained in the Senate version of the Mine Act before passage. The Conference Report explained:

> The Senate bill contained a "general duty" clause which required operators to furnish safe and healthful working conditions free from recognized hazards likely to cause death or harm to miners and to comply with rules, regulations and orders promulgated under the Act. This provision would have permitted the issuance of citations or the assessment of civil penalties based on violations of the general duty. The House amendment had no general duty clause.

The conference substitute conforms to the House amendment.

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S. Conf. Rep. No. 461, 95th Cong., 1st Sess. 38-39, reprinted in Senate Subcommittee on Labor, Committee on Human Resources, 95th Cong., 2d Sess., Legislative History of the Federal Mine Safety and Health Act of 1977, at 1316-1317 (1978). The report further explained Congress' belief that the imminent danger provision of Section 107(a), 30 U.S.C. 817(a), was sufficient to protect miners' health and safety where dangers outside the scope of the specific standards existed. Id. The scheme adopted by Congress miners without a general duty clause provides this protection to m. that would subject operators to mandatory civil penalties for conditions which are not prohibited by specific standards.

By its decision, however, the majority introduces into the cited standard a "general duty" concept applicable well beyond loading, hauling and dumping. The decision ignores the nature of underground mining systems and turns identical or similar standards within other Subparts into surplusage. It ignores the clear legislative history declining to adopt a general duty concept. It also ignores the relevant roof control standard which is applicable.

I dissent.

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