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MSHA V. SOUTHWESTERN ILLINOIS COAL
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FEDERAL MINE SAFETY & HEALTH REVIEW COMMISSION
WASHINGTON, D.C.
May 15, 1985

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

v.

Docket No. LAKE 82-38

SOUTHWESTERN ILLINOIS COAL
CORPORATION

BEFORE: Backley, Acting Chairman; Lastowka and Nelson,
Commissioners

DECISION

BY THE COMMISSION:

This civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1982), involves application of the principles and conclusions announced in *Southwestern Illinois Coal Corp.*, 5 FMSHRC 1672 (October 1983) ("Southwestern I"). The parties and the crucial issues in the present case are the same as those involved in *Southwestern I*. We find the decision in that case dispositive of the issues before us and conclude that *Southwestern Illinois Coal Corporation* ("Southwestern") violated 30 C.F.R. 77.1710(g).^{1/} Accordingly, for the reasons explained below, we reverse and remand for a determination of whether the violation was "significant and substantial" and for assessment of an appropriate civil penalty.

1/ 30 C.F.R. 77.1710(g) provides:

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:

(g) Safety belts and lines where there is danger of falling;....

The relevant facts are stipulated. Southwestern owns and operates a large surface coal mine in Perry County, Illinois, known as the Captain Mine. On September 18, 1981, during a regular inspection of the Captain Mine, an inspector of the Department of Labor's Mine Safety and Health Administration ("MSHA") observed a miner working approximately 18 feet above ground on the mine's "lazer tower". One of the miner's knees was wrapped around the vertical leg of the tower, and he was using both hands to reposition the "lazer". The miner was not wearing a safety belt and there were no safety belts in the immediate area. The parties stipulated that the miner was in danger of falling. The inspector ordered the miner down, instructed him to get a safety belt, and issued Southwestern a citation alleging a violation of 30 C.F.R. 77.1710(g). The inspector further found that the violation was of such a nature as could significantly and substantially contribute to the cause and effect of a mine safety hazard. 30 U.S.C. 814(d)(1). After the miner obtained a safety belt the inspector instructed him in its use and terminated the citation.

During October 1978 Southwestern had implemented a new company safety program at the mine. According to Southwestern's safety director, the safety program included giving a copy of the company's safety rules and regulations to each new employee and explaining the rules in detail to all new employees during a seminar. These rules required all employees to comply with federal mine safety and health standards and specifically provided that "safety belts and lines shall be worn at all times when there is a danger of falling." The rules were explained again to all employees during an annual, MSHA approved, refresher training course. All Southwestern employees who participated in the safety training were informed that violations of any of the safety rules or regulations would warrant issuance of a company notice of safety violation and that the notice would remain in an employee's personnel file for one year from the date it was written. Southwestern's policy also mandated progressive discipline for repeated violations, including suspension without pay or discharge.

Pursuant to this policy, the miner in question had received a copy of Southwestern's safety rules and regulations and participated in the new miner safety seminar.. The seminar included one hour of training regarding safety belts and their use. Approximately seven months later, and approximately 15 months before the tower incident, the miner had received refresher training which included instructions in the use of safety belts. Following the tower incident, the miner was issued a notice of safety violation because of his failure to

comply with the rule regarding the wearing of safety belts. Because it was the miner's first violation, the notice was placed in his personnel file for one year and no further action was taken.

Based on these facts the parties submitted cross-motions for summary decision. The Secretary of Labor argued that the miner violated the standard by not wearing a safety belt while working where there was a danger of falling and that Southwestern should be held liable for the violation. The Commission's administrative law judge held that the fact that the miner was working without a safety belt in a situation posing a danger of falling did not establish a violation of 30 C.F.R. 1710(g) unless the Secretary also proved that Southwestern had failed to require its employees to wear safety belts. 5 FMSHRC at 1186-87, citing *Southwestern Illinois Coal Corp.*, 3 FMSHRC 871 (April 1981) (ALJ). Because Southwestern instructed its employees to wear safety belts in situations involving a danger of falling and because that instruction was supported by disciplinary action, the judge concluded that the Secretary had not met his burden of proof and vacated the citation. 5 FMSHRC at 1187.

Subsequent to our grant of review in this case, we issued our decision in *Southwestern I* interpreting 30 C.F.R. 1710(g). We held that "when an operator requires its employees to wear [safety] belts when needed, and enforces that requirement, it has discharged its obligation under the regulation." 5 FMSHRC at 1675. Thus, the judge in the present case interpreted the standard in a manner facially consistent with our decision in *Southwestern I*.

We further concluded in *Southwestern I*, however, that the record did not show that Southwestern had engaged in sufficiently specific and diligent enforcement of the safety belt requirement to discharge its obligation under the standard. We found Southwestern's relevant safety policies and procedures deficient because they left the decision to wear a safety belt largely to the miner and because of a virtual absence of any site-specific guidelines and supervision on the subject of actual fall dangers. 5 FMSHRC at 1676.

We reach the same conclusion in the present case. The affidavit in the record of Southwestern's safety director states that the same safety policies and enforcement procedures in effect in *Southwestern I* were also in effect at the time of the instant citation. While the record supports the judge's findings that Southwestern had a safety program requiring the wearing of safety belts, and that miners violating this requirement were disciplined, sufficient evidence of Southwestern's specific enforcement actions and its diligence in site-oriented enforcement of its safety belt rule is lacking. As in *Southwestern I*, the present record reveals a too broad delegation to the miner of the ultimate decision as to whether the wearing of a belt was necessary and too little hazard-specific

guidance and supervision by the operator.

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Accordingly, we conclude that Southwestern violated 30 C.F.R. 77.1710(g). We reverse the judge's vacation of the citation and remand for determination of whether the violation was significant and substantial and for assessment of an appropriate civil penalty.^{2/}

^{2/} Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.

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