CCASE:
MSHA V. METTIKI COAL
DDATE:
19920110
TTEXT:
January 10, 1992
SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

v. Docket Nos. YORK 89-10-R
YORK 89-26

METTIKI COAL CORPORATION

BEFORE: Ford, Chairman; Backley, Doyle, Holen and Nelson, Commissioners
DECISION
BY THE COMMISSION:
This consolidated contest and civil penalty proceeding, arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. • 801 et seq. (1988)("Mine Act" or "Act"), presents the following issues: (1) whether a notice to provide safeguard issued pursuant to 30 C.F.R. • 75.1403 is valid if it addresses conditions that exist at a significant number of mines; (2) whether the validity of a notice to provide safeguard is affected by the fact that it is patterned after 30 C.F.R. • 75.1403-10(e), a published safeguard criterion; and (3) whether the Secretary of Labor should be collaterally estopped from litigating the issues in this case.(Footnote 1) Our decision

_____

1 30 C.F.R. • 75.1403 repeats section 314(b) of the Mine Act, 30 U.S.C. • 874(b), and states:

Other safeguards adequate, in the judgment of an authorized representative of the Secretary [of Labor], to minimize hazards with respect to transportation of men and materials shall be provided.

30 C.F.R. • 75.1403-1 sets forth general provisions regarding "criteria" by which authorized representatives are guided in requiring safeguards. Section 75.1403-1(a) provides:

Sections 75.1403-2 through 75.1403-11 set out the criteria by which an authorized representative of the Secretary will be guided in requiring other safeguards on a mine-by-mine basis under • 75.1403. Other safeguards may be required.

The procedures by which an authorized representative of the Secretary may

in this matter is one of several issued on this date with respect to the

authority of the Secretary of Labor to issue safeguards.(Footnote 2) Commission Administrative Law Judge William Fauver concluded that the Secretary was collaterally estopped from litigating the issues pertaining to validity of a safeguard raised in this case, because the Secretary litigated and lost on the same issues against a different mine operator in BethEnergy Mines, Inc., 11 FMSHRC 942 (May 1989)(ALJ)("BethEnergy I"). The judge, relying on BethEnergy I, also held, on the merits, that the citation charging a violation of the safeguard and the underlying safeguard were invalid. 12 FMSHRC 92 (January 1990)(ALJ). For the reasons that follow, we reverse the judge's decision in part, vacate it in part and remand this case for further proceedings.

I.

Factual Background and Procedural History

On November 1, 1988, MSHA Inspector Charles Wotring inspected the Mettiki Mine in Garrett County, Maryland. He observed an empty and unattended Eimco diesel-powered, self-propelled personnel carrier parked in a crosscut off of the main E-2 track about 20 feet from the base of a slight incline. The personnel carrier was equipped with two brake systems: service brakes used during normal operation and a parking brake designed to prevent the carrier from moving when parked. The parking brake was engaged, but the personnel carrier was not secured by stopblocks, derails or chain-type car holds.

_____

issue a citation pursuant to section 75.1403 are described in 30 C.F.R. □ 75.1403-1(b)

> The authorized representative of the Secretary shall in writing advise the operator of a specific safeguard which is required pursuant to • 75.1403 and shall fix a time in which the operator shall provide and thereafter maintain such safeguard. If the safeguard is not provided within the time fixed and if it is not maintained thereafter, a [citation] shall be issued to the operator pursuant to section 104 of the Act.

30 C.F.R. • 75.1403-10 is entitled "Criteria-Haulage; general" and section 75.1403-10(e) provides:

> Positive-acting stopblocks or derails should be used where necessary to protect persons from danger of runaway haulage equipment.

2 The other safeguard decisions issued today are: Southern Ohio Coal Company, 14 FMSHRC , Nos. WEVA 88-144-R, etc.; BethEnergy Mines, Inc., 14 FMSHRC , Nos. PENN 89-277-R, etc.; and Rochester & Pittsburgh Coal Co., 14 FMSHRC , Nos. PENN 88-309-R, etc.

Inspector Wotring issued the citation to Mettiki because he concluded that securing the carrier with only the parking brake was insufficient to

comply with the notice to provide safeguard that had been in effect at the mine since June 1980. Wotring believed that the safeguard, as subsequently modified, required track-mounted haulage equipment to be secured with a stopblock, equipped with derails, or chained to the rail to prevent runaway movement. The citation stated in part:

> The White Knight No. 2 personnel carrier was parked on the E-2 main line track incline, unattended and unsecured to prevent runaway. No chain or other means was provided to prevent runaway of this equipment.

Gov. Exh. 22. The inspector designated the alleged violation as being of a significant and substantial nature. Wotring also found Mettiki's negligence to be moderate.

The underlying notice to provide safeguard had been issued by MSHA Inspector Michael Evanoff on June 1, 1980, at the Gobbler Knob Mine (now part of the Mettiki Mine) and provided:

> Positive acting stopblocks or derails are not being used near the bottom of the slope track haulage to protect persons from danger of runaway haulage equipment. Trackmen regularly extend the track haulage at this area which lies on an approximate 17 degree grade. This is a notice to provide safeguards requiring in this mine that positive acting stopblocks or derails shall be used where necessary to protect persons from danger of runaway haulage equipment.

Gov. Exh. 23.

The safeguard was modified on several occasions, most recently on May 11, 1988, to read as follows:

> Safeguard 0629279 issued 6-1-80 is hereby modified in the requirements to read: Positive acting stopblocks, derails or chain type car holds shall be used to secure or prevent runaway of track mounted haulage equipment. Other devices not specifically designed for such purpose are not acceptable, such as skid retarders, post or crib blocks crossed over rails of any design in front/rear of haulage equipment, wooden chocks under wheels or jill pokes of any design.

Gov. Exh. 24.

The notice to provide safeguard was patterned after 30 C.F.R. • 75.1403-10(e), which states:

> Positive-acting stopblocks or derails should be used

> where necessary to protect persons from danger of runaway haulage equipment.

This notice to provide safeguard, as modified, was essentially the same as a safeguard that was invalidated by Commission Administrative Law Judge

Gary Melick in BethEnergy I, supra. In that case, the judge found that "all of these safeguards regarding the use of positive acting stopblocks or derails in [MSHA's] District 3 were uniformly modified to include language prohibiting the use of certain types of stopblocks," and that "this standardized language was applied to all track haulage mines in District 3, regardless of the conditions in any particular mine." 11 FMSHRC at 943. Judge Melick concluded that "[s]ince it is undisputed that the original safeguard in this case, as well as the subsequent modifications, were issued on a district-wide basis without regard to the specific conditions at [the mine] they were not properly issued." 11 FMSHRC at 948. The Secretary did not appeal the judge's decision in BethEnergy I and it became a final decision of the Commission by operation of the statute. Section 113(d)(1) of the Mine Act, 30 U.S.C. • 823(d)(1).

In his decision in the present case, Judge Fauver vacated the safeguard and the citation. The judge noted that in BethEnergy I, Judge Melick determined that MSHA had issued safeguards requiring the use of positive acting stopblocks or derails to all track haulage mines in MSHA District 3, regardless of the conditions at any particular mine. Judge Fauver held that, inasmuch as this case involves the same MSHA District and the same standardized safeguard, the Secretary was collaterally estopped from relitigating Judge Melick's findings in this case. 12 FMSHRC at 95. Judge Fauver, relying on BethEnergy I, also held, on the merits, that the underlying safeguard was invalid. Id. The Commission granted the Secretary's petition for discretionary review. Oral argument in this matter was heard on February 21, 1991, along with argument in the other safeguard cases.

II.

Disposition of Issues

A. The Secretary's safeguard authority

The central issue in this case is the validity of the underlying safeguard. In its companion decision issued this date, Southern Ohio Coal Co., 14 FMSHRC , Nos. WEVA 88-144-R, etc. ("SOCCO"), the Commission addressed the extent of the Secretary's authority to issue safeguards under section 314(b) of the Mine Act. 30 U.S.C. • 874(b) (See n.1 supra). We reviewed the text and legislative history of that section and reaffirmed the Commission's view, first expressed in Southern Ohio Coal Co., 7 FMSHRC 509, 512 (April 1985)("SOCCO I"), that section 314(b) is an unusually broad grant to the Secretary of regulatory authority permitting her to issue, on a mine-by-mine basis, what are, in effect, mandatory standards dealing with transportation hazards.

The Commission rejected the proposition that a notice to provide safeguard is invalid if it addresses a hazard that exists in a significant number of mines. We noted the considerable authority of the Secretary to

determine what should properly be formulated as mandatory standards, and we held that the rulemaking provisions of the Mine Act, sections 101 and 301, do not circumscribe the Secretary's authority to issue safeguards under section

314(b). Rather, we held that a safeguard may properly be issued to deal with commonly encountered transportation hazards, provided it is based on a determination by the inspector of a specific transportation hazard existing at a particular mine. We made clear, however, that a safeguard may not properly be issued by rote application of general MSHA policies, irrespective of the specific conditions at a given mine. We also discussed the Court's opinion in Zeigler Coal Co. v. Kleppe, 536 F.2d 398 (D.C. Cir. 1976), and the Commission's opinion in Carbon County Coal Corp., 7 FMSHRC 1367 (September
1985), both of which dealt with the mine ventilation plan adoption and approval process, and concluded that these cases are distinguishable. Finally, we allocated to the Secretary the burden of proving that a safeguard was issued on the basis of the specific conditions at a particular mine. Notwithstanding the legal conclusions reached in SOCCO, we also questioned, from the standpoint of policy, whether the proliferation of safeguards is the most effective method of addressing the more commonly encountered hazards in underground coal mine transportation, and we strongly suggested that the safety of underground coal miners would be better advanced by the promulgation of mandatory safety standards aimed at eliminating such hazards. SOCCO, 14 FMSHRC at , slip op. at 15-16.

In BethEnergy Mines, Inc., 14 FMSHRC , Nos. PENN 89-277-R, etc. ("BethEnergy"), also issued this date, we concluded that the validity of a safeguard is not affected by the fact that it is based on a promulgated criterion in section 75.1403, and that the principles with respect to roof control plan criteria set forth in the D.C. Circuit's decision in UMWA v. Dole, 870 F.2d 662 (D.C. Cir. 1989) are not relevant to cases involving safeguards. BethEnergy, slip op. at 7-8. For the reasons set forth in BethEnergy, we hold that a safeguard must be based on the specific conditions at a mine, regardless of whether the safeguard is patterned after a promulgated criterion, and that an otherwise invalid safeguard is not made valid simply because it is based on a promulgated criterion.

B. Validity of the safeguard at issue

Judge Fauver adopted Judge Melick's reasoning in BethEnergy I and held that the safeguard was invalid. In BethEnergy I, Judge Melick, having determined that all of the mines with track haulage in MSHA District 3 had been issued the same safeguard, regardless of the conditions in any particular mine, invalidated the safeguard on that basis.

In SOCCO, we rejected the "mine-peculiar" view of the Secretary's safeguard authority. In BethEnergy, we held that a safeguard must be based on the specific conditions at a mine, regardless of whether the safeguard is patterned after a promulgated criterion. Thus, consistent with these decisions, the safeguard in question in this case is valid, notwithstanding the fact that similar safeguards were issued for similar hazards at a number of other mines in MSHA District 3, if it was actually based on the specific conditions at Mettiki's mine and on a determination by the inspector that

those conditions created a transportation hazard in need of correction.

~34

The judge's analysis is not consistent with the foregoing framework. Accordingly, we vacate his determination with regard to the validity of the safeguard and remand this proceeding to the judge for reevaluation of the safeguard's validity within the framework discussed in SOCCO, BethEnergy and this decision.

C. Collateral Estoppel

Mettiki also contends that the Secretary should be collaterally estopped from denying that standardized safeguards similar to the safeguard at issue in this case had been issued to all track haulage mines in MSHA District 3, regardless of the conditions in any particular mine, because she previously litigated that issue unsuccessfully in BethEnergy I. Judge Fauver, citing Parkland Hosiery Co. v. Shore, 439 U.S. 322 (1979), and Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313 (1971), determined that, because the Secretary had litigated and lost that issue against a different operator, she was estopped from relitigating it in this case. 12 FMSHRC at 95.

Relying on United States v. Mendoza, 464 U.S. 154 (1984), the Secretary argues that the judge erred because collateral estoppel cannot be applied against the federal government in cases involving nonmutual parties. She contends that since Mettiki was not a party to the earlier litigation, the Secretary cannot be collaterally estopped from litigating the validity of the safeguard at issue in this case.

In Mendoza, the Supreme Court held that the federal government is not bound by an adverse decision of a United States District Court "in a [subsequent] case involving a litigant who was not a party to the earlier litigation." 464 U.S. at 162. The Court stated that the federal government is "more likely than any private party to be involved in lawsuits against different parties which nonetheless involve the same legal issues." 464 U.S. at 160. The Court concluded that the application of nonmutual estoppel against the federal government would force the government "to appeal every adverse decision in order to avoid foreclosing further review." 464 U.S. at 161.

~35

We conclude that collateral estoppel should not be applied against the Secretary in this case because Mettiki was not a party in BethEnergy I. The Secretary should not be bound in the present proceeding by Judge Melick's decision in an earlier case involving a different mine operator. The cases cited by the judge to support his determination that collateral estoppel should be applied are inapposite. In both Parklane Hosiery and Blonder-Tongue, the Court authorized the use of collateral estoppel to bar relitigation of issues that had been previously litigated in a prior case even though the party seeking estoppel was not a party in the previous litigation. Those cases, however, did not involve the federal government. The Court in

Mendoza disapproved the use of nonmutual collateral estoppel against the federal government. 464 U.S. at 160-63. Mettiki has not directed our attention to any precedent or compelling reason justifying a departure from Mendoza. We hold, therefore, that the judge erred in ruling that the Secretary was collaterally estopped from litigating the validity of the safeguard in this case.

III.

Conclusion

For the reasons set forth above, we reverse the judge's decision that collateral estoppel should be applied against the Secretary in this case, vacate the judge's decision that the safeguard is invalid, and remand this case for further consideration.

~36

The judge should set forth findings and conclusions as to whether the Secretary proved that the disputed safeguard was based on the judgment of the inspector as to the specific conditions at the Mettiki Mine and on the inspector's determination that a transportation hazard existed that was to be remedied by the action prescribed in the safeguard. Taking into consideration the principles announced in SOCCO I, the judge should determine whether the safeguard notice "identif[ied] with specificity the nature of the hazard at which it [was] directed and the conduct required of the operator to remedy such hazard." 7 FMSHRC at 512. If the judge finds the safeguard to have been validly issued, he should resolve the question of whether Mettiki violated the safeguard. If the judge determines that there was a violation, he should then consider whether the violation was of a significant and substantial nature and assess an appropriate civil penalty.