

CCASE:
SOL (MSHA) V. CONSOLIDATION COAL
DDATE:
19930831
TTEXT:

August 31, 1993

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. WEVA 91-1964
	:	WEVA 91-1965
CONSOLIDATION COAL COMPANY	:	

BEFORE: Holen, Chairman; Backley, Doyle 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. (1988)("Mine Act" or "Act"), involves a dispute between the Secretary of Labor and Consolidation Coal Company ("Consol") regarding whether Consol violated 30 C.F.R. 75.1707 because a hole existed in a stopping between an intake escapeway and a track and trolley entry at its Blacksville No. 1 Mine.(Footnote 1) Administrative Law Judge Avram Weisberger determined that Consol had not violated the standard and, accordingly, he vacated the citation. 14 FMSHRC 1450 (August 1992)(ALJ). The Secretary filed a petition for discretionary review challenging the judge's decision, which the Commission granted. For the reasons discussed below, we reverse the judge's decision and remand to the judge to determine whether the

1 30 C.F.R. 75.1707 is entitled "Escapeways; intake air; separation from belt and trolley haulage entries," and provides in part:

[T]he escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine for the entire length of such entries to the beginning of each working section, except that the Secretary or his authorized representative may permit such separation to be extended for a greater or lesser distance so long as such extension does not pose a hazard to the miners.

Section 75.1707 repeats the language of section 317(f)(4) of the Mine Act, 30 U.S.C. 877(f)(4).

~1556

violation was significant and substantial ("S&S") and to assess a civil penalty.

I.

Factual and Procedural Background

Consol operates the Blacksville No. 1 Mine, an underground coal mine in West Virginia. On March 5, 1991, during an inspection of the longwall section of the mine, Gene Jones, an inspector from the Department of Labor's Mine Safety and Health Administration ("MSHA"), observed an 8-by-16 inch hole in the No. 3 stopping. Tr. 18-19, 39-40. Constructed of 8-by-16 inch concrete blocks, the stopping was placed in a crosscut between an intake escapeway and an adjoining track entry. Tr. 22, 40, 42. The track entry was used to transport miners and materials into and out of the mine. Tr. 22. Inspector Jones placed an anemometer into the hole in the stopping and determined that air was coursing from the track entry to the intake escapeway at a rate of 344 feet per minute. Tr. 51, 53. The inspector testified that, if a fire occurred in the track entry, the smoke infiltrating the intake escapeway through the hole could be sufficient to cause carbon monoxide poisoning and visibility problems. Tr. 52-53. Accordingly, he issued Citation No. 3315803, alleging an S&S violation of section 75.1707.(Footnote 2) The citation was terminated after the hole was sealed. G. Exh. 3. Consol subsequently challenged the citation, and the matter was heard by Judge Weisberger.

The judge found that, although there was a hole in the stopping, Consol had not violated the standard. 14 FMSHRC at 1456. The judge determined that section 75.1707 and its underlying statutory language do not set forth the "type or degree" of separation required, and that the legislative history of the standard provides no further clarification. 14 FMSHRC at 1455-56. Defining "separation" in accordance with its dictionary meaning, "to set or keep apart ... to block off: BAR, SEGREGATE ...," the judge concluded that the No. 3 stopping adequately separated the intake escapeway from the track entry because it was placed across the crosscut between the two entries. 14 FMSHRC at 1456, quoting, Webster's Third New International Dictionary, Unabridged 2069 (1986). Accordingly, the judge vacated Citation Nos. 3315803 and 3315865. 14 FMSHRC at 1459 (n.2 supra).

II.

Disposition of Issues

The Secretary argues that the judge erred in finding that Consol had not violated section 75.1707 because the judge failed to construe the standard in accordance with its purpose, and did not consider testimony regarding the hazards associated with the hole. S. Br. at 3-4, 6-7. Consol responds that

² The parties stipulated that the decision on this citation would also apply to Citation No. 3315865, which also alleges a violation of section 75.1707. 14 FMSHRC at 1455. Citation No. 3315803 is included in Docket No. WEVA 91-1964, and Citation No. 3315865 is included in Docket No. WEVA 91-1965.

~1557

the judge correctly interpreted the standard because neither section 75.1707 nor its underlying statutory language require that an intake escapeway be reasonably airtight in order to be separated from a track entry. C. Br. at 4-5.

Section 75.1707 provides, in pertinent part, that "the escapeway required by this section to be ventilated with intake air shall be separated from the belt and trolley haulage entries of the mine..." 30 C.F.R.

75.1707. It reiterates the language of section 317(f)(4) of the Mine Act which was carried over without change from section 317(f)(4) of the Federal Coal Mine Health and Safety Act of 1969 ("Coal Act"). The legislative history of the Coal Act clarifies the intended meaning of section 75.1707. The Senate Report reveals Congress's recognition of the importance of maintaining safe escapeways, stating that the Coal Act "[r]equire[s] at least two separate and distinct travelable passageways clearly marked as escapeways which shall be maintained in safe condition." S. Rep. No. 411, 91st Cong., 1st Sess. 35 (1969), reprinted in Senate Subcommittee on Labor, Committee on Labor and Public Welfare, 94th Congress, 1st Sess., Part I Legislative History of the Federal Coal Mine Health and Safety Act of 1969, at 161 ("Legis. Hist."). Congress also recognized that, in order to increase the safety of escapeways, they should be separated from areas in which fires often occur. The Senate Report explains that the Coal Act requires "that every underground mine furnish at a minimum two separate escapeways adequately ventilated and marked, one of which must be separated from haulage entries where many mine fires start." Legis. Hist. at 129. In addition, the Senate Report states that section 317(f)(4) "requires that all new mines separate the escapeway which is on intake air from the belt or trolley haulageway because mine fires often originate in these haulageways and within a relatively short time the air current is completely filled with smoke, and harmful matter." Legis. Hist. at 209. Thus, the express purpose of section 317(f)(4) is to ensure that intake air in escapeways remains uncontaminated by separating the escapeways from other entries, thus preventing smoke or other harmful matter from circulating to an adjoining escapeway in the event of a fire.

A standard must be construed in accordance with the intended purpose of the statutory language upon which it is based. We agree with the Secretary that, in order to effectuate its purpose, section 75.1707 must be interpreted to require separation of the intake air ventilating an escapeway from the airways ventilating haulage entries. The judge's construction of the standard, which requires some separation of the entries but allows free movement of air currents, thwarts the standard's purpose of maintaining only intake air in escapeways. Such a construction could lead to absurd results in that an intake escapeway could be considered "separated" from a haulage entry merely with a railing or chain link fence. We conclude, therefore, that the judge misconstrued section 75.1707.

We need not address Consol's argument that there is no requirement that an intake escapeway be reasonably airtight. The judge found that there was an 8-by-16 inch hole in the stopping separating the intake escapeway from the track entry. It is undisputed that in the event of a mine fire, such a hole could permit contaminated air to enter the escapeway, resulting in the risk of carbon monoxide poisoning and impaired visibility. Tr. 52-53. Thus, the air

~1558

course ventilating the intake escapeway was not separated from the track entry airway. Accordingly, we affirm Citation No. 3315803.

III.

Conclusion

For the reasons discussed above, we reverse the judge's determination that Consol did not violate section 75.1707. We remand this proceeding to the judge to determine whether the violation was S&S and to assess a civil penalty. The judge should take such further action with respect to Citation No. 3315865 as is consistent with this decision.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner