

CCASE:  
SOL (MSHA) V. CONSOLIDATION COAL  
DDATE:  
1980228  
TTEXT:



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Pittsburgh, Pennsylvania, on January 23, 1980. Joseph F. Reid testified on behalf of MSHA. Richard Checca, Hugh Briggs, John Poskon, and David Cole testified on behalf of Consol. Both parties waived their rights to file briefs, proposed findings of fact, and conclusions of law. Instead, they made oral arguments at the conclusion of the taking of testimony.

The matter involves the alleged violation of 30 C.F.R. 75.1725(a), failure to immediately remove from service machinery or equipment in an unsafe condition on October 3, 1978, at the Westland Mine loading ramp. This incident resulted in a miner suffering a disabling injury when he was squeezed between a moving mine car and a stationary shuttle car. Consol contends that it was engaged in "troubleshooting" at the time and did not violate the regulation.

#### ISSUES

Whether Consol violated the Act or regulations as charged by MSHA and, if so, the amount of the civil penalty which should be assessed.

#### APPLICABLE LAW

30 C.F.R. 75.1725(a) provides as follows: "Mobile and stationary machinery and equipment shall be maintained in safe operating condition and machinery or equipment in unsafe condition shall be removed from service immediately."

#### STIPULATIONS

The parties stipulated the following:

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1. The Westland Mine is owned and operated by respondent, Consolidation Coal Company.

2. The Westland Mine was subject to the jurisdiction of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 801 et seq. (Coal Act) and is subject to the jurisdiction of the Federal Mine Safety and Health Act of 1977, Pub. L. 91-173, as amended by Pub. L. 95-164 (Act).

3. The Administrative Law Judge has jurisdiction over this proceeding pursuant to section 109 of the Coal Act and section 301 of the 1977 Act.

4. The subject notice and any modification, extensions and terminations thereof, were properly served by a duly authorized representative of the Secretary of Labor upon an agent of respondent at the dates, times and places stated therein, and may be admitted into evidence for the purpose of establishing their issuance and not for the truthfulness or relevancy of any statements asserted therein.

5. The assessment of a civil penalty in this proceeding will not affect the respondent's ability to continue in business.

6. The appropriateness of the penalty, if any, to the size of the coal operator's business should be determined based on the fact that in 1978 the Westland Mine had an annual tonnage of 68,768 and the controlling company, Consolidation Coal Company, had an annual tonnage in excess of 10 million tons.

7. The alleged violation was abated in a timely fashion and the operator demonstrated good faith in attaining abatement.

8. An accident occurred on October 3, 1978, involving one man, John Corey, who suffered a disabling injury.

SUMMARY OF THE EVIDENCE

The undisputed evidence shows that a serious accident occurred at Consol's Westland Mine on October 3, 1978. John A. Corey, a miner, sustained a disabling injury in that accident. No representative of MSHA was present at the time of the accident.

The testimony of the eyewitnesses to the accident, who testified on behalf of Consol, established that on October 3, 1978, at approximately 6:15 a.m., section foreman Hugh Briggs was notified that the car spotter was not operating. The car spotter is a device which moves mine cars in the loading ramp area so that coal is evenly loaded from shuttle cars into mine cars. Mr. Briggs examined the car spotter and confirmed the fact that it was not operable. A mechanic, Richard Checca, was dispatched to the loading ramp area. After he was unable to activate the car spotter switch, he crossed the tracks to the car spotter tank and opened it. The car spotter tank contained the electrical panel and controls for the car spotter switch. At all times, mechanic Checca was accompanied by foreman Briggs.

At this time, in addition to foreman Briggs and mechanic Checca, the following miners were present: John Corey, a roof bolter helper; John Poskon, a roof bolter; and David Cole, a miner helper. There were several mine cars on the tracks. Two shuttle cars were loaded and placed one behind the other or "piggy-back" on the opposite side of the tracks from the car spotter tank.

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Mechanic Checra spent 5 to 10 minutes "troubleshooting." He was unable to identify the problem. However, when he used a wooden wedge to manually lift the armature or contactor inside the car spotter tank, the mine cars moved forward on the tracks. During this entire period, foreman Briggs remained at his side but issued no orders to withdraw equipment or men. In fact, foreman Briggs testified that he did not know the whereabouts of any of the three other members of his crew who were in this area. Mechanic Checra testified that he manually lifted the armature three to five times. As the cars moved, the conveyor belt of the shuttle car was activated and coal was loaded in the mine car. John Poskon testified that when he observed the mine cars move, he activated the shuttle cars' conveyor belts to load coal into the mine cars. He did this so that the mine cars would not be as likely to derail as they would if they were half full. No one told him to activate the loading apparatus. Mechanic Checra saw the mine car fill up and he testified as follows:

I noticed it was--it was going to dump the coal all over the tracks and pile everything up, so I just run the spotter and tried to get it through so it wouldn't cause a big pile of coal, you know, that everything would--well, whatever it did; but I tried to run the car through as far as I could to get the coal in the other car. That's when I guess Corey noticed that the--no one was operating the buggy, and he went across.

(Tr. 49).

Foreman Briggs testified that he was "surprised" when the conveyor on the shuttle car was activated and it began to dump coal into the mine car. David Cole, a miner helper, testified that at the time the cars moved and

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coal began to be loaded, he was standing next to John Corey on the same side of the tracks as were foreman Briggs and mechanic Checca but on the opposite side of the tracks from the shuttle cars and John Poskon. As coal from the shuttle cars began to spill out of the mine car, David Cole testified that "everyone started to yell." Someone yelled to shut off the shuttle car. No one saw John Corey cross the tracks. All of the witnesses assumed that John Corey ran across the tracks to shut off the shuttle car. At that point, everyone heard John Corey yelling and he was found to be squeezed between the mine car and the shuttle car. The shuttle car was moved and the victim was removed.

On October 3, 1978, at about 7:30 a.m., MSHA inspector Joseph F. Reid was conducting a regular inspection of the Westland Mine when he was informed by Consol management of the occurrence of a serious accident. At about 9 a.m., he arrived on the section where the accident occurred. Two Consol employees told him what happened. None of the parties involved in the accident was present. He found no violations evident at that time. He did not issue a citation. He returned to his regular inspection.

On October 11, 1978, the president of the local United Mine Workers of America submitted a written request to MSHA to investigate the instant accident. Inspector Reid was assigned this investigation. During the next 5 days, he made two trips to the mine and obtained statements from John Poskon, Hugh Briggs, and Richard Checca. Inspector Reid testified that he was told that a wooden wedge was used to "block out" the contactors causing the car spotter to operate continuously. As noted, supra, witnesses Poskon, Briggs, and Checca deny making any such statement. He wrote a citation for

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a violation of 30 C.F.R. 75.1725(a) for failure to remove unsafe equipment from service. He also issued a "safeguard" to the victim, John Corey, for not seeking refuge in a manhole or shelter while there was moving traffic on the track. To abate the violation, management met with the miners concerning reinstruction on removing unsafe equipment from service. Marshall Hunt, Consol's assistant superintendent, gave Inspector Reid a copy of Consol's report of its investigation of the accident (Exh. G-4).

In a Consol memorandum dated October 3, 1978, from Stanley R. Kretoski, Sr., to Joseph Kristoff, Jr., the facts of the accident in question are set forth. The memo concludes, in pertinent part, as follows:

Those of you who have been around for a few years are aware that this is not the first time this kind of accident has happened in our mines, and there will be others if safe haulage practices are not adhered to. With this thought in mind, the following recommendations are made:

1. Absolutely no one is to cross between moving mine cars.
2. When trips are being changed or maintenance work is being performed on the car spotter, shuttle cars are to be kept at least 8' away from the mine cars.
3. Only those people whose work duties require their presence at the ramp area shall be there.
4. The practice of "piggy-backing" is to stop unless both shuttle cars are attended.

(Exh. G-4).

#### EVALUATION OF THE EVIDENCE

All of the testimony, exhibits, stipulations, and arguments of counsel have been considered. The evidence shows that on October 3, 1978, the car

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spotter in the loading ramp area of 10 East Section of Consol's Westland Mine was not operable. Although the car spotter was not in safe operating condition, it was not removed from service. At that time, foreman Briggs was present and he permitted "troubleshooting," involving the movement of mine cars, to proceed without taking any precaution to avoid injury to miners. Moreover, after the mine cars started to move, he took no action to prevent or stop the loading of coal while "troubleshooting" was being performed by the mechanic. I find this conduct to be a violation of 30 C.F.R. 75.1725(a) as charged by MSHA.

Section 110(i) of the Act provides in pertinent part as follows:

In assessing civil monetary penalties, the Commission shall consider the operator's history of previous violations, the appropriateness of such penalty to the size of the business of the operator charged, whether the operator was negligent, the effect on the operator's ability to continue in business, the gravity of the violation, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation.

Consol's prior history shows 490 violations at the Westland Mine in the 2 years prior to the instant violation. Of that number, only one violation was of regulation 30 C.F.R. 75.1725(a) in controversy here.

Consol is a large operator. The assessment of a civil penalty will not affect its ability to continue in business.

Consol was negligent in failing to remove from service the car spotter which it knew was defective and unsafe. It was also negligent in permitting normal loading of mine cars while its mechanic was "troubleshooting." Moreover, by Consol's own admission, it had actual knowledge of the prior

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occurrence of "this kind of accident" but failed to produce any evidence of a safety program to prevent the instant accident. Under these circumstances, Consol is chargeable with a high degree of negligence.

In determining the gravity of this violation, consideration must include the following: (1) the likelihood of injury; (2) the number of workers exposed to the potential injury; and (3) the severity of potential injuries. In this case, the facts show that mining cars were moving on the tracks at irregular intervals without warning. Foreman Briggs testified that he did not know the whereabouts of three members of his crew at the time the car spotter was manually activated. Under these conditions, death or serious physical injury could be expected to result. In fact, victim John Corey sustained a disabling injury. I conclude that the violation was severe.

After notification of the violation, Consol discussed the hazards of this accident with its employees at the mine. Consol demonstrated good faith to achieve rapid compliance.

In conclusion, the evidence establishes a violation of 30 C.F.R. 75.1725(a) in that the car spotter was neither in safe operating condition nor was it removed from service. An accident involving serious physical injury resulted because mine cars were being loaded with coal during the time that the car spotter was defective. The accident could have been prevented by the exercise of the degree of care mandated by the Act and regulations. The operator's negligence was of a high degree and the gravity was severe. Based upon all of the evidence of record and

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the criteria set forth in section 110(i) of the Act, I conclude that a civil penalty of \$7,500 should be imposed for the violation which was found to have occurred.

ORDER

Therefore, IT IS ORDERED that respondent pay the sum of \$7,500 within 30 days of the date of this decision as a civil penalty for the violation of 30 C.F.R. 75.1725(a).

James A. Laurensen  
Judge