

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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OCT 12 1984

SECRETARY OF LABOR, : CIVIL PENALTY PROCEEDINGS
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA), : Docket No: LAKE 83-8
Petitioner : A/O No: 11-01845-03507
: :
v. : Zeigler No. 5 Mine
: :
ZEIGLER COAL COMPANY, :
Respondent :

DECISION

Appearances: Rafael Alvarez, Esq., Office of the
Solicitor, U.S. Department of Labor,
Chicago, Illinois, for Petitioner
H. Halbert Woods, Esq., Zeigler Coal
Company, Des Plaines, Illinois, for
Respondent

Before: Judge Moore

On the evening of May 17, 1982, Inspector Buelow entered respondent's mine for the purpose of conducting a ventilation inspection. He was accompanied by mine management personnel Leroy Johnson and Dan Kroll until he got to the dinner hole just inside the section. From there on, Sam Meadows the section foreman accompanied the investigating team. They proceeded down the No. 5 entry toward the faces and as they proceeded under the last check curtain (a pull-through curtain) they saw a continuous miner and a shuttle car operating in a crosscut to the left of No. 5 entry. There was no line brattice directing air to the **lefthand** crosscut and the cutting blades of the miner were **inby** the rib of No. 5 entry by about sixty feet. The crosscut was bolted for forty feet.

The inspector issued a 104(d)(1) notice with accompanying findings of significant and substantial as well as unwarrantable failure. The ventilation plan **calls** for a blowing line curtain to within twentyfive feet of the face and inasmuch as there is no dispute as to the absence of the curtain, there is no dispute as to the existence of the violation. The dispute is as to the violation's designation as significant and substantial and as an unwarrantable failure.

The general practice in this mine is that the continuous miner cuts a crosscut by cutting to a depth of twenty feet and then backs out so that the roof bolter can come in. The continuous miner then goes to other faces and when it

comes back to where it started it cuts another twenty feet, backs out and then again leaves the area so that the roof bolter can come in. Inasmuch as the crosscut on the left had been cut almost sixty feet and then bolted for forty feet, it was the opinion of the inspector that three different twenty foot deep cuts had been made without any air being directed into the crosscut.. He blamed the section foreman Sam Meadows for allowing this situation to occur.

He may have made statements to the effect that it was not entirely Sam Meadows' fault, but it was Sam Meadows' negligence that he attributed to the coal mine operator, and it was that negligence that led to the unwarrantable failure aspect of the case.. As to the significant and substantial finding, while his methane reading showed only **4/10ths** of **1%**, there was always a chance of hitting a methane feeder and without the required ventilation the methane concentration could have become high enough to cause an explosion if there had been an ignition.

Section foreman Sam Meadows testified that at the beginning of the shift he gave a standard talk on the importance of ventilation and of keeping the brattice curtains in their proper position. He further testified that the continuous miner **was** cutting a new crosscut on the right hand side of the entry, and that before he went to the dinner hole for his evening meal he directed the miner operator to square up the new crosscut, a procedure that would have taken some forty--fiveminutes. He again cautioned the operator and helper to keep their ventilation curtain within twenty.-five feet of the face as they squared **up**. He and a Mr. Crawford, a face man, whose job it was to see that a line curtain was available, went to the dinner hole and proceeded to eat. Before they finished eating, the inspection party showed up at the dinner hole and Mr. Meadows sent Mr. Crawford back to the face area with instructions to **make** sure that the ventilation curtains were in the proper position.

The rest of the sequence is the same as that related by Inspector Buelow. When they went through the **pull-**through curtain they saw the continuous miner working in the left hand crosscut with no line curtain directing air to the face. Mr. Meadows testified that the operator of the continuous miner had not followed his instructions and squared up the notch of the new crosscut being driven on the right hand side of the entry. He said that the miner operator had, without any authority, backed out of

the crosscut on the right and started mining the crosscut on the left. The miner operator and helper were reprimanded by Mr. Meadows for failing to carry out his instructions and for mining in the left hand crosscut without authorization to do so. From the conversation it appeared that the miner and helper had deliberately gone into the crosscut, knowing that the line curtain was not up, because they made some remarks as to not wanting to do Mr. Crawford's work while he was sitting in the dinner hole. Mr. Crawford, the man they were referring to had gotten into a conversation with someone after Mr. Meadows had sent him back to the face area and he had not reached the continuous miner before the inspection party got there.

I have no reason to doubt Mr. Meadows' testimony. If his instructions had been carried out, the continuous miner would still have been working in the right hand crosscut squaring it up when Mr. Meadows returned from the dinner hole. While the left hand crosscut would have been the **next** area to be mined, it had not been mined by any of Mr. Meadows' shifts and I can not make the assumption that Mr. Meadows would have sent the continuous miner into the crosscut without seeing that the appropriate curtains were hung.

I find no negligence on the part of section foreman Meadows and I therefore VACATE the unwarrantable finding. The violation in my opinion was significant and substantial however. The mine liberates 500,000 to 600,000 cubic feet of methane per day and while only a small percentage of that methane comes from the face areas there is always the possibility of a methane build-up if proper ventilating techniques are not used. In view of these findings and together with the other criteria which have been the subject of a stipulation, I consider a \$200 penalty to be appropriate,

The Zeigler Coal Company is accordingly ORDERED to pay to MSHA, within 30 days, a civil penalty in the amount of \$200.

Charles C. Moore, Jr.

Charles C. Moore, Jr.
Administrative Law Judge

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