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METTIKI COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

METTIKI COAL CORPORATION,
CONTESTANT

v.

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

CONTEST PROCEEDING

Docket No. YORK 84-13-R
Order No. 2261376; 5/30/84

A-Mine

DECISION

Appearances: Timothy M. Biddle, Esq., and Adrienne J. Davis, Esq., Crowell & Moring, Washington, D.C., for Contestant;
Covette Rooney, Esq., Office of the Solicitor, U.S. Department of Labor, for Respondent.

Before: Judge Melick

This contest proceeding was brought by the Mettiki Coal Corporation (Mettiki) pursuant to Section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," to challenge an order of withdrawal issued by the Secretary of Labor under Section 104(d)(1) of the Act.

The order at issue (Order No. 2261376) alleges a violation of the standard at 30 C.F.R. 75.200 and reads as follows:

There were two resin grouted rods (made up for installation) standing in an upright position against the right rib a distance of 5 feet inby the TRS [temporary roof support] on the Fletcher roof bolting machine located in the last open cross-cut between the LT Mains (004) sections No. 2 and No. 3 intake entries at break No. 85. These roof bolts were inby permanent roof supports (last row) a distance of 11 feet. This section is supervised by Paul Baker section foreman. The approved roof control plan states that "Miners shall not advance inby the last row of installed roof bolts except to install

supports," and all indications indicated that a miner had to advance inby the last row of installed roof bolts to place these above listed roof bolts against the rib.

At the conclusion of the evidentiary phase of the hearing Mettiki moved for dismissal. In a bench decision the undersigned granted the motion. That decision appears below with only non-substantive changes.

I'm going to grant the operator's motion to dismiss. First of all the applicable Roof Control Plan states that miners shall not advance inby the last row of installed roof bolts, except to install supports. The Government acknowledges however that an additional exception is permitted so that a miner can advance inby the last row of installed roof bolts so long as there is temporary support providing protection.

The undisputed testimony of the Government witnesses is that two roof bolts were found positioned some five feet inby the temporary support. However the only evidence that the Government has produced to indicate that the individual miners had themselves been inby the temporary roof support is its speculation that it would have been virtually impossible to have two roof bolts positioned or lined up so closely together and parallel against the rib unless the miners had themselves been under unsupported roof.

Against that speculation, however, there is the direct sworn testimony of Mssrs. Riggleman and Shifflett. Mr. Riggleman, in particular, as the most likely person to have positioned the cited roof bolts where they were, demonstrated how, while remaining under the protection of the temporary support he would place one or two of these six foot roof bolts against the rib inby the temporary support by placing one end on the mine floor about 5 feet inby and tossing it up against the rib. According to Riggleman it would ordinarily align itself upright alongside the rib.

When you compare this credible and corroborated direct testimony against the Government's speculation, I am obligated to accept that testimony--and I have no reluctance in accepting that testimony. I therefore find that the miners were at all times under the protection of at least temporary roof support in spite of the fact that the roof bolts themselves were found

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some five feet inby. The position of the roof bolts has been satisfactory explained and therefore, I find no violation. The order must accordingly be dismissed.

ORDER

The bench decision is affirmed and Order No. 2261376 is dismissed.

Gary Melick
Assistant Chief Administrative Law Judge