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U.S STEEL MINING V. SOL (MSHA) & UMWA
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

U.S. STEEL MINING CO., INC.,
CONTESTANT

v.

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

AND

UNITED MINE WORKERS OF
AMERICA (UMWA),
INTERVENOR

CONTEST PROCEEDING

Docket No. WEVA 84-335-R
Order No. 2266009; 6/29/84

Morton Mine

DECISION

Appearances: Louise Q. Symons, Esq., U.S. Steel Mining
Company, Inc., Pittsburgh, Pennsylvania,
for Contestant;
Heidi Weintraub, Esq., U.S. Department of Labor,
Office of the Solicitor, Arlington,
Virginia, for Respondent;
Charles Johnson, United Mine Workers of America,
Washington, D.C., for Intervenor.

Before: Judge Melick

This case is before me upon the application for review filed
by the U.S. Steel Mining Company, Inc. (U.S. Steel) under section
107 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C.

801 et. seq., the "Act", to challenge the issuance by th
Secretary of Labor of an imminent danger withdrawal order on June
29, 1984. The general issue before me is whether the conditions
existing at the time the withdrawal order was issued constitute
an "imminent danger" within the meaning of section 3(j) of the
Act. "Imminent danger" is there defined as "the existence of any
condition or practice in a coal or other mine which could
reasonably be expected to cause death or serious physical harm
before such condition or practice can be abated."

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The order at bar (Order No. 2266009) issued pursuant to section 107(a) of the Act, (Footnote.1) reads as follows:

The investigation of a fatal powered haulage accident that occurred in B entry near the third crosscut outby the face on main south section (MMU 040-0) revealed that the following conditions constitute an imminent [sic] danger. The Joy shuttle car, (Serial No. ET10618, Approval No. 2G-2216-8) was not blocked against motion while repairs to a stuck conveyor chain was [sic] in progress. Motion of the shuttle car was not necessary to make the repairs (75.1725(c)). The underlying cause was the hazard created when the operator modified the tram control located near the center of the shuttle car operators compartment. The modification caused the tram lever to extend into the operator compartment to such an extent that accidental activation could occur. The lever was accidentally moved while other activities were being preformed [sic] which resulted in fatal injuries to a miner.

On June 27, 1984, at 11:25 p.m. an accident occurred in the Morton Mine resulting in the death of Jerry W. Jarrell, an electrician. The deceased had been performing mechanical repairs on a shuttle car and had positioned himself close to the mine floor near the left front tram motor and bumper in an attempt to observe the conveyor chain beneath the shuttle car. While attempting to operate the conveyor and boom control simultaneously, it appears that the shuttle car operator accidentally contacted a modified tram control lever

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causing the unblocked shuttle car to move about 2 feet. The movement caused the victim's head to be crushed between the shuttle car bumper and the mine floor.

Upon completion of his investigation on June 29, 1984, MSHA Inspector Homer S. Grose issued the withdrawal order at bar. According to Grose three primary factors led him to conclude that an imminent danger existed. First, the tram control lever in the cited shuttle car had been modified so that the hand control extended into the operator's compartment some 2-1/2 inches past the deenergizing switch (panic bar) and 1-3/4 inches above the floor of the compartment. Grose opined that the control protruded so far into the operator's compartment that it could be accidentally triggered, and that this did in fact occur 2 days prior to the issuance of his order, leading to the fatality.

The second factor Grose relied upon in finding an imminent danger was the continuing practice at the Morton Mine of performing repairs on mobile equipment without blocking it against trammig motion when such motion was not required for repairs. Inspector Grose found, and it may reasonably be inferred, that had the cited shuttle car been properly blocked Mr. Jarrell would not have been killed. U.S. Steel's Chief Inspector, Carl Peters, conceded that it was not the practice at the mine to block equipment under such circumstances because they did not believe that it was required by the regulations. Peters acknowledged moreover, that U.S. Steel changed this practice only "to get out from under the order". It may therefore reasonably be inferred that without the withdrawal order issued by inspector Grose, U.S. Steel would have continued the same practices of not blocking equipment under the same circumstances that led to the fatality. Whether or not U.S Steel was in violation of the standard for equipment blocking (30 C.F.R. 1725(c)) is, of course, a question not before me in this proceeding. Freeman Coal Mining Corp., 2 IBMA 197.

Finally, the determination by Inspector Grose that an imminent danger existed was based upon the expectation that equipment would continue to be operated and repaired in the vicinity of other miners. Grose observed that several fatalities had already occurred "this year" where miners had been pinned against ribs by a shuttle car. Within the above framework of evidence I find that indeed at the time the withdrawal order at bar was issued there existed an "imminent danger" within the meaning of the Act and that the Secretary has met his burden of proof in support of that order. See 5 U.S.C. 556(d).

In reaching this conclusion I have not failed to consider the applicant's argument that the absence of serious physical injuries or other fatalities over the 8 years during which the tram lever had been modified, demonstrates that there was no imminent danger. In this case however the cited conditions and practices had in fact already caused the death of a miner and the evidence clearly indicates that those same or similar conditions and practices would have continued. Accordingly considering this past history the conditions and practices could reasonably be expected to cause serious or fatal injuries in the future.

U.S. Steel also appears to imply in its posthearing brief that the cited tram control lever had already been shortened as a result of a section 103(k) order before the citation at bar had been issued. There is no evidence in the record however to support this contention and inspector Grose indeed testified that at the time he issued the order at bar the tram control lever had not been modified. U.S. Steel also suggests that since the shuttle car which had crushed the deceased in this case was in fact blocked during the rescue efforts and remained blocked at the time the withdrawal order herein was issued, it was erroneous for Inspector Grose to assume that the shuttle car would not remain blocked. The blockage necessary to elevate the shuttle care to remove the body of the deceased was not however the same type of blockage cited by Inspector Grose as an element of the imminent danger. On the contrary, U.S. Steel's Inspector Peters clearly stated that, but for the withdrawal order in this case, U.S. Steel would have continued its practice of not blocking equipment during similar repairs. The contention is therefore irrelevant.

Finally, U.S. Steel contends that the subject withdrawal order was issued upon facts existing at the time of the fatality on June 27, 1984 and not upon events 2 days later when the order was issued. While the wording of the order appears to support this contention, Inspector Grose made it clear at the hearing in this case that although he relied upon the fatal accident as evidence of the type of accident that could occur as result of the circumstances he found 2 days later he was nevertheless relying upon facts existent on June 29, 1984, for his conclusion that an "imminent danger" existed at that time. The conclusions of inspector Grose are supported by the credible evidence of record. *Old Ben Coal Corporation v. Interior Board of Mine Operation Appeals*, 523 F.2d 25 (7th Cir., 1975).

