FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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JUL 22 1986

SECRETARY OF LABOR, MINE SAFETY AND HEALTH ADMINISTRATION (MSHA), Petitioner	:	CIVIL PENALTY PROCEEDING Docket No. KENT 85-149 A. C. No. 15-10271-03502
v.	:	Lancer Tipple Mine
CABIN COAL CORPORATION, Respondent	:	

DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor, U.S. Department of Labor, Nashville, Tennessee, for Petitioner;
Richard Sims, President, Cabin Coal Corporation, Prestonsburg, Kentucky, pro se.

'Before: Judge Maurer

The Secretary of Labor, on behalf of the Mine Safety and Health Administration (MSHA), charges respondent with a violation of the safety regulations promulgated under the Federal Mine Safety and Health Act, 30 U.S.C. § 801 et seq., (the Act).

After notice to the parties, a hearing was held on the merits at Prestonsburg, Kentucky, on May 30, 1986.

Samuel V. Trossky, a'surface mine inspector employed by MSHA, had occasion on April 22, 1985, to inspect the Lancer Tipple.

On that occasion he observed a front end loader moving coal from the stock pile and taking it to the hopper. He issued § 104(a) Citation No. 2468999 for a violation of 30 C.F.R. § 77.1605(a) because the windshield of that vehicle had numerous cracks directly in the line of sight of the operator so as to impair his vision.

The front end loader had to go up a S-foot elevated ramp.to dump coal into the hopper and therefore because

of the driver's impaired vision, he possibly could run into the hopper, or maybe run into a truck according to the inspector. However, the inspector testified that he didn't know how likely it would be that the operator would run into something and he further testified that there was infrequent vehicular traffic in the area this front end loader was operating in and no pedestrian traffic.

The facts of this case establish a non-S&S violation of the cited regulation and I conclude that a civil penalty of $20 is appropriate.

Conclusions of Law

1. The Commission has jurisdiction to decide this case.

2. Respondent violated the mandatory safety standard published at 30 C.F.R. § 77.1605(a) as alleged in Citation No. 2468999.

3. The violation was not "significant and substantial" within the meaning of the Act.

4. The appropriate penalty for the violation is $20.

ORDER

Citation No. 2468999 is affirmed as non-significant and substantial and the respondent IS ORDERED to pay a civil penalty of $20 to the Secretary within 30 days of the date of this decision.

Roy J. Maurer
Administrative Law Judge

Distribution:

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