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SOL (MSHA) v. CONSOLIDATION COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges
2 Skyline, 10th Floor
5203 Leesburg Pike
Falls Church, Virginia 22041

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

v.

CONSOLIDATION COAL COMPANY,
RESPONDENT

CIVIL PENALTY PROCEEDINGS

Docket No. WEVA 91-91
A.C. No. 46-01433-03952

Loveridge No. 22 Mine

DECISION

Appearances: Charles Jackson, Esq., Office of the Solicitor,
U.S. Department of Labor, Arlington, Virginia,
for the Petitioner;
Walter Scheller, Esq., Consolidation Coal Company,
Pittsburgh, Pennsylvania, for the Respondent.

Before: Judge Melick

This case is before me upon the petition for civil penalty filed by the Secretary of Labor, pursuant to section 105(d) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," charging the Consolidation Coal Company (Consol) with one violation of the mandatory standard at 30 C.F.R. 75.1405 and proposing a civil penalty of \$147 for the alleged violation. The general issue before me is whether Consol committed a "significant and substantial" violation of the cited regulatory standard and, if so, the amount of civil penalty that should be assessed for the violation in accordance with section 110(i) of the Act.

The one citation at issue, Citation No. 3308635, alleges a "significant and substantial" violation and charges that "the cut off levers on the No. 1 and 9 supply cars in the 1 South mains (058) section are damaged and inoperative creating a hazard to persons who may have to uncouple the supply cars."

The cited standard provides as follows:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and

uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be so equipped within 4 years after March 30, 1970.

Consol does not dispute the violation but maintains that it was neither "significant and substantial" nor of high gravity. Frank Bowers, a coal mine inspector for the Federal Mine Safety and Health Administration (MSHA), explained that the existing cutoff levers on the cited supply cars were located at the ends of the cars at the sides, which enabled persons to uncouple the cars without going between the cars. He explained that, if working properly, by pushing the lever down, a chain uncouples the car. In this case, the chains were broken off the levers.

Bowers thought it was reasonably likely under the circumstances for a person to proceed between the cars to uncouple them and it would be reasonably likely to result in serious crushing injuries and lost fingers or legs. Bowers further testified that he had previously seen a miner at this mine position himself between two supply cars in attempting to uncouple the cars. This had occurred in spite of stickers on the cars warning miners not to proceed between the cars, in spite of the issuance of a safeguard at this mine prohibiting miners from uncoupling between cars, and in spite of purported safety messages and training sessions at which employees were allegedly trained against proceeding between rail cars to uncouple cars. While Bowers observed that a "safety bar" could be used to uncouple the cars from a safe position he did not see any such bar in the area at that time. Bowers also testified that the motorman told him that he did not then have such a safety bar available.

Bowers also concluded that the operator "should have known" of the violative condition because it was "pretty obvious" and that company policy requires that cutoff levers be checked on the cars before they enter the mine.

Within this framework, I conclude that indeed the violation was "significant and substantial" and of significant gravity. See Mathies Coal Company, 6 FMSHRC 1 (1984). In reaching these conclusions, I have not disregarded the testimony of Loveridge Mine Escort David Olson that warning stickers have been placed on mine cars warning miners not to proceed between the rail cars, and that supply cars are ordinarily furnished with a symbolic warning sticker. It is apparent, however, that the warnings were ignored by the Consol employee previously observed by the inspector between supply cars. The effectiveness of such warnings are therefore suspect.

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I have also not disregarded Olson's testimony that miners have been periodically advised in training sessions and in safety messages not to proceed between rail cars, and that he had never personally seen any employee between the cars. It is apparent, however, that this training and these messages were also ignored by the employee seen by Inspector Bowers proceed between the cars. While this evidence provides some mitigation, it is not of sufficient weight to negate the "significant and substantial" findings herein.

I have also considered the testimony of Olson that he observed a safety bar on the locomotive of the subject supply train at the time of the citation. However, even assuming that the safety bar was indeed present as Olson testified, and that such a bar could be used by miners to uncouple cars without proceeding between them, I do not find this evidence to be sufficiently mitigating to negate the "significant and substantial" and high gravity findings made herein.

In light of the undisputed testimony that the cited and admitted violative conditions were "obvious" and had been overlooked during Consol's inspection process, I must also conclude that the violation was the result of negligence. In particular I have also noted the existence of seven prior violations in the 10-month period preceding the instant citation of the same regulatory standard at issue herein and involving 19 inoperable automatic couplers. This evidence is not only relevant to the history criterion under section 110(i) but also reflects upon the ineffectiveness of the company inspection procedures and indeed is also a factor to be considered in evaluating operator negligence. Under the circumstances, and considering all of the criteria under section 110(i) of the Act, I conclude that a civil penalty of \$300 is appropriate.

ORDER

Citation No. 3308635 is affirmed, and Consolidation Coal Company is directed to pay a civil penalty of \$300 for the violation charged therein, within 80 days of the date of this decision.

Gary Melick
Administration Law Judge
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