

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES
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September 27, 1996

JIM WALTER RESOURCES, INC., : CONTEST PROCEEDING
Contestant :
v. : Docket No. SE 96-112-R
: Citation No. 4476618; 1/3/96
: No. 4 Mine
SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH : Mine ID 01-01247
ADMINISTRATION (MSHA), :
Respondent :

DECISION

Appearances: R. Stanley Morrow, Esq., Jim Walter Resources, Inc., Brookwood, Alabama for Contestant.
William Lawson, Esq., Office of the Solicitor, U.S. Department of Labor, Birmingham, Alabama for Respondent.

Before: Judge Fauver

This is a contest proceeding under ' 105 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. ' 801 et seq. The parties have filed cross motions for summary decision.

Having considered the stipulations, exhibits, and the record as a whole, I find that the record establishes the following Findings of Fact and further findings in the Discussion below:

FINDINGS OF FACT

1. Jim Walter Resources, Inc., operates an underground coal mine, known as Mine No. 4, which produces coal for sale or use in or affecting interstate commerce.

2. On January 3, 1996, it was operating nonpermissible diesel-powered buses and locomotives within 150 feet of pillar workings in the No. 4 Mine. The diesel-powered vehicles contained electrical components including an alternator, battery, starter, circuit breakers, diodes, fuses, relays, resistors, and solenoids.

3. Based upon the above facts, the Secretary issued a

citation charging a violation of 30 C.F.R. ' 75.1002.1-(a).

DISCUSSION WITH FURTHER FINDINGS, CONCLUSIONS
General Principles

Where the language of a statutory or regulatory provision is clear, the terms of that provision must be enforced as they are written@ Utah Power & Light Co., 11 FMSHRC 1926, 1930 (1989); see also Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc. 467 U.S. 837, 842-43 (1984). The ordinary meaning of its words prevails, and it cannot be expanded beyond its plain meaning@ (Western Fuels-Utah, Inc., 11 FMSHRC 278,283 (1989) (citing Old Colony R.R. v. Commissioner, 284 U.S. 552, 560 (1932))).

Under the Mine Act, if a statutory provision is ambiguous or silent on a point in question, an inquiry is required into the reasonableness of the Secretary's interpretation. If the Secretary's interpretation is found to be reasonable, it is given deference by the Commission and the courts. Special weight is given to an agency's interpretation of its own regulation. The Supreme Court has stated that the agency's interpretation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation.@ Bowles v. Seminole Rock & Sand Company, 325 U.S. 410, 414 (1945); and see Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 566 (1980); and Secretary of Labor ex rel. Bushnell v. Connelton Industries, Inc, 867 F.2d 1432, 1433, 1435 (D.C. Cir. 1989). To warrant deference the agency's interpretation must be consistent with due process. That is, an agency's interpretation of its regulation cannot be said to be reasonable if the regulation as interpreted fails to give fair warning of the conduct required or prohibited.

Disposition

Section 75.1002-1(a) provides in part:

(a) Electric equipment other than trolley wires, trolley feeder wires, high-voltage cables, and transformers shall be permissible, and maintained in a permissible condition when such equipment is located with 150 feet from pillar workings

The controlling issue is whether ' 75.1002-1(a) applies to Contestant's diesel-powered buses and locomotives.

Section 75.1002 is a verbatim adoption of ' 310(c) of the 1969 Coal Mine Health and Safety Act, which was not changed by the 1977 Amendments to the 1969 Act. Section 310(c) was enacted to prevent certain nonpermissible electric equipment (specifically, Atrolley wires and trolley feeder wires, high-voltage cables and transformers@) from being located with 150 feet of pillar workings. The standard is intended to Aprevent such equipment from being located in the ventilating current which might contain [explosive] mixtures of gas and [float coal] dust.@ 13 F.R. 11777, 11778 (June 14, 1972). Section 310(c) does not specify other electric equipment, such as electric-powered vehicles. Because of this omission, in 1972 the Secretary proposed an amendment to ' 75.1002 by adding ' 75.1002-1, stating it was needed because Aelectric equipment other than trolley wires trolley feeder wires, high-voltage cables, and transformers may be located with 150 feet form pillar workings ... and are subject to the [same] hazards.@ 37 F.R. 11777, 11778 (June 14, 1972). The amendment became effective February 23, 1973. 38 F.R. 4974-76.

The Secretary contends that diesel-powered vehicles are Aelectric equipment@ within the meaning of ' 75.1002-1(a) because they contain electric components, e.g. alternators, batteries, starters, solenoids, and circuit breakers, and the vehicles and components present the same hazards as other nonpermissible equipment.

This is a case of first impression. However, several decisions give some guidance.

In U.S. Steel Mining Company, Inc., 15 FMSHRC 1541 (1993), the Commission held that Aelectrical circuits that perform electrical functions exclusively@ and components of such circuits, such as circuit breakers, are Aelectric equipment@ within the meaning of ' 75.512 (which requires examination and testing of Aelectric equipment@). The Commission gave deference to the Secretary's interpretation, which it found to be reasonable and supported by the definition of Aequipment@ in the Institute of Electrical and Electronic Engineers Standard Dictionary of Electrical and Electronic Terms.¹

¹The IEEE Dictionary defines Aequipment@ as: AA general term including material, fittings, devices, appliances, fixtures, apparatus, and the like used as a part of or in connection with, an electrical installation.@

In Amax Coal Company, 16 FMSHRC 1837 (1994), the trial judge held that electric equipment as used in ' 75.400 (which prohibits combustible accumulations in active workings, or on electric equipment therein) includes diesel-powered equipment. The judge's rationale was that the Congressional concern about electric equipment as a potential ignition source is equally applicable to diesel equipment. On appeal the Commission declined to adopt this rationale. Instead, the Commission deferred to the Secretary's interpretation, holding that the phrase in active workings includes both a physical area of a mine and all equipment located within it whether electric or nonelectric. It thus declined to hold that diesel equipment is electric equipment under the regulation.

In Mettiki Coal Company, 11 FMSHRC 2435 (1989), I held that ' 75.512's requirement to inspect electric equipment does not apply to diesel-powered locomotives. I observed that after the citation was issued, the Secretary proposed a regulation to require that all diesel-powered equipment [in underground coal mines] be examined and tested weekly .., with a preamble indicating that ' 75.512 does not apply to diesel-powered equipment. I also observed that the Secretary's position in Mettiki was inconsistent with various existing and proposed regulations, in that wherever the Secretary intended to apply a standard to mobile diesel-powered transportation equipment, diesel-powered equipment, electrical components on mobile diesel-powered transportation equipment, or All electrical and diesel-powered equipment, those words were stated in the regulation or proposed regulation.²

A striking example is the Secretary's proposed standard for ' 57.36302 (Permissible Equipment) which provides in part: All electrical and diesel-powered equipment used in or beyond the last open crosscut shall be permissible. * * * Nonpermissible electrical and diesel-powered equipment shall be kept at least 150 feet from pillar recovery workings... 50 F.R. 23612, 23639 (June 4, 1985). This proposed regulation is inconsistent with the Secretary's contention that the term electric equipment in ' 75.1002-1(a) includes diesel-powered equipment.

Another example is the Secretary's proposed ' 75.1907(a)(1), which would require that diesel-powered equipment be permissible

²See, for example, 30 C.F.R. ' 36.2(a), 36.3-36.6, 36.9, 36.28-36.31, 36.41 and proposed rules published at 54 F.R. 40950 (October 4, 1989), and 50 F.R. 23612 (June 4, 1985).

if used in locations where permissible electric equipment is required. The Secretary's position is that the proposed standard removes any confusion which may exist as to whether nonpermissible diesel-powered equipment can operate within 150 feet of the longwall face (Secretary's counsel's letter, August 28, 1996).

In light of the confusion in the regulations, I find that the Secretary's interpretation that diesel vehicles are electric equipment under ' 75.1002-1 (a) is not entitled to special weight. However, based upon an independent analysis, I conclude that the prohibition of ' 75.1002-1(a) reasonably applies to nonpermissible diesel-powered equipment.

Section 75.1002-1(a) supplements ' 75.1002 by providing that Electric equipment other than trolley wires, trolley feeder wires, high-voltage cables, and transformers shall be permissible ... when located within 150 feet from pillar workings .. (emphasis added). Because of the focus upon all electric equipment, the term electric equipment in ' 75.1002-1(a) reasonably includes electric components of diesel-powered vehicles. This conclusion is supported by the Commission's decision in U.S. Steel Mining Company, supra. Since ' 75.1002-1(a) applies to the electric components of diesel-powered vehicles, it would be contrary to the logic and safety intent of the standard to hold that nonpermissible diesel-powered vehicles may be operated within the restricted area although their electric components must be kept in permissible condition. It is axiomatic that an interpretation of a regulation should be rejected if it produces an absurd result or frustrates the purpose of the underlying statute. Natural Resources Defense Council, Inc. v. EPA, 907 F.2d 1146, 1156 (D.C. Cir. 1990). Accordingly, I hold that the prohibition of ' 75.1002-1(a) applies to Contestant's diesel-powered vehicles.

CONCLUSIONS OF LAW

1. Contestant's No. 4 Mine is subject to the Act.
2. Contestant violated ' 75.1002-1(a) as alleged in Citation No. 4476618.

ORDER

WHEREFORE IT IS ORDERED that Citation No. 4476618 is AFFIRMED and this proceeding is DISMISSED.

William Fauver
Administrative Law Judge

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